



## **Mortgage Solutions of Colorado(MSC) Seller Guide**

### **1: Purpose of this Seller Guide**

The Mortgage Solutions of Colorado Seller Guide sets forth additional detailed terms and conditions governing the Seller's participation in the MSC Correspondent Lending Program. The MSC Seller Guide may be amended from time to time. To the extent that there are any conflicting provisions between this Seller's Guide and the executed Correspondent Agreement, the provisions of the Correspondent Agreement shall control.

### **2: Updates and Amendments**

MSC may periodically update the Seller Guide to reflect developments in the MSC Correspondent Lending Program. MSC will make each update by means of a written notice to the Seller, and such update will constitute an amendment to the Seller Guide. The written notice will explain the amendment and will specify both the effective date of the change and the Loans to which such change applies. When the Seller makes a Commitment to MSC after being provided with a notice of an amendment to the Seller Guide, the Seller shall be deemed to have agreed to the amendment.

### **3: Availability of Records**

Each Seller is expected to promptly respond to any request for production of all documents or records that MSC may require pertaining to the business dealings between MSC and the Seller. In the event a Seller does not respond in a timely manner to such a request, MSC may conclusively presume that such documents cannot be produced because they would confirm that the Seller either did not take certain actions required by either the Loan Purchase Agreement and the Seller Guide, or that the Seller took certain actions prohibited by either or both of these documents. In such case, MSC will take appropriate action based on the Seller's inability to produce necessary documentation.

If MSC is required to take legal action to obtain access to the contested documents or records, which it has a legitimate right to examine, the Seller will be liable for any legal fees, costs, and related expenses that become necessary in enforcing our right of access to the documents or records in question.

### **4: Periodic Review by MSC**

MSC shall have the right to periodically review the current financial condition, delivery record, Agency certification status, and other factors considered at the time of the original Seller approval. At the completion of this review, the Seller's eligibility will remain in an approved status as long as the eligibility criteria and delivery performance are acceptable to MSC.

### **5: Information and Documents Required by MSC for Periodic Review**



Examples of the documents that MSC may request to inspect include, but are not limited to, any and all of the following:

- The most recent financial statements of condition and income. If the Seller is a subsidiary company, the financial statements of condition and income of the parent are also required. Financial statements should be delivered to MSC, whether in response to a specific request or not, within 90 days following the end of each fiscal year. (For Delegated Correspondents, audited financials are required.)
- The most recent unaudited financial statements of condition and income.
- The names and resumes of new officers and directors appointed since the last review.
- A summary and explanation of any changes in methods of operation, financial condition, or relationship with regulatory agencies governing the operations of the Seller.
- A current Fidelity Bond and Errors and Omissions insurance policy.

## **6: No Accrued Liabilities**

### CONCERNING THE SELLER AND SELLER'S THIRD PARTY ORIGINATORS

The Seller, for itself and the Seller's Third Party Originators, hereby makes the following Representations, Warranties and Covenants to MSC as follows:

Except as the Seller has disclosed to MSC and MSC has acknowledged in writing prior to the Loan Purchase Agreement's effective date, there are no accrued liabilities of the Seller with respect to any of the Loans, or circumstances under which MSC will be liable for any such accrued liabilities as the Seller's successor in interest in and to the Loans.

## **7: Hazard Insurance**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

Pursuant to the terms of each Loan, hazard insurance policies meeting MSC and Agency minimum requirements insure all buildings or other improvements upon the Mortgaged Property and obligates the Mortgagor to maintain such hazard insurance policies at the Mortgagor's cost and expense, and upon the Mortgagor's failure to do so, or to provide evidence thereof, authorizes the Mortgagee to obtain and maintain such insurance at the Mortgagor's sole cost and expense, and to seek reimbursement from the Mortgagor. Each hazard insurance policy is the valid and binding obligation of the insurer, is in full force and effect, and will be in full force and effect, to MSC's benefit upon the consummation of the transactions contemplated by the Program Documents and this Seller Guide. The Seller has not engaged in, and has no knowledge of the Mortgagor having engaged in, any act or omission that would impair the coverage of any hazard insurance policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either. The Loan terms permit the maintenance of an escrow account to pay the premiums for the above-mentioned insurance, and the Mortgagor has not waived the requirement for such escrows, unless otherwise permitted by MSC or required by applicable law.



## **8: Flood Certification**

MSC requires a Flood Certification from CoreLogic. Flood Certifications from other providers will be accepted, however an additional fee of \$10.00 charged to the loan at time of purchase.

## **9: The Full Disbursement of Proceeds**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

The full principal amount of the Loan proceeds have been advanced to Borrower, either by payment directly to such Borrower or by payment made on such Borrower's request or approval and there is no requirement for future advances in the Loan documents. The unpaid balance of the Loan is as represented by the Seller. Any and all requirements as to completion of any on-site or off-site improvements and as to disbursements of any escrow funds therefore have been complied with. All costs, fees, and expenses incurred in making or closing the Loan and recording the Mortgage were paid, and the Mortgagor is not entitled to any refund of any amounts paid or due under the Note or the Mortgage.

## **10: Third Party Compliance**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

When a person or entity:

- (i) originates a Loan on the Seller's behalf;
- (ii) originates a Loan on its own behalf and sells it to the Seller; or
- (iii) performs any act for the Seller which the Program Documents or this Seller Guide requires the Seller to perform, the Seller warrants that such person or entity has complied with all this Seller Guide's requirements with respect to all such Loans and acts. All parties that have had any interest in the Loan, whether as mortgagee, assignee, pledgee, or otherwise, are (or during the period in which they held and disposed of such interest, were) in compliance with any and all applicable requirements concerning licensing and qualifications to do business under the laws of the state where the Mortgaged Property is located. Loans originated by Seller's Third Party Originators appearing on MSC's Third Party Originators Ineligible List are not eligible for purchase by MSC.

## **11: LTV/MI Policy**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

Each Loan's LTV does not exceed the maximum LTV permitted by the applicable Underwriting Guidelines. All MI Policy provisions have been and are being complied with. Each MI Policy is



written with a private mortgage insurance company acceptable to MSC, is the binding obligation of such insurer, is in full force and effect, and has had all premiums due thereunder paid. The Seller has not engaged in any act or omission, and the Seller has no knowledge of any act or omission by or on the Mortgagor's behalf or any other person's or entity's behalf, which act or omission would impair any such MI Policy's coverage or validity, the benefit of the endorsement provided for in, or the validity or binding effect of either. Any Loan subject to a MI Policy obligates the Mortgagor under the MI Policy to maintain such MI Policy to the extent required by law and to pay all required premiums and charges.

## **12: Title Insurance**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

The Seller is the sole insured under the Title Policy. The Title Policy is in full force and effect, will be in full force and effect upon the consummation of the transactions contemplated in the Loan Purchase Agreement and in this Seller Guide, and is in conformance with applicable Agency requirements. No claims have been made under such Title Policy, the accuracy of any attorney's opinion of title has not been disputed, and no prior Loan holder, including the Seller, has done, by act or omission, anything that would impair the coverage of such Title Policy or the accuracy of such attorney's opinion of title. The attorney's opinion of title, if permitted by MSC or required by state law, is in a form and substance acceptable to investors purchasing Loans and mortgage lending institutions making Loans in reliance upon such attorney's opinions of title.

## **13: Loan Recording and Transfer**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

The Seller has timely recorded the Mortgage, and the Note if necessary to protect MSC's interests. The Seller has either closed the Loan with MERS as the named nominee, or has assigned the Loan to MERS as the nominee prior to MSC's purchase of the Loan. If applicable, the Assignment of Mortgage from Seller to MERS has been timely recorded, and validly transfers the Loan, free and clear of any pledge, lien, encumbrance, or security interest, and the Seller will not assign or transfer any interest in the Loan to any person or entity other than MSC or MERS.

## **14: Appraisals**

### DELEGATED TRANSACTION

Delegated Correspondent Customers must include a Collateral Underwriter report in each file (CU not required on VA loans). The CU – FNMA's appraisal analysis tool – is now available directly to correspondent sellers and can be obtained through the following pdf link: [Collateral Underwriter](#) .



On delegated transaction underwritten to FNMA guidelines and receiving a CU review rating of 4 or 5, MSF will require the correspondent to address to MSF's satisfaction each CU finding though one or more of the following; (a) comments from the original appraiser, (b) a desk or field review with comments specific to the CU finding, or (c) data and information from the CU report/tools which supports the original appraisal and clearly alleviates the potential concern identified in the CU finding. If data or information from the CU report or tools is utilized, provide a copy of the full CU report printout.

### 15: Final Documents Guidelines

All final post-closing documents must be reviewed for accuracy before delivery to MSC. Delivery to MSC must be within 120 days and not prior to the date of the loan purchase by MSC. Any documentation not received within 360 days from the date of purchase by MSC, will result in fees to the seller as established by MSC.

Delivery Process	Earliest completion date	Latest completion date
MIN Transfer of Beneficial Rights (TOB)	Date loan has been purchased/ funded by MSC.	As required by MERS, within five calendar days of the effective transfer date. "The effective transfer date is the date defined in the Purchase and Sale Agreement on which the buyer begins servicing the loans on its servicing system." This is the first payment due to MSC.
MIN Transfer of Servicing Rights (TOS)	Date loan has been purchased/ funded by MSC.	As required by MERS, within five calendar days of the effective transfer date. "The effective transfer date is the date defined in the Purchase and Sale Agreement on which the buyer begins servicing the loans on its servicing system." This is the first payment due to MSC.
MIC/LGC/LNG	7 days after MIP is paid for FHA, after VAFF is paid for VA, After check and closing package are delivered for USDA.	Loan must be insured within 60 days from closing. Proof of insuring can be submitted with the remaining final documents if they are received within 60 days, if not please email to <a href="mailto:corr.finaldocs@msfhome.com">corr.finaldocs@msfhome.com</a>
Submission of any final documents including the Recorded Mortgage/Deed of Trust, Title Policy, Assignments and insuring documentation	Date loan has been purchased/ funded by MSC.	120 days from MSC purchase date.



On Delegated Correspondent Loans, MSC will require either a Soft Pull Credit Report or other validation of no additional liabilities, dated no sooner than 14 days prior to closing.

On Delegated Correspondent Loans, if the closing date is >45 days prior to the delivery date, or if more than one payment due date has passed since funding of the loan, MSF will require a payment history with the file submission.

The seller must submit the final documents with the MSC loan number displayed in the upper right hand corner of each document being submitted.

The seller must submit the documents with the [MSC Final Docs Transmittal Form](#). The seller may list multiple documents on each form. Each document submitted must be clearly indicated on the form.

All Final Documents can mailed or over-nighted to the following address:

**Mortgage Solutions Financial  
Attn: Correspondent Final Docs  
5455 N Union Blvd.  
Colorado Springs, CO 80925**

Seller must submit the documents to the MSC CLDD Website.

Correspondent shall deliver to MSC all Loan documents required by MSC within the applicable time period determined by MSC and the commitment confirmation. MSC reserves the right to reject and not purchase any Loan which does not meet MSC's documentation requirements or is not in accordance with MSC instructions. MSC reserves the right to reject any Loan that is not purchased within ninety (90) calendar days from the Note Date. If the ninetieth (90<sup>th</sup>) calendar day falls on a weekend or holiday, MSC's expiration date will roll back to the immediately preceding weekday. Correspondent must provide the entire closed loan package to MSC within ten (10) calendar days from the Note Date. If the tenth (10<sup>th</sup>) calendar day falls on a weekend or holiday, MSC's expiration date will roll back to the immediately preceding weekday.

Effective October 15, 2015, Correspondents should send collateral on loans being sold to MSC to:

**Deutsche Bank National Trust Company  
Attn: Team Mortgage Solutions Financial  
1761 East Saint Andrew Place  
Santa Ana, CA 92705**

## **16: Mortgaged Property Undamaged; No Condemnation**

CONCERNING INDIVIDUAL MORTGAGE LOANS



The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

The Mortgaged Property is undamaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado, or other casualty so as to affect adversely the Mortgaged Property's value as security for the Loan or the use for which the premises were intended. The Mortgaged Property is in good repair. There are no condemnation proceedings by any federal, state, or local authority pending or, to the best of the Seller's knowledge, threatened against the Mortgaged Property.

## **17: Principal Reductions**

If a principal reduction was applied to a correspondent loan, MSC will withhold the principal reduction amount from the Purchase Advice.

1. Loan is approved for purchase, funding is notified by Post Closing.
2. Funder will review the HUD.
3. If a principal reduction is shown on the HUD, the funder will include the amount when emailing accounting for the purchase advice.
4. Accounting will include the principal reduction as a line item on the purchase advice.
5. The purchase advice is sent to funding and servicing.
  - a. The funder will review the purchase advice to ensure the principal reduction is included and the amount is correct before sending wire and PA to the correspondent.
  - b. Servicing will apply the principal reduction to the loan and forward to the servicer if necessary.
6. Any additional funds received from the correspondent for the principal reduction will be returned.

## **18: Collection Practices; Escrow Deposits**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

The collection practices used with respect to the Loan have been in accordance with Accepted Servicing Practices, and have been in all respects legal and proper. With respect to escrow deposits and escrow payments, all such payments are in Seller's possession and there exists no deficiency in connection with the escrow deposits and Escrow Payment for which customary arrangements for repayment have not been made. No escrow deposits or escrow payments, or other charges or payments due the Seller, have been capitalized under the Mortgage or Note. All Loans delivered for Funding shall contain the HUD required Initial Escrow Account Disclosure Statement.

## **19: Bankruptcy or Insolvency**

### CONCERNING INDIVIDUAL MORTGAGE LOANS



The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

To the best of the Seller's knowledge, the Mortgagor is not a debtor in any state or federal bankruptcy or insolvency proceeding.

In the event the Mortgagor was a debtor in any state or federal bankruptcy or insolvency proceeding and the Loan offered for sale under the Program Documents is a refinance of a loan debt included in the bankruptcy or insolvency proceeding, the loan debt was reaffirmed, to the extent required under the applicable state law and United States Bankruptcy Code, during said proceedings.

## **20: Additional Fannie Mae or Freddie Mac Warranties**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

For all Loans originated under either the Fannie Mae or Freddie Mac conventional mortgage programs, all Warranties, Representations and obligations required under the Agencies' respective selling programs including but not limited to rules imposed by Federal Housing Finance Agency (FHFA), are hereby referenced, made a part of, and incorporated in their entirety into this Seller Guide.

## **21: FHA and VA Guidelines**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

Each FHA or VA Loan sold to MSC meets all requirements and guidelines in effect for such Loan as prescribed by FHA or VA, as applicable, and MSC, at the time of MSC's purchase. The Seller further warrants that each such insurable or guaranteeable Loan is eligible for inclusion in a Ginnie Mae pool.

FHA Mortgage Loans/FHA Direct Endorsement (DE) Approval Required - Should the Seller desire to commit FHA Mortgage Loans for sale to MSC, the Seller represents and warrants that it was at the time of Mortgage Loan origination, is presently, and will continue to be an FHA-approved lender in good standing, possessing full Direct Endorsement (DE) approval and authority under the FHA Direct Endorsement program. Seller further represents and warrants that Seller's DE authority is not subject to FHA Test Case requirements, and that no FHA Mortgage Loans committed for sale to MSC are subject to FHA Test Case requirements.

VA Mortgage Loans/VA Staff Appraisal Reviewer (SAR) Required - Should the Seller desire to commit VA Mortgage Loans for sale to MSC, the Seller represents and warrants that it was at the time of Mortgage Loan origination, is presently, and will continue to be a VA-approved lender in good standing, possessing full Staff Appraisal Reviewer (SAR) approval and authority under the Lender Appraisal Processing Program (LAPP). Seller further represents and warrants that Seller's VA authority is not subject to VA Test Case requirements, and that no VA Mortgage Loans committed for sale to MSC are subject to VA Test Case requirements.





## **22: FHA / VA / USDA Non-Delegated Correspondent Process**

### **PAYMENT OF UPMIP / FUNDING FEE / GUARANTEE FEE**

On all non-delegated correspondent loans, MSC will pay the FHA UFMIP, the VA Funding Fees and the USDA Guarantee fee. The appropriate amount will be withheld from the purchase advice, plus any applicable late fees charged by FHA, VA and USDA.

In order to avoid late fees, all loans should be delivered to MSC within 10 days from the funded date.

#### **VA**

VA policy requires that the funding fee be paid via the VA FFPS within 15 calendar days of loan closing. VA defines the loan closing as the date the note or date documents are consummated (signed). Fees paid more than 15 days after loan closing will automatically be assessed a four percent late fee. Fees paid more than 30 days late will automatically be assessed an interest charge in addition to the late fee. Any such fees or interest charges incurred by MSC as a result of late delivery of the closed loan package, will be withheld from the purchase advice.

#### **FHA**

Upfront mortgage insurance premium (MIP) is required for most of the FHA's Single Family mortgage insurance programs. Upfront MIP must be remitted within 10 calendar days of the mortgage closing or disbursement date, whichever is later (Mortgagee Letter [2005-28](#)).

#### **FHA Late Charge**

FHA charges a one-time late charge of four percent (4%) is assessed on an upfront MIP payment received more than 10 calendar days after the mortgage closing or disbursement date, whichever is later.

#### **FHA Interest Charge**

FHA assesses a one-time interest charge on an upfront MIP payment received more than 30 calendar days after the mortgage closing or disbursement date, whichever is later. The interest rate is the U.S. Department of the Treasury's [Current Value of Funds Rate](#) in effect when the upfront MIP payment is received.

#### **USDA**

There are no late charges or interest charge for USDA loans. MSC requires the guarantee fee remitted within 15 days of loan closing.

#### **Special Notes**

If the correspondent insures the loan themselves with FHA/VA/USDA, evidence of the payment should be included in a prominent place in the closed loan file. If such evidence is not included, then MSC will assume that the appropriate fees have not been paid and will withhold that amount from the PA, and the loan will be appropriately insured and fees paid. Should such payment be a duplicate payment, MSC will collect the over-payment from the involved agency and issue a check to the customer once the refund of the over-payment has been received.



## **23: Loan Payments**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

The Seller has not made, directly or indirectly, any payment on the Loan or on any other Loan of the Mortgagor from any other person or entity; the Seller has also not made any agreement with any Mortgagor providing for any variation of the Mortgage Interest Rate, the schedule of payment or other Loan terms and conditions.

## **24: Prohibited Practices**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

Seller and its third party originators have not engaged in any of the following practices with respect to loans purchased or to be purchased by MSC:

- A. Encouraging a borrower to default on an existing loan in connection with the refinance of all or part of the existing loan;
- B. Financing, directly or indirectly, premiums or fees for single premium credit life, disability or unemployment insurance products, or any other accident, loss-of-income, life or health insurance, with the proceeds of the Mortgage Loan;
- C. Refinancing of a Special Subsidized Mortgage. A "Special Subsidized Mortgage" means a residential mortgage loan that is originated or subsidized by or through a state, local, or tribal government or nonprofit organization and that in some circumstances:
  - does not have to be completely repaid; or
  - requires only partial payments be made.Examples include, but are not limited to, a mortgage granted by organizations such as Habitat for Humanity or a local housing authority.
- D. Contracting for a prepayment penalty on any product or loan unless specifically allowed within MSC product guidelines as described in the Seller Guide.
- E. Executing documents to evidence or secure the loan which contain an arbitration clause;
- F. Payment to a home improvement contractor from the proceeds of the Mortgage Loan other than by a check made payable either to the consumer, or jointly to the consumer and the home improvement contractor, or through an independent third party escrow agent;
- G. Payment of Mortgage Loan payments in advance from the loan proceeds; and
- H. Contracting for an increase in the interest rate upon default of the loan at a level not commensurate with risk mitigation.

## **25: MSC Ability to Repay/Qualified Mortgage Rule Policy**

On January 10, 2013, the Consumer Financial Protection Bureau (CFPB) issued a final rule implementing the Ability to Repay/Qualified Mortgage provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). These provisions amend the Truth



in Lending Act (TILA) regulations (Regulation Z). **Accordingly, as of the effective date of the rule, MSC will originate only loans that meet the Qualified Mortgage criteria.** The following is an overview summarizing the Rule which is over 804 pages long. MSC will implement underwriting guidelines and other systematic criteria which will conform our operations to be compliant with the Rule. The Compliance Department should be consulted for any issues which require interpretation of the Rule or its application to our operations and loan originations.

**The Ability to Repay/QM rule:**

- (1) Prohibits creditors from making a mortgage loan without determining the consumer's ability to repay and establishes minimum requirements for making this determination;
- (2) Establishes requirements for a Qualified Mortgage (QM) to satisfy the ability to repay requirements that include: (i) limits on points and fees of 3 percent of the total loan amount with adjustments for smaller loan sizes; (ii) a safe harbor and conclusive presumption of compliance with the ability to repay requirements for QMs that have an Annual Percentage Rate (APR) that does not exceed the Average Prime Offer Rate (APOR) by 1.5 or more percentage points for a first lien or 3.5 percentage points for a subordinate lien transaction; and (iii) a presumption of compliance that may be rebutted for QMs that exceed the Average Prime Offer Rate (APOR) by 1.5 or more percentage points for a first lien or 3.5 percentage points for a subordinate lien transaction along with the bases for rebutting the presumption;
- (3) Outlines the requirements for balloon-payment qualified mortgages made by certain creditors;
- (4) Establishes special provisions for refinancing non-standard mortgages into standard mortgages ; and
- (5) Places limits on prepayment penalties.

**EFFECTIVE DATE** – The rule will be effective for application dates on or after January 10, 2014.

**APPLICABILITY** – Applies to all consumer-purpose mortgages except home equity lines of credit, timeshare plans, reverse mortgages, or temporary loans.

**ABILITY TO REPAY REQUIREMENT** – Prohibits creditor from making covered mortgage loan unless creditor makes reasonable and good faith determination, based on verified and documented information, that consumer will have reasonable ability to repay the loan according to its terms.

**COMPLYING WITH ABILITY TO REPAY** – Creditor can comply in following four ways:

**1. Originating mortgage loan after considering and verifying eight factors at a minimum:**

- (A) Current or reasonably expected income or assets, other than value of dwelling;
- (B) Current employment status, if creditor relies on employment income;
- (C) Monthly payment on the covered transaction;
- (D) Monthly payment on any simultaneous loan creditor knows or should have known about;
- (E) Monthly payment for mortgage-related obligations;



- (F) Current debt obligations, alimony, and child support;
- (G) Monthly debt-to-income ratio or residual income; and
- (H) Credit history.

Creditors generally must use reasonably reliable third-party records to verify the information they use to evaluate the factors. For adjustable-rate mortgages, the monthly payment must be calculated with whichever is higher between the fully indexed rate or the introductory rate.

**2. Originating "Qualified Mortgage" (QM)** – Lender may satisfy ability to repay by originating QM. To qualify as QM, mortgage must:

- (A) Provide regular periodic payments;
- (B) Not include negative amortization, interest-only or balloon features or have a loan term exceeding 30 years;
- (C) Not have total points and fees, discussed below, exceeding 3% of the total loan amount for loans \$100,000 or more, with greater limits for smaller loans;
- (D) be underwritten by taking into account the monthly payment for mortgage related obligations using the maximum interest rate that may apply during the first five years and periodic payments of principal and interest based on such interest rate; and
- (E) Involve creditor consideration and verification of: (a) consumer's current or reasonably expected income or assets and (b) current debt obligations, alimony, and child support.

● **QM 43 DTI Requirement**– Also, to qualify as QM, consumer's monthly debt to total monthly income at time of loan consummation may not exceed 43 percent using the consumer's monthly payment on the loan and any other simultaneous loan creditor knows or has reason to know will be made.

● **Temporary QM** - Alternatively, under "special rules," loan may be treated as a QM if it satisfies QM criteria for regular periodic payments, maximum 30-year loan term and maximum points and fees and is eligible (1) for purchase or guarantee by Fannie Mae or Freddie Mac under conservatorship or a limited-life regulatory entity successor to either; (2) insurance by HUD/FHA or the Rural Housing Service; or (3) for VA or Department of Agriculture guarantee. These rules expire on the effective date of a QM rule issued by these agencies or January 10, 2021.

● **Legal Presumptions of Compliance with Ability to Repay: Prime Loans Receive Safe Harbor and "Subprime," Rebuttable Presumption.**

○ **Conclusive Presumption of Compliance or Safe Harbor** – Rule provides conclusive presumption or "legal safe harbor" that ability to repay requirements have been met for QM that satisfies the other requirements and has an Annual Percentage Rate (APR) that does not exceed the Average Prime Offer Rate (APOR) by 1.5 or more percentage points for a first lien or 3.5 percentage points for a subordinate lien transaction.

○ **Presumption of Compliance** - Provides "rebuttable presumption of compliance" for loans that meet qualified mortgage requirements listed above for loans that exceed the Average Prime Offer Rate (APOR) by 1.5 or more percentage points for a first lien or 3.5 percentage points for a subordinate lien transaction along with the bases for rebutting the presumption.



For loans where there is a “rebuttable presumption” of compliance, a borrower may rebut the presumption that they had the ability to repay by showing that despite meeting QM requirements, creditor did not make a reasonable and good faith determination of the consumer’s repayment ability at the time of consummation. This could be achieved by showing that consumer’s income, debt obligations, alimony child support, and the consumer’s monthly payment (including mortgage-related obligations) on the covered transaction and any simultaneous loans of which the creditor was aware or should have been aware would leave the consumer with insufficient residual income or assets other than the value of the dwelling to pay their living expenses. Guidance accompanying the rule notes that the longer the time the consumer demonstrates actual ability to repay by making timely payments, without modification or accommodation, the less likely the consumer will be able to rebut the presumption based on insufficient residual income.

**3. Refinancing a “non-standard mortgage” into a “standard mortgage.”** Provides an exception to ability to repay requirement to allow consumer to refinance from non-standard to a standard product. The rule defines a “non-standard mortgage” as (1) an adjustable-rate mortgage with an introductory fixed interest rate for a period of one year or longer, (2) an interest-only loan, and (3) a negative amortization loan. Defines “standard mortgage,” as mortgage that provides for regular payments that does not have a negative amortization, interest-only payment, or balloon payment feature; and complies with limits on points and fees and other restrictions. Permits refinancing from a non-standard to standard mortgage when: (1) creditor for standard mortgage is holder of existing nonstandard mortgage; (2) monthly payment is materially lower than payment on non-standard mortgage; (3) creditor receives consumer’s written application for the standard mortgage no later than two months after the non-standard mortgage has recast; (4) consumer has made no more than one payment 30 days late on the non-standard mortgage during the last 12 months before application and none within the last six months. The rule provides specific payment calculations for purposes of determining whether the refinancing reduces the consumer’s monthly mortgage payment, and for determining whether the consumer has the ability to repay standard mortgage.

**DEFINITION OF “POINTS AND FEES”** – Rule definition of “points and fees” includes fees or charges known at or before consummation including:

- (1) All items included in finance charge under TILA rules;
- (2) All compensation paid directly or indirectly by a consumer or creditor to a loan originator including a mortgage brokerage firm and individual employee loan originators that can be attributed to the transaction at the time the interest rate is set;
- (3) all bona fide and reasonable real estate related fees under Section 1026.4(c)(7) of TILA including title related charges (other than amounts held for future payments of taxes) unless the charge is reasonable; the creditor does not receive any compensation for the charge and charge is not paid by an affiliate
- (4) premiums or other charges payable at or before consummation for any credit life, disability, unemployment or credit property insurance or any other life, accident, health or loss-of-income insurance for which the creditor is a beneficiary;
- (5) Maximum prepayment penalty that may be charged under the mortgage;



(6) Total prepayment penalty if the consumer refinances existing mortgage with the current holder or servicer or affiliate of either.

The following items that are included in the finance charge under current TILA rules are not included in the definition of points and fees: (a) interest or time price differential, (b) any premium or other charge imposed under any Federal or state guarantee or insurance that protects creditor against consumer default, (c) any premium or other charge for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss that is not under a Federal or state agency program if premium or charge is payable after consummation or, for any premium or charge payable at or before consummation, the portion of premium that is not in excess of amount payable under the Federal Housing Administration (FHA) program provided premium or charge is refundable on pro rata basis; (d) any bona fide third party charge not retained by the creditor, loan originator or an affiliate of either; (e) up to two bona fide discount points if the interest rate without a discount does not exceed the APOR by one point or one bona fide discount point if the interest rate does not exceed the APOR by more than two percentage points;

**Under these provisions charges received by affiliates of lenders and originators as well as payments to mortgage brokers are included in points and fees.**

**LIMIT ON POINTS AND FEES INCLUDING ADJUSTMENT FOR SMALLER LOANS -** Provides that to qualify as QM for loan amount greater than or equal to \$100,000, total points and fees for the transaction may not exceed 3 percent of the total loan amount. For loan amount greater or equal to \$60,000 but less than \$100,000, points and fees may not exceed \$3,000 and for a loan amount greater than or equal to \$20,000 but less than \$60,000 the fees cannot exceed 5 percent of total loan amount. For a loans greater than or equal to \$12,500 but less than \$20,000, \$1000 indexed for inflation; and (5) for a loan amount less than 12,500 (indexed for inflation), 8 percent of the total loan amount.

**PREPAYMENT PENALTIES** – Prohibits prepayment penalties unless:

- (1) Otherwise permitted by law,
  - (2) Mortgage is a fixed-rate QM;
  - (3) Mortgage is not a higher-priced mortgage (APR 1.5 or more over APOR),
  - (4) Penalty does not apply for more than 3 years;
  - (5) Amount of penalty is limited to two percent if incurred during the first two years following consummation and 1 percent if incurred during the third year following consummation.
- The rule requires a creditor offering a loan with a prepayment penalty to also offer that consumer a loan without a prepayment penalty and requires creditor offering prepayment penalty through a mortgage broker to offer a loan without a prepayment penalty to such broker and establish agreement so broker presents such loan to a consumer. The rule excludes from the prepayment penalty definition interest charged consistent with the monthly interest accrual amortization method for FHA loans consummated before January 21, 2015.

**NOTE ON LIABILITY** – TILA as amended by Dodd-Frank imposes significant liability for violations of Ability to Repay. Consumer may recover special statutory damages for violation equal to the sum of all finance charges and fees paid. Damages are in addition to actual damages; statutory damages up to prescribed threshold; and court costs and attorney fees. Dodd-Frank extends the statute of limitations for violations of ability to repay from one year to three years from date of violation. Also, provides consumer may assert violation as claim for setoff at foreclosure without time limit on when claim may be raised.

## **26: Responsible Lending; Benefit to Borrower; Ability to Repay**



## CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

- A. Seller agrees to use best efforts to ensure that each loan offered to a borrower is consistent with his or her needs, objectives and financial situation.
- B. Each Mortgage Loan, the proceeds of which have been used to refinance a previous mortgage loan, offers a documented, demonstrable, tangible net economic benefit to the borrower.
- C. Appropriate assessment and documentation has been performed of the borrowers' ability to repay each Mortgage Loan in accordance with its terms.
- D. Timely, sufficient and accurate information has been provided to borrowers concerning each Mortgage Loan's terms, costs, risks, and benefits including but not limited to disclosure of:
  1. the existence of a prepayment penalty, if applicable, prior to closing
  2. disclosure on products containing a prepayment penalty of the availability of similar products with no prepayment penalty, and
  3. on limited documentation products, disclosure of the availability of a lower interest rate in exchange for higher levels of documentation
- E. Total loan compensation for each Mortgage Loan, including compensation to third party originators, has been structured to avoid providing any incentive to originate a loan with predatory or abusive characteristics.
- F. For transactions involving a mortgage broker, all compensation received by the mortgage broker from any and all sources has been clearly disclosed to the borrower, at or prior to application, in writing on a mortgage broker compensation disclosure form. The mortgage broker compensation actually received by the mortgage broker does not exceed the amount disclosed. A copy of a mortgage broker compensation form is included in the Mortgage Loan File.

## **27: Loans Secured by New Jersey property**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:

No Mortgage Loan is a "High Cost Home Loan" as defined in the New Jersey Home Ownership Act ("NJ Act") effective November 27, 2003 (N.J.S.A. 46:10B 22 et seq.); No Mortgage Loan is a "manufactured housing loan", or a loan made, arranged or assigned by a person selling home improvements to, or performing home improvements for the borrower, or made by or through a creditor to whom the borrower was referred by such person. The Seller represents and warrants that the Seller has in place a process based on the unique requirements of the NJ Act to ensure each Mortgage Loan secured by New Jersey property complies with these restrictions.

## **28: Guaranteed Rural Housing (GRH) Loans**

### CONCERNING INDIVIDUAL MORTGAGE LOANS

The Seller Represents, Warrants and Covenants the following to MSC as to each Loan offered for sale under the Program Documents:



Each single family Guaranteed Rural Housing Loan ("GRH Loan") has been underwritten and conforms to (1) Any MSC GRH Loan policies, and (2) national USDA GRH Loan Guidelines as published in the GRH Instruction 1980-D and accompanying notices and announcements, and (3) applicable local USDA Rural Development Office policies, and (4) MSC Underwriting. In the event of a conflict between these requirements, MSC Underwriting Guidelines are controlling.

## **29: Miscellaneous Representations, Warranties and Covenants**

**MSC Website Access and Usage:** If the Seller is granted access into the MSC private website, the Seller represents and warrants that it will not disclose the Seller's designated password to anyone nor use it to perform unauthorized functions. MSC grants client access to the web site provided the Seller covenants and agrees to the following conditions:

- A. The Seller will indemnify and hold MSC harmless for any liability due to improper use of the web-site when accessed using Seller's password.
- B. Should Seller's only security administrator be out of the office for any reason, MSC will not act as a security administrator on the behalf of the client. This includes, but is not limited to: password resets, adding/deleting employees, and changes to security access.
- C. Seller is responsible for notifying MSC if the only security administrator should leave his/her employment. At that time, MSC will delete all user accounts and establish a new security administrator.

## **30: Uninsurable Mortgage**

For a Mortgage Loan underwritten by the Seller:

- A. Certificate of Insurance. The certificate of insurance has not been duly issued by a mortgage insurance company or guarantor ("Mortgage Insurer") acceptable to MSC;
- B. Insurance Premium. The mortgage insurance premium has not been paid to the Mortgage Insurer;
- C. Insurance Cancellation or Denial. The Mortgage Insurer cancels coverage and/or denies a claim under such coverage due to fraud, misrepresentation or omission of a material fact or for any other reason related to the eligibility of the Mortgage Loan for Mortgage Insurance or guaranty.

## **31: Unmarketable Loan**

The Mortgage Loan the Seller delivers to MSC is unmarketable, or unmarketable on the secondary market without loss to MSC, including, but not limited to, a Mortgage Loan as to which:

- A. Program Documents - The Seller has not complied with a requirement, term or condition of the Program Documents.
- B. Evidence of Compliance - The Seller is unable to supply satisfactory evidence of compliance with the Program Documents.
- C. False or Misleading Representation - The Seller has made one or more false or misleading representations, warranties or covenants to MSC in the Program Documents or has failed to provide MSC with information that is true, complete and accurate as to the Mortgage Loan or the Seller.
- D. Underwriting or Documentation - The Seller did not underwrite and/or document the Mortgage Loan in accordance with Program Document requirements.





- E. Protection of Occupants - The Seller violated or failed to comply with any applicable law designed to protect the health and safety of the Mortgaged Property's occupants (including failure to take any action available to the Seller that would relieve the Mortgage holder from liability under such law or regulation).

The foregoing notwithstanding, a Mortgage Loan will not be considered to be unmarketable relative to the creditworthiness of the Borrower for purposes of this Section if the Seller received Automated Underwriting System (AUS) Approval for a Mortgage Loan, and all of the following have been satisfied:

- All data entered into AUS specific to the related Mortgage Loan is complete, true and accurate, and remains unchanged as of the Mortgage Loan's Closing Date;
- Seller has complied with all messages and conditions contained in the AUS feedback, and has documented the Closed Loan Package appropriately;
- Seller has verified the data and taken all other necessary actions in compliance with MSC's requirements as set forth in the Seller Guide and on the related Mortgage Loan's AUS feedback, and in accordance with reasonable and prudent underwriting methods. Acceptable evidence of such verification and/or actions is included in the Closed Loan Package;
- Seller must review the Closed Loan Package to determine there is no potentially derogatory, misleading, contradictory, fraudulent, omitted or inaccurate information, and that all information available to Seller has been prudently considered; and
- Seller has complied with all other requirements and restrictions contained in the Seller Guide, including any updates, amendments, supplements, or other announcements.

### **32: Repurchase Price**

The amount the Seller must pay to MSC upon MSC's Repurchase request to the Seller ("Repurchase Price") shall be calculated as follows:

- A. The Purchase Price** If the Loan **has not** been pooled, the Purchase Price, including any premium pricing plus the Servicing Release Premium ("SRP") paid to the Seller, **or** If the Loan **has been** pooled, the Purchase Price plus the SRP paid to the Seller at the time of purchase based on the outstanding principal balance due and owing on the Mortgage Loan as of the date of Repurchase, **plus**
- B. Modified Loan Amount** MSC may, as part of its loss mitigation efforts, enter into an agreement modifying the terms of the Loan (Modification Agreement) with a Borrower suffering an involuntary inability to pay their Mortgage under the original terms of the Note. Such Modification Agreement may increase the amount of the unpaid principal balance due to capitalization of interest, Escrow amount and/or other advances. The Repurchase Price will include the outstanding principal balance based on the modified Loan amount, **plus**
- C. Expenses** — Any and all documentary stamp taxes, recording fees, transfer taxes, and all other expenses payable in connection with any such Repurchase, including, without limitation, any loss relating to the Mortgage Loan, all costs or expenses incurred by MSC in the course of repurchasing such Mortgage Loan from a third party, and MSC's reasonable attorneys' fees; **plus**,



- D. **Interest, Penalties and Fees** — Accrued but unpaid interest up to the first day of the month following the date of Repurchase and any penalties or fees charged to MSC by the Servicer, such as, but not limited to, late fees or restoration fees.

### **33: Procedure for Completing Repurchase**

- A. **Repurchase.** The Seller must Repurchase MSC's interest in the identified Mortgage by the Repurchase invoice due date. In the event the Repurchase is not completed by the invoice due date, MSC may net fund (set-off) the amount from subsequent amounts due to the Seller. Alternatively, MSC may, in its sole discretion, obtain a market price from Secondary Marketing and require Seller to reimburse MSC for the marketing loss incurred plus the SRP.
- B. **Wire Transfer of Funds.** The Seller shall effect Repurchases by wire transfer from the Seller to MSC of immediately available funds. At its option, MSC may choose to consider a wire as being received in the following month if it is received in the last three- (3) business days of the given month.
- C. **Release of Loan File.** Upon receipt by MSC of the Seller's funds for Repurchase, MSC shall release to the Seller the related Loan File(s) and shall execute and deliver to the Seller such instruments of transfer or assignment, in each case without recourse, as shall be necessary to vest in the Seller, or its designee, title to such Repurchased Loans.
- D. **Recordation and Transfer Costs / Repurchase Date.** The Seller shall assume the cost of recordation of assignments and other costs of transfer of any Repurchased Loans. The date of Repurchase is the date when MSC receives the Repurchase Price funds by wire transfer.

**Please Note:** MSC's decision to require the Seller to Repurchase a Mortgage shall be conclusive. The Seller's failure to comply with MSC's Repurchase request may result in suspension or termination of selling privileges. Suspension or termination upon the occurrence of one or more of the Repurchase events shall not limit MSC's right to take other action to enforce its rights or protect its interests.

### **34: Questionable Refinancing Practices Event of Default & Remedies**

Questionable refinancing practices (such as those discussed below), constitute an Event of Default. The Seller must include in its policies and procedures for originating new Mortgages, refinancing existing Mortgages and reviewing Mortgages originated by third parties appropriate safeguards to preclude the possibility of violating MSC's prohibitions against questionable refinancing practices.

### **35: Prohibited Activities**

- A. **Selling Loan in Process of Refinancing.** MSC considers the delivery of any Mortgage that is in the process of being refinanced (or acquiring from, or funding for, a third-party originator) as unacceptable (even if no agreement for future refinancing was entered into at the time of origination). Therefore, the Seller must not deliver for MSC's purchase or securitization any Mortgage that the Seller (or its affiliates or its third party originators) has agreed to refinance or is currently in the process of



refinancing. MSC considers an originator to be in the process of refinancing a Mortgage if, at the time the Mortgage is delivered to MSC, the Seller has taken another application from the same Borrower for the same property or has entered into an agreement with one of its third-party originators to acquire or fund another Mortgage that has the same Borrower and property as the Mortgage that is being delivered to MSC.

- B. **Targeting.** MSC considers specifically targeting or allowing other Loan originators at any time to specifically target Borrowers whose Mortgages are owned, securitized or serviced by MSC as unacceptable.

### **36: Permitted Activities**

MSC does not consider the Seller to be engaged in a questionable refinancing practice if the Seller:

- A. **General Advertising.** Advertises its availability for handling refinancing of Mortgages it has sold to MSC as long as the Seller does not specifically target, or allow other Loan originators to specifically target, Borrowers whose Mortgages are owned or securitized by MSC.
- B. **General Terms.** Promotes the terms it has available for refinancing by sending letters or promotional material to Borrowers or to all Borrowers who have specific types of Mortgages (such as FHA, VA, Conventional fixed-rate, or Conventional adjustable-rate) or to those Borrowers whose Mortgages fall within specific interest rate ranges. The Seller may not, however, treat or allow other Loan originators to treat Mortgages it has sold to MSC as separate classes of Mortgages for purposes of advertising the availability of refinancing terms.
- C. **Payoff Information.** The Seller may cooperate with individual Borrowers who contact the Seller about prepaying their Mortgages by advising them of refinancing terms and streamlined origination arrangements that are available, including MSC's own alternatives.

### **37: Review of Activities/Remedies**

MSC will review Sellers that have high levels of prepayments. If such a review raises serious concerns about the Seller's practices, MSC will conduct a review of the Seller's origination and refinancing activities to ensure that they are in compliance with MSC's requirements. MSC will be entitled to one or more appropriate General Remedies if MSC finds that the Seller has violated MSC's policies and requirements set forth in this agreement, including, but not limited to, requiring the Seller to make MSC whole for any losses resulting from claims made by Agencies or investors.

### **38: Legal or Regulatory Action**

The Seller is placed on probation or a federal or state government agency restricts the Seller's activities in any manner; a court finds that the Seller or any of the Seller's principal officers have committed an act constituting civil fraud; or the Seller or an Officer thereof is convicted of any criminal act that relates to lending or Loan servicing activities.

### **39: Invalid Assignment**



The Seller assigns or attempts to assign its interests, rights or obligations under the Loan Purchase Agreement without MSC's prior written consent.

#### **40: Right to Withhold Fundings**

Upon any termination or suspension, MSC shall have the right to suspend the Seller's Fundings until such time as MSC has determined in the exercise of its reasonable judgment that MSC has insulated itself from any potential harm or loss relating to the Seller's sale of Mortgage Loans to MSC.

#### **40: Right of Set-Off**

MSC may set-off and deduct any fees, penalties or other sums owed to MSC by the Seller under the terms of the Program Documents, which may include indemnification and repurchase invoices.

#### **41: Waiver of Defaults/Remedies**

MSC may waive any default by the Seller and its consequences, only in a written waiver specifying the nature and terms of such waiver. No such waiver shall extend to any subsequent or other default or impair any right consequent thereto, nor shall any delay by MSC in exercising, or failure to exercise, any right arising from such default affect or impair MSC's rights as to such default or any subsequent default. All of MSC's remedies are non-exclusive and cumulative. MSC's failure to exercise any of its remedies does not constitute a waiver of that remedy in the future as to the same or any other Seller default.

#### **42: Use of Name**

The Seller is not authorized to use the corporate name or any derivation thereof, or any of the service marks of MSC in any promotional or other materials without the prior, written consent of MSC. As consideration for granting such consent, the Seller agrees to indemnify MSC from, and hold it harmless against any loss, damage or expense, including those incurred in defending any action or proceeding, which results from Seller's use of MSC's corporate name, trade name or service marks.

The Seller will not advertise or represent in print, in verbal communications or otherwise, that it is acting on behalf of, under the direction of, as the agent or as the representative of, or otherwise through or for, MSC.

#### **43: "Knowledge" Standard**

Whenever any representation, warranty, or other statement contained in the Correspondent Agreement or this Seller Guide is qualified by reference to a party's "knowledge" or "to the best of" a party's "knowledge," such "knowledge" shall be deemed to include a party's knowledge of facts or conditions which the party, including (without limitation) any of such party's directors, officers, agents, or employees, either is actually aware or should have been aware under the circumstances with the exercise of reasonable care, due diligence and competence in discharging its duties under this Seller Guide and the Program Documents. All matters of public record shall be deemed to be known by the Seller. Any representation or



warranty that is inaccurate or incomplete in any material respect is presumed to be made with the Seller's knowledge.

#### **44: MSC's Discretion**

Whenever any provision of this Seller Guide requires MSC to make a determination of fact or a decision to act, or to permit, approve or deny another party's act, such determination or decision shall be made in MSC's sole and absolute discretion. MSC's purchase decision is at all times at MSC's sole and absolute discretion and nothing in this Seller Guide shall be construed as an obligation on MSC's behalf to purchase a Loan at any time.