

## CHAPTER 12: SECONDARY MARKET

### KEY TOPICS IN THIS CHAPTER

- Transfer to the Secondary Market
- Holder Demand for Repurchase
- Lender Initiated Repurchase
- Repurchase of the Loan or Note by Agency

### 12.1 PURPOSE AND OVERVIEW

This chapter will describe how GRRHP loans are sold in the secondary market and how the guarantee comes into play in the event of a borrower default. The secondary market is a mechanism that allows lenders to sell GRRHP guaranteed loans and obtain liquidity to make additional loans. Through the secondary market, the lender receives the following benefits which may then be passed on to the borrower in the form of lower interest rates and longer fixed rate terms:

- Reduced interest rate risk by transferring the risk of interest rate increases to the secondary market.
- Increased liquidity by using funds received from a loan sale for additional lending or investing activity.
- Increased return on investment by selling the loan to the secondary market and keeping a servicing fee. A lender may increase their return on their invested capital by lowering their at risk capital.

### SECTION 1: TRANSFER TO THE SECONDARY MARKET

#### 12.2 HOLDER VERSUS PARTICIPANT

The Agency makes a clear distinction between a holder of the loan and a participant in the loan. In a non-Government Sponsored Enterprises (GSE) securitization, a holder is a person or organization other than the lender who holds all or part of the loan with no servicing responsibilities. The holder "holds" the note, and the guaranteed portion of the note is backed by the "Full Faith and Credit" of the U.S. Government in case of default. The Agency considers a GSE or the Ginnie Mae issuer as the "holder" of the note in a securitized transaction. A GSE or Ginnie Mae issuer may have servicing responsibilities. Unless otherwise noted, all holders must have a *Form RD 3565-5, "Assignment Guarantee Agreement"*, that has been executed by the Agency or a duly executed Agency approved assignment guarantee agreement.

A participant is a person or organization that buys an interest in the loan. A participant owns a share of the note while another entity keeps the note, the collateral securing the note, and all responsibility for loan servicing. A participant does not hold any part of the note but has a participation arrangement with the lender. A participant has no claim to the guarantee in case of default.

### **12.3 TRANSFER TO THE SECONDARY MARKET**

#### **A. Loan Requirements For Sale On The Secondary Market**

The lender may sell, assign, or participate all or part of a performing loan to one or more lenders or investors at or after loan closing. Lenders are regularly contacted by and normally maintain a list of brokers or dealers interested in the purchase of GRRHP loans, or they may work directly with Fannie Mae or Freddie Mac or be a Ginnie Mae issuer.

Below is an example of an average transaction involving the steps a lender and a broker would take in the sale of a guaranteed loan on the secondary market:

- Contact several brokers. The brokers will need to know:
  - ◇ Under which of the three loan guarantee programs the loan is made: Option One, permanent guarantee; Option Two, construction advances and permanent financing guarantee; or Option Three, continuous guarantee.
  - ◇ The loan amount and the size of the guaranteed portion.
  - ◇ The interest rate.
  - ◇ The maturity date.
  - ◇ The payment schedule.
  - ◇ If it is a new loan, when it will be funded.
- Determine loan-servicing fee.
- Select a bid.
  - ◇ Hold negotiations concerning premiums and fees. The Agency may participate in such negotiations only as a provider of information.
- Review Documents. The broker or intermediary should send the lender a purchase commitment letter. The lender must notify the Agency that the loan is being sold and obtain the documents that the Agency will need to execute. In order to complete the sale, the lender should sign and return one copy of the commitment letter to the broker along with the following:
  - ◇ A copy of the note.
  - ◇ Executed *Form RD 3565-4*.

- ◇ Executed *Form RD 3565-5* (see Paragraph 12.3 B.) or an Agency approved assignment guarantee agreement.
- Close the transaction.
  - ◇ Upon receipt of the forms, the holder or broker prepares *Form RD 3565-5* or an Agency approved assignment guarantee agreement and sends it to the lender in triplicate. The lender signs all three forms and forwards them to the Agency for execution. The Agency signs the forms and forwards them to the lender or investment broker, and the settlement date is established.
  - ◇ The broker returns the original copy to the lender and another copy to the Agency.
  - ◇ On the settlement date, the broker wires the funds to the lender.

Once documents are received by the Agency, it will endeavor to return executed forms to the lender within 7 calendar days.



### **B. Agency Execution of *Form RD 3565-5***

The lender must provide the Agency with copies of all appropriate forms used in the sale or assignment. Once the lender accepts a specific buyer's offer, the lender must notify the Agency that the loan is being sold and submit *Form RD 3565-5* to the Agency for execution. The authorized Agency official shall execute *Form RD 3565-5* after reviewing it according to this paragraph. The form does not have to be signed by the holder before Agency approval of the assignment. After execution by the lender and the Agency, the holder will execute it and return a copy to the Agency for retention in the borrower's case file and to update the pertinent areas in its loan tracking system with the new holder/assignee information.

Before executing *Form RD 3565-5*, the authorized Agency official will review the documents to determine the following items.

- To whom is the loan being sold? A loan may not be sold to the borrower or someone who has a relationship to the borrower or is an owner or subsidiary of the lender itself.
- Is the loan delinquent? Delinquent loans may not be sold into the secondary market.

Upon the lender's sale or assignment of the loan, the lender will remain bound to all obligations indicated in the Loan Note Guarantee, the Lender's Agreement, the Agency program regulations, and future program regulations.

The lender will send the holder the borrower's executed note attached to the Guarantee, and the holder will succeed to all rights of the Loan Note Guarantee pertaining to the portion of the loan purchased.

### **C. Loans Involving Ginnie Mae, Freddie Mac, and Fannie Mae**

For GRRHP loans that are securing Ginnie Mae guaranteed securities, the lender should follow Ginnie Mae procedures to close secondary market transactions. Lenders that do business with Freddie Mac and Fannie Mae will follow their respective procedures to close secondary market transactions involving GRRHP loans. The lenders must provide the Agency with proper documentation to evidence the secondary market transaction in the borrower's case file. The Agency will then update its loan tracking system accordingly.

Once GRRHP loans are formed into Ginnie Mae guaranteed securities, the lender does not need to execute a *Form RD 3565-5* for subsequent assignments. Loans and/or mortgage servicing backing Ginnie Mae guaranteed securities may only be assigned to a Ginnie Mae issuer, with prior Ginnie Mae approval.

For GRRHP loans that are backing Ginnie Mae guaranteed securities where there is a conflict between this chapter and Ginnie Mae requirements, the Ginnie Mae requirements shall prevail.

## **SECTION 2: REPURCHASE FROM A SECONDARY MARKET HOLDER**

### **12.4 Holder Demand for Repurchase**

The holder may make written demand on the lender to repurchase the unpaid portion of the loan when either:

- The borrower has not made a payment of principal and/or interest due on the loan for at least 60 days, or
- The lender has failed to give the holder its pro-rata share of any payment made by the borrower within 30 calendar days of receipt of a payment.



The holder must concurrently send a copy of the demand letter to the Agency.

When a lender is requested to repurchase a loan from the holder, the lender must consider the request according to the servicing actions that are necessary on the loan. In order to facilitate servicing and simplified accounting of loan transactions, lenders are encouraged to repurchase the loan upon the holder's request.

The lender will notify the holder and the Agency of its decision to repurchase within 10 business days from the date of the written demand letter by the holder. The lender may agree to repurchase the unpaid portion of the entire loan from the holder, even though the guarantee will not cover the unguaranteed portion of the loan. If the lender decides to repurchase, the lender has 30 calendar days from the date of the holder's written demand letter to do so. The guarantee will not cover the unguaranteed portion of the loan or the note interest to the holder on the guaranteed loan portion accruing after 90 calendar days from the date of the demand letter to the lender requesting the repurchase. The lender may deduct the lender's servicing fee from the repurchase amount.

The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. Upon repurchase, the lender shall notify the Agency by returning the original Assignment Agreement. The Agency will then update its loan tracking system accordingly.

### **12.5 Lender Initiated Repurchase**

If due to loan default or imminent loan restructuring, the lender determines that its repurchase is necessary to adequately service the loan, the lender may repurchase the loan from the holder. Lender repurchase is not required if the holder will agree to the restructured terms of the note. If interest is capitalized, a new note is taken, the original note is amended, or the principal amount is modified, the lender must ensure that the assignment is amended to reflect the actual guaranteed portion held by the holder.

The lender will not repurchase from the holder for arbitrage purposes. The lender must document all attempts to repurchase the loan from the holder in the loan file.

### **12.6 Demand for Repurchase of Loans Contained in a Ginnie Mae Pool**

Ginnie Mae or its approved issuer/lender may make a written demand to the Agency to repurchase the unpaid portion of the loan when the borrower has not made a payment of principal and/or interest due on the loan for at least 90 days.

### **12.7 Purchase of the Loan or Note by the Agency**

#### **A. Agency Purchase from the Holder**

If the lender does not repurchase the loan as provided in Paragraph 12.4, the Agency will purchase from the holder the unpaid principal balance of the **guaranteed**



**portion** together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 calendar days after written demand to the Agency from the holder. This demand notice is in addition to the copy of the written demand on the lender. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 calendar days from the date of the original demand letter of the holder to the lender requesting the repurchase.

With its demand on the Agency, the holder will include:

- A copy of the written demand made upon the lender;
- Originals of the Loan Note Guarantee and note properly endorsed to the Agency or the original of an Agency approved assignment guarantee agreement;
- A copy of any written response to the demand provided by the lender to the holder; and
- An account number to which the Agency can forward the purchase amount via electronic funds transfer.

The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder within 10 business days from the date of the written demand letter to the lender from the holder requesting repurchase of the guaranteed portion. The lender will furnish a current statement certified by an appropriate authorized officer of the lender stating the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. The Agency will coordinate the resolution of the discrepancy. Such conflict will suspend the running of the 30 calendar day payment requirement.

The authorized Agency official shall review the borrower's loan file and:

- Verify the amounts owed to the lender and the holder, and
- Complete *Form RD 1980-37, "Purchase of a Guaranteed Loan Portion"*, and return it to the Finance Office for processing.

At the time of purchase by the Agency, the holder will assign the original Agency approved assignment guarantee agreement to the Agency without recourse, including all rights, title, and interest in the loan. *Purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the Lender's*

Agreement or the Loan Note Guarantee nor does the purchase waive any of the Agency's rights against the lender. The Agency succeeds to all rights of the holder under the Loan Note Guarantee including the right to set-off from any payments the Agency owes the lender any funds payable by the lender to the Agency.

**B. Agency Purchase of Loans Contained in Ginnie Mae Pools**

The Agency will purchase from Ginnie Mae or its approved issuer/lender the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the issuer/lender's servicing fee, within 30 calendar days after written demand to the Agency from Ginnie Mae or its approved issuer/lender. In addition to the unpaid guaranteed portion of the loan, the guarantee will only cover interest accrued up to 90 calendar days from the date that the Agency received the demand notice from Ginnie Mae or its approved issuer/lender.

With its demand on the Agency, Ginnie Mae or its approved issuer/lender will include:

- Originals of the Loan Note Guarantee and note properly endorsed to the Agency;
- An account number to which the Agency can forward the purchase amount via electronic funds transfer; and
- A current statement certified by an appropriate authorized officer of the lender stating the unpaid principal and interest then owed on the loan.

The Agency will notify Ginnie Mae or its approved issuer/lender of its receipt of the demand notice.

The authorized Agency official shall review the borrower's loan file and

- Verify the amounts owed to the lender, and
- Complete *Form RD 1980-37* and return it to the Finance Office for processing.

At the time of purchase by the Agency, Ginnie Mae or its approved issuer/lender will assign any and all interest in the loan to the Agency. Purchase by the Agency does not change, alter, or modify any of the issuer/lender's obligations to the Agency specified in the Lender's Agreement or the Loan Note Guarantee nor does the purchase waive any of the Agency's right against the issuer/lender. The Agency succeeds to all rights of the issuer/lender under the Loan Note Guarantee including the right to set-off any payments the Agency owes the issuer/lender.

HB-1-3565

**12.8 Servicing Fees**

The Agency Loan Note Guarantee will not cover servicing fees on the unguaranteed portion of the loan.