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To: Clients and Friends

From: David F. Dulock

Subject: Taxpayer First Act Requires New Taxpayer Consent Requirements

Section 2202 of “The Taxpayer First Act” (Public Law No. 116-25), signed into law on July 1, 2019, and effective December 29, 2019, amends Internal Revenue Code 26 U.S.C. 6103(c) to prohibit persons designated by a taxpayer to receive return information or taxpayer return information (said terms are defined in section 6103(b)(2) and (3), respectively) from (i) using the information for any purpose other than the express purpose for which the taxpayer gave consent and (ii) from disclosing the information to any other person without the express permission of, or request by, the taxpayer.

In addition to lenders and servicers having the taxpayer sign IRS form 4506-T, Section 2202 will require lenders and servicers to obtain the above additional consents from the taxpayer before this information may be used or disclosed in the origination or servicing of mortgage loans. According to Fannie Mae and the Mortgage Industry Standards Maintenance Organization (MISMO®) the IRS has no plans currently to provide a standard consent form or to update IRS form 4506-T to satisfy Section 2202’s new consent requirements. MISMO, however, has drafted taxpayer consent language that lenders and servicers may use to comply with the consent requirements of Section 2202. MISMO states on its website that “[l]enders, GSEs, 4506-T fulfillment vendors, mortgage insurers, and due diligence firms participated in the development of the MISMO Taxpayer Consent Language” and “[l]enders and industry participants are free to use the language as-is or modify the language to meet compliance expectations.” This firm has incorporated the MISMO consent language into the closing packages generated by our system for use by our clients.

Attachments: Section 2202 of The Taxpayer First Act; MISMO’S Taxpayer Consent Language; Fannie Mae Selling and Servicing Notice Taxpayer First Act and Use of Tax Return Information

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SECTION 2202 OF THE TAXPAYER FIRST ACT
LIMIT REDISCLOSURES AND USES OF CONSENT-BASED
DISCLOSURES OF TAX RETURN INFORMATION

(a) **IN GENERAL.**—Section 6103(c) is amended by adding at the end the following: “Persons designated by the taxpayer under this subsection to receive return information shall not use the information for any purpose other than the express purpose for which consent was granted and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.”.

(b) **APPLICATION OF PENALTIES.**—Section 6103(a)(3) is amended by inserting “subsection (c),” after “return information”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to disclosures made after the date which is 180 days after the date of the enactment of this Act.

MISMO'S TAXPAYER CONSENT LANGUAGE

I understand, acknowledge, and agree that the Lender and Other Loan Participants can obtain, use and share tax return information for purposes of (i) providing an offer; (ii) originating, maintaining, managing, monitoring, servicing, selling, insuring, and securitizing a loan; (iii) marketing; or (iv) as otherwise permitted by applicable laws, including state and federal privacy and data security laws. The Lender includes the Lender's affiliates, agents, service providers and any of aforementioned parties' successors and assigns. The Other Loan Participants includes any actual or potential owners of a loan resulting from your loan application, or acquirers of any beneficial or other interest in the loan, any mortgage insurer, guarantor, any servicers or service providers for these parties and any of aforementioned parties' successors and assigns.

Selling and Servicing Notice

November 6, 2019

Taxpayer First Act and Use of Tax Return Information

The Taxpayer First Act was signed into law on July 1, 2019. It includes a provision that persons receiving return information must obtain the express permission of taxpayers prior to disclosing that return information to any other person. "Tax return information" is defined under the IRS Code, 26 U.S.C. § 6103.

Therefore, if a lender or servicer obtains tax return information during the origination or servicing of a mortgage loan, the lender or servicer must obtain express consent from the taxpayer to be able to share the tax information with another party. Such sharing would extend to actual or potential owners of the loan, such as Fannie Mae or any other loan participant. This component of the law goes into effect December 28, 2019.

The IRS has indicated that it has no plans at this time to provide a standard form related to disclosing or sharing tax return information with other parties. However, the Mortgage Industry Standards Maintenance Organization (MISMO®) drafted a sample Taxpayer Consent Form designed to allow sellers/servicers to share tax return information with other loan participants. (available to MISMO members). Sellers/servicers may also prepare their own taxpayer consent form, as long as the form provides the seller/servicer with express permission to share tax return information in accordance with the law.

This Notice is being provided as a courtesy to our customers. As a reminder, the Selling Guide requires compliance with all federal, state, and local laws. We are not imposing any new requirements over and above the sellers/servicers' existing requirement to comply with the A3-2-01, Compliance with Laws. Because the law becomes effective on December 28, 2019, sellers should obtain signed taxpayer consent forms from borrowers in connection with all loans that are sold to or securitized by Fannie Mae on or after that date. Servicers must also obtain consent on or after December 28, 2019 when tax return information is obtained as part of the servicing function (for example, when processing a loan modification). As with all other origination and servicing records, a copy of the signed consent must be maintained in the loan file.

If customers have any questions or concerns regarding their compliance with the new law, they should contact their legal counsel or compliance department, Fannie Mae account team, Portfolio Manager, or our Single-Family Servicer Support Center at 1-800-2Fannie (1-800-232-6643)