



## State of New York Mortgage Agency

641 Lexington Avenue, New York NY 10022

(212) 688-4000

By E-mail

March 10, 2016

### Seller's Guide Bulletin #1-2016

**RE: Modified Policy for Business Use of Home and Second Kitchens; RemodelNY Loan Contingency for Vacant Properties; RemodelNY Loan Consultant Requirement; Clarification of Open-Tank Inspection Requirement for Vacant Property Cesspool Certifications; Post-Pool Approval Ratio Tolerance & Re-Submission Criteria for SONYMA Express® Loans; Changes to Grant/Subsidy Amounts; Funds Required for Closing; Revised Lender Training Modules; and Revised SONYMA Forms**

Dear Participating Lender:

Please be advised of the following guideline changes to all State of New York Mortgage Agency ("SONYMA") programs, where applicable. You'll note that some of these changes were previously announced, but not previously published in a Seller's Guide Bulletin. Unless otherwise stated herein, the changes go into effect immediately.

#### **Modified Policy for Business Use of Home and Second Kitchens**

Effective immediately, SONYMA is modifying its policy as it applies to business use of the borrower's current residence to expand eligibility for buyers who claimed greater than 15% business use of home at their prior residence. The IRS mandates that a SONYMA-financed property be used for residential purposes and no more than 15 percent of the property can be used for business or income producing purposes.

Further, SONYMA is modifying its policy regarding the presence of a second kitchen in a SONYMA property. SONYMA requires that no financed home contain rental units other than those specifically permitted via the Certificate of Occupancy. To ensure compliance with this rule, SONYMA previously required the removal of the additional kitchen's cabinetry, appliances, sinks and the capping of any plumbing inside the relevant wall whenever a property contained more kitchens than the number of legal living units in the property (e.g., accessory apartment, in-law suite, or summer/canning kitchen).

Effective immediately, to satisfy these requirements, SONYMA will rely on the following statements made by all Borrowers and non-applicant titleholders in Section 5 of the Recapture Notification and Mortgagor's Affidavit (Form 211) affirming that for the entire term of the SONYMA mortgage, that they:

- a. will not use, nor will any other person use (other than in connection with the rental units of a 2- to 4-family home), **more than 15 percent of the property for business or income producing purposes** [as determined on Line 3 of IRS Form 8829 (or a successor form) of their Federal tax return(s)];
- b. will **not permit the property to be occupied by more families than is allowed under the applicable certificate of occupancy** or its equivalent;

If Borrower's most recent tax return shows evidence of using their current residence for business or commercial use (Schedule C – Profit or Loss from Business indicates their primary residence as their business address), the Lender should remind the Borrowers and non-applicant titleholders of the IRS' requirement.

Please note, if the appraisal, or any other documentation in the loan file, reflects more kitchens than the number of legal living units, *and* the appraiser or any other party implies the presence of a potential illegal rental unit, the lender must address it. If there is an illegal use, SONYMA will require the removal of the additional kitchen. However, if the loan file shows no indication of an illegal use, SONYMA will no longer require removal of the additional kitchen.

As a reminder, for credit underwriting purposes, a property with an accessory apartment, in-law suite, or summer/canning kitchen must be common to the area and noted as such in the appraisal report. The appraiser must also supply at least one recent comparable in the area and interior access must be present between the units. Lastly, the income from such a unit will not be considered as borrower income for credit qualifying purposes.

#### **RemodelNY Loan Contingency for Vacant Properties**

As a reminder, SONYMA requires at least 10% contingency reserve for all RemodelNY loans. This percentage can be increased up to 20% upon recommendation of a consultant. SONYMA will require a **15% contingency** reserve for all properties utilizing the RemodelNY loan feature in which the utilities are off at the time of the inspection. This allows room to address unforeseen repairs resulting from an inability to test the adequacy of certain systems.

#### **RemodelNY Loan Consultant Requirement**

A Consultant is required on a RemodelNY loan under ANY of the following circumstances:

- More than \$35,000 work being completed
- Structural repairs are being completed
- The subject property is vacant
- The utilities are off at the time of inspection
- The work is being completed by a contractor who is related to a borrower or titleholder

SONYMA uses HUD approved 203(k) consultants. Your local non-profit counseling agency may also have a consultant who can perform the scope of work. The fees consultants are permitted to charge are determined by the amount of work being completed and are as follows:

<b>Cost of Repairs</b>	<b>Fee*</b>
≤\$15,000	\$500
≤\$30,000	\$600
≤\$50,000	\$700
>\$50,000	\$800

\*Consultants can add \$200 if they perform a feasibility study, and an additional \$100 for a 2 unit property

### **Clarification of Open-Tank Inspection Requirement for Vacant Property Cesspool Certifications**

For properties with a cesspool/septic system that have been vacant for 60 days or more during the period of November 15 through April 15 or 120 days or more during the period of April 16 through November 14, SONYMA will accept any one of the following:

- A septic/cesspool certification that includes an open tank inspection. The location of the tank can be obtained by accessing the septic plans filed with the municipality. \*
- A septic/cesspool certification without an open tank inspection, but with documentation demonstrating that the system was properly winterized at time of vacancy.
- A septic/cesspool certification without an open tank inspection, but with documentation demonstrating that the system has a valid warranty in place.
- Seller or borrower funded escrow holdback for 125% of septic system/cesspool replacement cost as determined on an estimate from a qualified septic/cesspool contractor.
- RemodelNY renovation escrow including replacement cost of new septic/cesspool as determined on an estimated provided by a qualified contractor.

**\*Effective immediately, an inspection of the tank using a camera inserted through the pipes is a permissible substitute for the open tank inspection.**

### **Post-Pool Insurance Approval Ratio Tolerance & Re-Submission Criteria for SONYMA Express® Loans**

For SONYMA Express® loans *only*, once a loan has been submitted by the lender and approved by the pool insurer (up to and concurrent with the loan closing), and the borrower discloses or the lender learns of additional debt(s); an increase in the housing payment (i.e. higher real estate taxes); or reduced income, supporting documentation with an amended 1003 and 1008 must be submitted to the pool insurer, if the new information results in the ratios:

- exceeding 40% for the housing-to income ratio or
- exceeding 45% for the debt-to-income ratio or
- increasing by two (2) percentage points or more, even if the ratios listed above do not exceed 40%/45%.

### **Changes to Grant/Subsidy Amounts**

For all loans, if grant/subsidy amounts previously approved by the pool insurer change or there is new subordinate financing on the subject property, supporting documentation with an amended 1003 and 1008 must be submitted to the pool insurer and SONYMA. Other instances where the loan must be resubmitted to the pool insurer include: changes in the sales price; appraised value; loan amount; product type; increased interest rate; expired pool certificate or any other material change not noted in this lender announcement.

### **Funds Required for Closing**

Should the closing costs and prepaid expenses estimated at time of closing change, the Lender should re-evaluate the borrower's position to ensure they have sufficient funds to close and that the borrower's minimum 1% or 3% cash requirement has been met. This is particularly central when the borrower is receiving a gift and/or grants/subsidies or a Down Payment Assistance Loan (DPAL). In instances where there is a significant change which could impact the approval, SONYMA recommends that the Lender amend the 1003 and 1008 to reflect the change in costs and resubmit them to the pool insurer for an updated approval.

### **Revised Lender Training Modules**

SONYMA is in the process of updating its Seller’s Guide. In the interim, the most up-to-date source of program information is contained in our lender training modules. These modules, as well as our Monthly Lender Notices and any subsequent lender announcements, should be used as the primary source for originating SONYMA loans. For topics not discussed in these documents, the currently published [Seller’s Guide](#) still remains a good source of information.

The form changes outlined below are being incorporated into SONYMA’s training modules and will be posted shortly. Each module, as well as the Monthly Lender Letters and Seller Bulletins can be accessed on our website at:

<http://www.nyshcr.org/Topics/Lenders/Lenders/InformationforSONYMAParticipatingLenders.htm>.

### **Revised SONYMA Forms**

Effective as stated below, SONYMA has revised the following forms:

<b>Form Name and Number</b>	<b>Required Use/Effective Date</b>	<b>Modification Made</b>
<ul style="list-style-type: none"> <li>Recapture Notification and Mortgagor's Affidavit (Form 211/3-16) (For non-SONYMA Express® loans) <a href="http://www.nyshcr.org/Topics/Lenders/Lenders/Form211.pdf">http://www.nyshcr.org/Topics/Lenders/Lenders/Form211.pdf</a></li> </ul>	Available for immediate use, required for all loans RESERVED on 6/1/16 and later.	Removed references to Mortgage Credit Certificates (“MCC”). Modified Part II - Section 9 and Part IV to conform to current SONYMA requirements.
<ul style="list-style-type: none"> <li>Recapture Notification and Mortgagor's Affidavit (Form 211/3-16) (For SONYMA Express® loans only) <a href="http://www.nyshcr.org/Topics/Lenders/Lenders/Form211-SEonly.pdf">http://www.nyshcr.org/Topics/Lenders/Lenders/Form211-SEonly.pdf</a></li> </ul>	Available for immediate use, required for all loans RESERVED on 6/1/16 and later.	Same as above.
<ul style="list-style-type: none"> <li>Property Seller’s Affidavit (Form 210/3-16) <a href="http://www.nyshcr.org/assets/documents/648.pdf">http://www.nyshcr.org/assets/documents/648.pdf</a></li> </ul>	Available for immediate use, required for all loans CLOSED on 6/1/16 and later.	Removed references to Mortgage Credit Certificates (“MCC”).
<ul style="list-style-type: none"> <li>Interest Rate Option Form (Form #D3/8-15) <a href="http://www.nyshcr.org/Topics/Lenders/Lenders/FormD3.pdf">http://www.nyshcr.org/Topics/Lenders/Lenders/FormD3.pdf</a></li> </ul>	Should be used Immediately for all reservations required for all loans RESERVED on 6/1/16 and later.	Removed references to 1% lock-in fee.
<ul style="list-style-type: none"> <li>RemodelNY Repair Escrow Option Maximum Mortgage Worksheet (#R11/3-16) <a href="http://www.nyshcr.org/assets/documents/R11-RemodelNYMaximumMortgageWorksheet.pdf">http://www.nyshcr.org/assets/documents/R11-RemodelNYMaximumMortgageWorksheet.pdf</a></li> </ul>	Should be used Immediately for all reservations required for all loans RESERVED on 6/1/16 and later.	Updated to account for any down payment assistance and to allow for eligible renovation grants/subsidies to be incorporated into the worksheet.
<ul style="list-style-type: none"> <li>Down Payment Assistance Loan Enforcement Note and Mortgage (#D1/3-16) <a href="http://www.nyshcr.org/assets/documents/3668.pdf">http://www.nyshcr.org/assets/documents/3668.pdf</a></li> </ul>	Available for immediate use, required for all loans CLOSED on 6/1/16 and later.	Incorporated required HUD language (to comply with Section 24 CFR 203.41) if the loan is being submitted under the FHA Plus

		Program.
--	--	----------

The above forms are accessible on our website (<http://www.nyshcr.org/Topics/Lenders/Lenders/ApplicationandClosingForms.htm>), SONYMA Express®, and Lender Online. We are also in the process of updating our checklists. As soon as they are completed, we will advise you.

Thank you for your interest in our programs. We value our business relationships and look forward to continued success providing financing to first-time homebuyers. If you have any additional questions, please contact the undersigned at (518) 473-0090 or [sherri.eckles@nyshcr.org](mailto:sherri.eckles@nyshcr.org), or your SONYMA Business Development Officer. For Western & Central NY contact Dawn Adams (646) 539-8776 ([dawn.adams@nyshcr.org](mailto:dawn.adams@nyshcr.org)) or in the North Country, Capital District & Hudson Valley contact Bill Teague (518) 573-5936.

Sincerely,



Sherri Eckles  
Senior Vice President/Single Family Programs

Attachments