

Section 1.40 – Non-Arm’s Length/Conflict-of-Interest

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Overview

General

- Certain types of loan transactions may generate an increased risk due to the relationships of the people or companies involved in the transaction. Additional due diligence must be taken during the loan origination process when assessing the risk of these types of loans. Prudent underwriting and thorough analysis of the parties to the transaction may reveal a non-arm's length or conflict-of-interest concern.
 - Non-Arm's Length/Conflict-of-Interest transactions are eligible as outlined within this document; however, require additional scrutiny in order to mitigate risk associated with fraud.
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Eligible Loan Programs

The requirements outlined in this document apply to primary residence, second home, and investment property transactions, and all Truist non-Agency loan programs. For Agency loan programs guidance, see "Non-Arm's Length Transactions" in the "Eligible Transactions" topic outlined in [Section 2.01 Agency Loan Programs](#) of the *Correspondent Seller Guide* for guidelines.

Related Bulletins

General

Related bulletins are provided below in PDF format. To view the list of published bulletins, select the applicable year below.

- [2020](#)
- [2018](#)
- [2016](#)

Note: There were no related bulletins published in 2017 or 2019.

Agency Loan Programs

General

Reference: See “Non-Arm’s Length Transactions” in the “Eligible Transactions” topic outlined in [Section 2.01 Agency Loan Programs](#) of the *Correspondent Seller Guide* for guidelines.

Non-Agency Loan Programs

General

The following guidance applies to the Key and to the Jumbo Solution Second Mortgage loan programs.

Definitions: Non-Arm's Length

- A non-arm's length transaction occurs when a direct personal, business or financial relationship exists between the borrower and another interested party to the loan transaction that could potentially influence a decision with regards to price or costs for closing the loan. Interested parties to the loan transaction could include, but are not limited to the following:
 - builder,
 - developer,
 - seller,
 - lender,
 - mortgage broker,
 - real estate broker/realtor,
 - appraiser/appraisal company,
 - closing attorney/settlement agent/settlement company,
 - employee, or
 - employer.
 - This relationship may add additional risk by masking or misrepresenting the terms of the loan and may require additional review and documentation.
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Non-Agency Loan Programs, Continued

Definitions: Conflict-of-Interest

- At times, the relationship between the borrower and another interested party to the transaction are not the only relationships of concern. Any party to the transaction who has a direct or indirect personal, business, or financial relationship could represent a conflict-of-interest, because this relationship may influence the transaction. Conflict-of-interest relationships include, but are not limited to the following:
 - The realtor or lender is the seller of the property,
 - the property builder is the real estate broker/realtor,
 - the real estate broker/realtor is acting as the listing and/or selling agent for a property they own,
 - the lender is the mortgage holder,
 - the borrower is employed by the lender,
 - the lender is providing second mortgage financing behind a Truist first mortgage,
 - the closing agent or agency has a business, personal, or ownership interest/stake/joint venture/partnership with the lender, borrower, realtor, builder, or seller,
 - the transaction involves a vendor (such as an appraiser, settlement agency or title company) who is involved in the lending process of the subject property,
 - an employee of the lender (loan officer, processor, underwriter, etc.) is the seller, or is related to, or associated with, the seller of the property,
 - Employees of the Correspondent lender may NOT be directly involved in the underwriting of a loan for an immediate family member(s), and/or
 - Truist guidelines prohibit individuals with an interest in the property or transaction (whether direct or indirect, financial or otherwise) from influencing the selection or engagement of the appraiser.
 - Truist employees are prohibited from financing any properties with a Correspondent lender.

Reference: See the *Appraiser Independence Requirements* topic in [General Section 1.07 Appraisal Guidelines](#) in the *Correspondent Seller Guide* for further details.

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Non-Agency Loan Programs, Continued

Identifying a Non-Arm's Length or Conflict of Interest Transaction

- Factors may be present that could indicate possible non-arm's length or conflict-of-interest transactions. They include, but are not limited to, the following examples:
 - Parties related by blood, marriage or domestic partner.
 - Parties related by a business relationship.
 - An employee is purchasing a property from their employer.
 - Mortgagors employed in the real estate or construction trades who are involved in the construction, financing or sale of the subject property.
 - The subcontractor is purchasing the home from the builder or developer.
 - A short sale transaction evidenced by a recent Notice of Default or a purchase price insufficient to fully satisfy existing lien(s), and, borrower has at one time or another occupied the subject property.
 - Property flipping transactions.
 - Property purchased at auction.
- The following transactions are usually considered "arm's length" even though they are between family members.
 - Spousal buyout - evidence that both parties are currently on title must be documented.
 - Interest buyout of inherited property - evidence of estate, death, recent transfer of ownership must be documented
 - Gift of Equity

Reference: See applicable loan product descriptions for additional information on spousal buyout, inherited property or gift of equity.

Ineligible Settlement Agent Guidelines

Reference: See General [Section 1.39: Ineligible Settlement Agent Guidelines](#) in the *Correspondent Seller Guide* to access the *Truist Ineligible List*.

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Non-Agency Loan Programs, Continued

**Eligible
Occupancy
Type**

- Primary Residence
- Second Home
- Investment Property

Note: Mortgage loans on newly constructed homes secured by a second home or investment property are not allowed if the borrower has a relationship or business affiliation with the builder, developer, or seller of the property.

**Maximum
LTV/TLTV/
HTLTV**

Follow current maximum product LTV/TLTV/HTLV requirements as published in the applicable product description.

**Transaction
Type**

Purchases and Refinances

**AUS
Requirements**

Reference: See the *Underwriting* topic subsequently presented for additional information.

**Property
Ownership**

On purchase transactions, verification the borrower is currently not on title, nor has been on title to the subject property in the previous twenty-four (24) months prior to application.

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Non-Agency Loan Programs, Continued

Documentation: General The borrower, or other interested parties to the transaction, must provide written explanation stating the relationship and reason for transaction.

Documentation: Appraisal A full appraisal is required for all non-arm's length/conflict-of-interest transactions, regardless of the feedback provided in the AUS messaging, and must include:

- Verification of the purchase price,
- Last sale date,
- A recent listing of the subject property.

Documentation: Income/Asset Verification Income and asset documentation must be fully documented as applicable to the specific loan program being utilized, regardless of the feedback provided in the AUS messaging.

Reference: See the applicable loan program product description for specific income and asset full documentation guidance.

Underwriting: General

- AUS transactions must receive an "Approve/Eligible" from Fannie Mae Desktop Underwriter (DU) or an "Accept/Eligible" from Freddie Mac Loan Prospector (LP). Any other result requires the loan to be manually underwritten.
- Non-AUS transactions must be manually underwritten.
- Truist reserves the right to deny a non-arm's length or conflict-of-interest transaction.

Underwriting Requirements

- If a non-arm's length or conflict-of-interest transaction is identified, the proper level of due diligence must be performed by utilizing all applicable fraud tools to ensure the transaction is eligible and that the relationship between the parties has not influenced or compromised the transaction, or is not fraudulent.

Reference: Refer to the individual product descriptions for any additional requirements.
