

Recent Changes in Chapter 13 Practice

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Recent Changes in Chapter 13 Practice

- **The Claims Process and Bankruptcy Rule 3002.1**
- **The National Mortgage Servicing Settlement**

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18 FEDERAL RULES OF BANKRUPTCY PROCEDURE

the right of a party to obtain information by means of discovery or as ordered by the court under any authority outside the rule.

Other changes. Stylistic and organizational changes were made throughout the rule and Committee Note to reduce the length and clarify the meaning of the published proposal.

Rule 3001. Proof of Claim

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* * * * *

(c) SUPPORTING INFORMATION.

(1) Claim Based on a Writing. When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:

FEDERAL RULES OF BANKRUPTCY PROCEDURE 19

12 (A) If, in addition to its principal amount,
13 a claim includes interest, fees, expenses, or other charges
14 incurred before the petition was filed, an itemized statement
15 of the interest, fees, expenses, or charges shall be filed with
16 the proof of claim.

17 (B) If a security interest is claimed in the
18 debtor's property, a statement of the amount necessary to cure
19 any default as of the date of the petition shall be filed with the
20 proof of claim.

21 (C) If a security interest is claimed in
22 property that is the debtor's principal residence, the attachment
23 prescribed by the appropriate Official Form shall be filed with
24 the proof of claim. If an escrow account has been established in
25 connection with the claim, an escrow account statement prepared
26 as of the date the petition was filed and in a form consistent with
27 applicable nonbankruptcy law shall be filed with the attachment
28 to the proof of claim.

20 FEDERAL RULES OF BANKRUPTCY PROCEDURE

29 (D) If the holder of a claim fails to provide
30 any information required by this subdivision (c), the court
31 may, after notice and hearing, take either or both of the
32 following actions:

33 (i) preclude the holder from
34 presenting the omitted information, in any form, as evidence
35 in any contested matter or adversary proceeding in the case,
36 unless the court determines that the failure was substantially
37 justified or is harmless; or

38 (ii) award other appropriate relief,
39 including reasonable expenses and attorney's fees caused by
40 the failure.

41 * * * * *

COMMITTEE NOTE

Subdivision (c). Subdivision (c) is amended to prescribe with greater specificity the supporting information required to accompany certain proofs of claim and, in cases in which the debtor is an individual, the consequences of failing to provide the required information.

FEDERAL RULES OF BANKRUPTCY PROCEDURE 21

Existing subdivision (c) is redesignated as (c)(1).

Subdivision (c)(2) is added to require additional information to accompany proofs of claim filed in cases in which the debtor is an individual. When the holder of a claim seeks to recover – in addition to the principal amount of a debt – interest, fees, expenses, or other charges, the proof of claim must be accompanied by a statement itemizing these additional amounts with sufficient specificity to make clear the basis for the claimed amount.

If a claim is secured by a security interest in the property of the debtor and the debtor defaulted on the claim prior to the filing of the petition, the proof of claim must be accompanied by a statement of the amount required to cure the prepetition default.

If the claim is secured by a security interest in the debtor's principal residence, the proof of claim must be accompanied by the attachment prescribed by the appropriate Official Form. In that attachment, the holder of the claim must provide the information required by subparagraphs (A) and (B) of this paragraph (2). In addition, if an escrow account has been established in connection with the claim, an escrow account statement showing the account balance, and any amount owed, as of the date the petition was filed must be submitted in accordance with subparagraph (C). The statement must be prepared in a form consistent with the requirements of nonbankruptcy law. *See, e.g.,* 12 U.S.C. § 2601 *et seq.* (Real Estate Settlement Procedure Act). Thus the holder of the claim may provide the escrow account statement using the same form it uses outside of bankruptcy for this purpose.

Subparagraph (D) of subdivision (c)(2) sets forth sanctions that the court may impose on a creditor in an individual debtor case

22 FEDERAL RULES OF BANKRUPTCY PROCEDURE

that fails to provide information required by subdivision (c). Failure to provide the required information does not itself constitute a ground for disallowance of a claim. *See* § 502(b) of the Code. But when an objection to the allowance of a claim is made or other litigation arises concerning the status or treatment of a claim, if the holder of that claim has not complied with the requirements of this subdivision, the court may preclude it from presenting as evidence any of the omitted information, unless the failure to comply with this subdivision was substantially justified or harmless. The court retains discretion to allow an amendment to a proof of claim under appropriate circumstances or to impose a sanction different from or in addition to the preclusion of the introduction of evidence.

Changes Made After Publication

Subdivision (c)(1). The requirement that the last account statement sent to the debtor be filed with the proof of claim was deleted.

Subdivision (c)(2). In subparagraph (C), a provision was added requiring the use of the appropriate Official Form for the attachment filed by a holder of a claim secured by a security interest in a debtor's principal residence.

In subdivision (c)(2)(D), the clause "the holder shall be precluded" was deleted, and the provision was revised to state that "the court may, after notice and hearing, take either or both" of the specified actions.

Committee Note. In the discussion of subdivision (c)(2), the term "security interest" was added to the sentence that discusses the

FEDERAL RULES OF BANKRUPTCY PROCEDURE 23

required filing of a statement of the amount necessary to cure a prepetition default.

The discussion of subdivision (c)(2)(D) was expanded to clarify that failure to provide required documentation, by itself, is not a ground for disallowance of a claim and that the court has several options in responding to a creditor's failure to provide information required by subdivision (c).

Other changes. Stylistic changes were made to the rule and the Committee Note.

Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence

- 1 (a) IN GENERAL. This rule applies in a chapter 13
2 case to claims that are (1) secured by a security interest in the
3 debtor's principal residence, and (2) provided for under
4 § 1322(b)(5) of the Code in the debtor's plan.
5 (b) NOTICE OF PAYMENT CHANGES. The
6 holder of the claim shall file and serve on the debtor, debtor's
7 counsel, and the trustee a notice of any change in the payment

24 FEDERAL RULES OF BANKRUPTCY PROCEDURE

8 amount, including any change that results from an interest rate
9 or escrow account adjustment, no later than 21 days before a
10 payment in the new amount is due.

11 (c) NOTICE OF FEES, EXPENSES, AND
12 CHARGES. The holder of the claim shall file and serve on
13 the debtor, debtor's counsel, and the trustee a notice itemizing
14 all fees, expenses, or charges (i) that were incurred in
15 connection with the claim after the bankruptcy case was filed,
16 and (ii) that the holder asserts are recoverable against the
17 debtor or against the debtor's principal residence. The notice
18 shall be served within 180 days after the date on which the
19 fees, expenses, or charges are incurred.

20 (d) FORM AND CONTENT. A notice filed and
21 served under subdivision (b) or (c) of this rule shall be
22 prepared as prescribed by the appropriate Official Form, and

FEDERAL RULES OF BANKRUPTCY PROCEDURE 25

23 filed as a supplement to the holder's proof of claim. The
24 notice is not subject to Rule 3001(f).

25 (e) DETERMINATION OF FEES, EXPENSES, OR
26 CHARGES. On motion of the debtor or trustee filed within
27 one year after service of a notice under subdivision (c) of this
28 rule, the court shall, after notice and hearing, determine
29 whether payment of any claimed fee, expense, or charge is
30 required by the underlying agreement and applicable
31 nonbankruptcy law to cure a default or maintain payments in
32 accordance with § 1322(b)(5) of the Code.

33 (f) NOTICE OF FINAL CURE PAYMENT. Within
34 30 days after the debtor completes all payments under the
35 plan, the trustee shall file and serve on the holder of the claim,
36 the debtor, and debtor's counsel a notice stating that the
37 debtor has paid in full the amount required to cure any default
38 on the claim. The notice shall also inform the holder of its

26 FEDERAL RULES OF BANKRUPTCY PROCEDURE

39 obligation to file and serve a response under subdivision (g).
40 If the debtor contends that final cure payment has been made
41 and all plan payments have been completed, and the trustee
42 does not timely file and serve the notice required by this
43 subdivision, the debtor may file and serve the notice.

44 (g) RESPONSE TO NOTICE OF FINAL CURE
45 PAYMENT. Within 21 days after service of the notice under
46 subdivision (f) of this rule, the holder shall file and serve on
47 the debtor, debtor's counsel, and the trustee a statement
48 indicating (1) whether it agrees that the debtor has paid in full
49 the amount required to cure the default on the claim, and (2)
50 whether the debtor is otherwise current on all payments
51 consistent with § 1322(b)(5) of the Code. The statement shall
52 itemize the required cure or postpetition amounts, if any, that
53 the holder contends remain unpaid as of the date of the
54 statement. The statement shall be filed as a supplement to the
55 holder's proof of claim and is not subject to Rule 3001(f).

FEDERAL RULES OF BANKRUPTCY PROCEDURE 27

56 (h) DETERMINATION OF FINAL CURE AND
57 PAYMENT. On motion of the debtor or trustee filed within
58 21 days after service of the statement under subdivision (g) of
59 this rule, the court shall, after notice and hearing, determine
60 whether the debtor has cured the default and paid all required
61 postpetition amounts.

62 (i) FAILURE TO NOTIFY. If the holder of a claim
63 fails to provide any information as required by subdivision
64 (b), (c), or (g) of this rule, the court may, after notice and
65 hearing, take either or both of the following actions:

66 (1) preclude the holder from presenting the
67 omitted information, in any form, as evidence in any
68 contested matter or adversary proceeding in the case, unless
69 the court determines that the failure was substantially justified
70 or is harmless; or

71 (2) award other appropriate relief, including
72 reasonable expenses and attorney's fees caused by the failure.

28 FEDERAL RULES OF BANKRUPTCY PROCEDURE

COMMITTEE NOTE

This rule is new. It is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor's plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, *see* Rule 3001(c)(2), and the amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust postpetition mortgage payments to cover any undisputed claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate the automatic stay.

Subdivision (a). Subdivision (a) specifies that this rule applies only in a chapter 13 case to claims secured by a security interest in the debtor's principal residence.

Subdivision (b). Subdivision (b) requires the holder of a claim to notify the debtor, debtor's counsel, and the trustee of any postpetition change in the mortgage payment amount at least 21 days before the new payment amount is due.

FEDERAL RULES OF BANKRUPTCY PROCEDURE 29

Subdivision (c). Subdivision (c) requires an itemized notice to be given, within 180 days of incurrence, of any postpetition fees, expenses, or charges that the holder of the claim asserts are recoverable from the debtor or against the debtor's principal residence. This might include, for example, inspection fees, late charges, or attorney's fees.

Subdivision (d). Subdivision (d) provides the method of giving the notice under subdivisions (b) and (c). In both instances, the holder of the claim must give notice of the change as prescribed by the appropriate Official Form. In addition to serving the debtor, debtor's counsel, and the trustee, the holder of the claim must also file the notice on the claims register in the case as a supplement to its proof of claim. Rule 3001(f) does not apply to any notice given under subdivision (b) or (c), and therefore the notice will not constitute prima facie evidence of the validity and amount of the payment change or of the fee, expense, or charge.

Subdivision (e). Subdivision (e) permits the debtor or trustee, within a year after service of a notice under subdivision (c), to seek a determination by the court as to whether the fees, expenses, or charges set forth in the notice are required by the underlying agreement or applicable nonbankruptcy law to cure a default or maintain payments.

Subdivision (f). Subdivision (f) requires the trustee to issue a notice to the holder of the claim, the debtor, and the debtor's attorney within 30 days after completion of payments under the plan. The notice must (1) indicate that all amounts required to cure a default on a claim secured by the debtor's principal residence have been paid, and (2) direct the holder to comply with subdivision (g). If the trustee fails to file this notice within the required time, this

30 FEDERAL RULES OF BANKRUPTCY PROCEDURE

subdivision also permits the debtor to file and serve the notice on the trustee and the holder of the claim.

Subdivision (g). Subdivision (g) governs the response of the holder of the claim to the trustee's or debtor's notice under subdivision (f). Within 21 days after service of notice of the final cure payment, the holder of the claim must file and serve a statement indicating whether the prepetition default has been fully cured and also whether the debtor is current on all payments in accordance with § 1322(b)(5) of the Code. If the holder of the claim contends that all cure payments have not been made or that the debtor is not current on other payments required by § 1322(b)(5), the response must itemize all amounts, other than regular future installment payments, that the holder contends are due.

Subdivision (h). Subdivision (h) provides a procedure for the judicial resolution of any disputes that may arise about payment of a claim secured by the debtor's principal residence. Within 21 days after the service of the statement under (g), the trustee or debtor may move for a determination by the court of whether any default has been cured and whether any other non-current obligations remain outstanding.

Subdivision (i). Subdivision (i) specifies sanctions that may be imposed if the holder of a claim fails to provide any of the information as required by subdivisions (b), (c), or (g).

If, after the chapter 13 debtor has completed payments under the plan and the case has been closed, the holder of a claim secured by the debtor's principal residence seeks to recover amounts that should have been but were not disclosed under this rule, the debtor may move to have the case reopened in order to seek sanctions against the holder of the claim under subdivision (i).

Changes Made After Publication

Subdivision (a). As part of organizational changes intended to make the rule shorter and clearer, a new subdivision (a) was inserted that specifies the applicability of the rule. Other subdivision designations were changed accordingly.

Subdivision (b). The timing of the notice of payment change, addressed in subdivision (a) of the published rule, was changed from 30 to 21 days before payment must be made in the new amount.

Subdivision (d). The provisions of the published rule prescribing the procedure for providing notice of payment changes and of fees, expenses, and charges were moved to subdivision (d).

Subdivision (e). As part of the organizational revision of the rule, the provision governing the resolution of disputes over claimed fees, expenses, or charges was moved to this subdivision.

Subdivision (f). The triggering event for the filing of the notice of final cure payment was changed to the debtor's completion of all payments required under the plan. A sentence was added requiring the notice to inform the holder of the mortgage claim of its obligation to file and serve a response under subdivision (g).

Subdivision (h). The caption of this subdivision (which was subdivision (f) as published), was changed to describe its content more precisely.

Subdivision (i). The clause "the holder shall be precluded" was deleted, and the provision was revised to state that "the court

B 10 (Attachment A) (12/11)

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: _____ Case number: _____
 Name of creditor: _____ Last four digits of any number you use to identify the debtor's account: _____

Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due (1) \$ _____

2. Interest due

Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount
_____ %	___/___/___	___/___/___	\$ _____
_____ %	___/___/___	___/___/___	\$ _____
_____ %	___/___/___	___/___/___	+ \$ _____
Total interest due as of the petition date			\$ _____ Copy total here ▶ (2) + \$ _____

3. Total principal and interest due (3) \$ _____

Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney's fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Advertisement costs	_____	(5) \$ _____
6. Sheriff/auctioneer fees	_____	(6) \$ _____
7. Title costs	_____	(7) \$ _____
8. Recording fees	_____	(8) \$ _____
9. Appraisal/broker's price opinion fees	_____	(9) \$ _____
10. Property inspection fees	_____	(10) \$ _____
11. Tax advances (non-escrow)	_____	(11) \$ _____
12. Insurance advances (non-escrow)	_____	(12) \$ _____
13. Escrow shortage or deficiency (Do not include amounts that are part of any installment payment listed in Part 3.)	_____	(13) \$ _____
14. Property preservation expenses. Specify: _____	_____	(14) \$ _____
15. Other. Specify: _____	_____	(15) \$ _____
16. Other. Specify: _____	_____	(16) \$ _____
17. Other. Specify: _____	_____	(17) + \$ _____
18. Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		(18) \$ _____

Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date

Does the installment payment amount include an escrow deposit?

- No
- Yes. Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor	_ / _ / _	
	Number of installment payments due	(1) _____	
2. Amount of installment payments due	_____ installments @	\$ _____	
	_____ installments @	\$ _____	
	_____ installments @	+ \$ _____	
	Total installment payments due as of the petition date	\$ _____	Copy total here ► (2) \$ _____
3. Calculation of cure amount	Add total prepetition fees, expenses, and charges		Copy total from Part 2 here ► + \$ _____
	Subtract total of unapplied funds (funds received but not credited to account)		- \$ _____
	Subtract amounts for which debtor is entitled to a refund		- \$ _____
	Total amount necessary to cure default as of the petition date		(3) \$ _____

Copy total onto Item 4 of Proof of Claim form

B 10 (Supplement 1) (12/11)

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re _____
Debtor

Case No. _____
Chapter 13

Notice of Mortgage Payment Change

If you file a claim secured by a security interest in the debtor's principal residence provided for under the debtor's plan pursuant to § 1322(b)(5), you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

Name of creditor: _____ Court claim no. (if known): _____

Last four digits of any number you use to identify the debtor's account: _____

Date of payment change: _____/_____/_____
Must be at least 21 days after date of this notice

New total payment: \$ _____
Principal, interest, and escrow, if any

Part 1: Escrow Account Payment Adjustment

Will there be a change in the debtor's escrow account payment?

- No
- Yes. Attach a copy of the escrow account statement prepared in a form consistent with applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why:

Current escrow payment: \$ _____ New escrow payment: \$ _____

Part 2: Mortgage Payment Adjustment

Will the debtor's principal and interest payment change based on an adjustment to the interest rate in the debtor's variable-rate note?

- No
- Yes. Attach a copy of the rate change notice prepared in a form consistent with applicable nonbankruptcy law. If a notice is not attached, explain why: _____

Current interest rate: _____% New interest rate: _____%

Current principal and interest payment: \$ _____ New principal and interest payment: \$ _____

Part 3: Other Payment Change

Will there be a change in the debtor's mortgage payment for a reason not listed above?

- No
- Yes. Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (Court approval may be required before the payment change can take effect.)

Reason for change: _____

Current mortgage payment: \$ _____ New mortgage payment: \$ _____

Part 4: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent.
(Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

X _____ Date ____/____/____
Signature

Print: _____ Title _____
 First Name Middle Name Last Name

Company _____

Address _____
 Number Street

 City State ZIP Code

Contact phone (____) ____-____ Email _____

B 10 (Supplement 2) (12/11)

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re _____,
Debtor

Case No. _____
Chapter 13

Notice of Postpetition Mortgage Fees, Expenses, and Charges

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: _____ Court claim no. (if known): _____

Last four digits of any number you use to identify the debtor's account: _____

Does this notice supplement a prior notice of postpetition fees, expenses, and charges?

- No
- Yes. Date of the last notice: ____/____/____

Part 1: Itemize Postpetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Bankruptcy/Proof of claim fees	_____	(5) \$ _____
6. Appraisal/Broker's price opinion fees	_____	(6) \$ _____
7. Property inspection fees	_____	(7) \$ _____
8. Tax advances (non-escrow)	_____	(8) \$ _____
9. Insurance advances (non-escrow)	_____	(9) \$ _____
10. Property preservation expenses. Specify: _____	_____	(10) \$ _____
11. Other. Specify: _____	_____	(11) \$ _____
12. Other. Specify: _____	_____	(12) \$ _____
13. Other. Specify: _____	_____	(13) \$ _____
14. Other. Specify: _____	_____	(14) \$ _____

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

Part 2: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- I am the creditor.
- I am the creditor's authorized agent. (Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

X _____ Date ____/____/____
Signature

Print: _____ Title _____
First Name Middle Name Last Name

Company _____

Address _____
Number Street
City State ZIP Code

Contact phone (____) ____-____ Email _____

SOUTHERN DISTRICT OF NEW YORK BANKRUPTCY COURT

11/2011

Rule 3002.1 Chart

NOTE: New Rule 3002.1, “*Notice Relating to Claims Secured by Security Interest in Debtor’s Principal Residence,*” applies “in a chapter 13 case to claims that are 1) secured by a security interest in the debtor’s principal residence and 2) provided for under section 1322(b)(5) in the debtor’s plan.” (emphasis added) [The language quoted above appears in **subdivision (a)** of the new rule.]

NOTE: A new **Attachment A**, “*Mortgage Proof of Claim Attachment,*” to Official Form 10 facilitates the submission of information required by new paragraph (2) of Rule 3001(c). Attachment A, if applicable, should be filed *with* Official Form 10.

Actor	Action	Timeframe	Official Form and/or ECF Event	Action Results in Docket Entry or Addition to Claims Register	Subdivision of Rule 3002.1
Claim holder	<p>Notice of change in payment amount</p> <ul style="list-style-type: none"> to be filed and served on the debtor, debtor’s counsel and the trustee 	Notice to be filed and served no later than 21 days before a payment in the new amount is due	<p>Supplement 1 (to Official Form B10), “<i>Notice of Mortgage Payment Change</i>”</p> <p><i>ECF event: “Notice of Mortgage Payment Change”</i> (event located in Bankruptcy/Claims Actions)</p>	Supplement 1 is to be filed using the event in the Claims Actions category. Once filed, the entry will appear on the ECF claims register as a supplement to the claim holder’s proof of claim.	3002.1(b) & (d)
Claim holder	<p>Notice itemizing all fees, expenses or charges that were incurred postpetition <u>and</u> are recoverable against the debtor or the debtor’s principal residence</p> <ul style="list-style-type: none"> to be filed and served on the debtor, debtor’s counsel and the trustee 	Notice to be served within 180 days after the date on which such fees, expenses or charges were incurred	<p>Supplement 2 (to Official Form B10), “<i>Notice of Postpetition Mortgage Fees, Expenses, and Charges</i>”</p> <p><i>ECF event: “Notice of Postpetition Mortgage Fees, Expenses, and Charges”</i> (event located in Bankruptcy/Claims Actions)</p>	Supplement 2 is to be filed using the event in the Claims Actions category. Once filed, the entry will appear on the ECF claims register as a supplement to the claim holder’s proof of claim.	3002.1(c) & (d)

SOUTHERN DISTRICT OF NEW YORK BANKRUPTCY COURT

Debtor or Trustee	Motion requesting a court determination as to whether payment of a claimed fee, expense or charge is required to cure a default or maintain payments	Motion to be filed within one year after service of a subdivision (c) notice	<i>ECF event: “Motion, Determine Mortgage Fees and Expenses”</i> (event located in Bankruptcy/Motions/Applications)	File on case docket.	3002.1(e)
Court	Shall determine (after notice and hearing) whether payment of any claimed fee, expense or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments [in accordance with § 1322(b)(5)]				3002.1(e)
Trustee or Debtor	Shall file and serve on the claim holder, the debtor and debtor’s counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim [this notice shall also inform the claim holder of its obligation to file and serve a response under subdivision (g)]. <ul style="list-style-type: none"> The debtor may file and serve the notice if 1) the debtor contends that final cure payment has been made and all plan payments have been completed and 2) the trustee does not timely file and serve the required notice. 	Notice to be filed and served within 30 days after the debtor completes all payments under the plan	<i>ECF event: “Notice of Final Cure Mortgage Payment”</i> (event located in Bankruptcy/Notices)	File on case docket.	3002.1(f)
Claim holder	Shall file and serve a statement indicating whether 1) it agrees that the debtor has paid in full the amount required to cure the default and 2) the debtor is otherwise current on all payments. <ul style="list-style-type: none"> The statement shall itemize the required cure or postpetition amounts, if any, that the claim holder contends are unpaid as of the date of the statement. 	Statement to be filed and served within 21 days after service of the subdivision (f) notice	<i>ECF event: “Response to Notice of Final Cure Payment”</i> (event located in Bankruptcy/Claims Actions)	The statement is to be filed using the event in the Claims Actions category. Once filed, the entry will appear on the ECF claims register as a supplement to the claim holder’s proof of claim.	3002.1(g)

SOUTHERN DISTRICT OF NEW YORK BANKRUPTCY COURT

Debtor or Trustee	Motion requesting a court determination as to whether the debtor has cured the default and paid all required postpetition amounts.	Motion to be filed within 21 days after service of the subdivision (g) statement	<i>ECF event:</i> “ Motion, Determine Final Cure and Payment Rule 3002.1 ” (event located in Bankruptcy/ Motions/Applications)	File on case docket.	3002.1(h)
Court	Shall determine (after notice and hearing) whether the debtor has cured the default and paid all required postpetition amounts.				3002.1(h)
Court	May take (after notice and hearing) either or both of the following actions [if the claim holder fails to provide any information required by subdivision (b), (c) or (g)]: 1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding (unless the court determines that the failure was substantially justified or is harmless) or 2) award other appropriate relief, including reasonable expenses and attorney’s fees caused by the failure.				3002.1(i)

Rule 3002.1, “Notice Relating to Claims Secured by Security Interest in Debtor’s Principal Residence” Cases

In re Harris (Bankr. C.D. Ill. Apr. 23, 2012)

The Court granted the debtors objection to the claim alleging that they had the right to cure the delinquent taxes through the plan under 11 U.S.C.S. § 1322(b)(5) and that the mortgagee was impermissibly attempting to force them to pay the taxes as part of the postpetition mortgage payments.

In re Lee (Bankr. N.D. Ohio Apr. 5, 2012)

Trustee’s motion to deem current, filed in compliance with local rules providing 14 days for response by creditor was denied where it did not afford the creditor the full 21 days for a response as established in Rule 3002.1(g).

In re Wright, 461 B.R. 757 (Bankr. N.D. Iowa Dec. 28, 2011)

Awarding the debtors actual damages, punitive damages, and attorney fees on its motion for sanctions where the terms of the confirmed plan bound the servicer under 11 U.S.C.S. § 1327(a), and it violated those terms by failing to notify the Trustee, the debtors, and the debtors’ attorney of changes in plan payments. The Court prohibited the servicer from the raising the amounts due without court approval.

In re Carr, (Bankr. E.D. VA Mar. 19, 2012)

A creditor may not charge an additional fee to satisfy the creditor’s response requirement under Rule 3002.1(g), response to the Trustee’s Notice of Final Cure Payment.

In re Sheppard, (Bankr. E.D. VA Apr. 18, 2012)

Finding that the Notice of Postpetition Mortgage Fees filed by the creditor did not conform with the requirements of Rule 3002.1, creditor was not entitled to recover payment for any costs and fees included in the notice, and the trustee was not required to make payments from the estate property based upon notices filed under the rule to supplement POCs.

In re Kraska, (Bankr. N.D. Ohio Apr. 13, 2012)

Creditor filed a motion to waive compliance with Rule 3002.1 in case where debtor intended to surrender real estate. Court held that absence of an arrearage claim does not obviate the need for the protections the rule provides. A blanket waiver was inappropriate.

In re Adams, (Bankr. E.D. N.C. May 3, 2012)

Disallowing creditor’s claim for postpetition attorney’s fees associated with the serving of the mortgage notice and finding that while the change in Rule 3002.1 did change which parties must be served with notice, it had no effect on the underlying services.

In re White, (Bankr. E.D. N.C. May 3, 2012)

Disallowing creditor’s claim for postpetition attorney’s fees associated with the serving of the mortgage notice and finding that it has been the general practice of mortgage companies to serve notice of mortgage payment change on debtors without the assistance of an attorney.



The National Mortgage Settlement Frequently Asked Questions (FAQs) for Borrowers in Bankruptcy and Case Trustees

The National Mortgage Settlement (the “Settlement”) is an agreement among the federal government, 49 states, and the five largest mortgage servicers and their affiliates (the “Banks”).

The Banks are:

Ally Financial, Inc.
(formerly GMAC)

Bank of America
Corporation

Citigroup, Inc.

J.P. Morgan Chase & Co.

Wells Fargo & Company

The Settlement provides benefits to borrowers, **including borrowers in bankruptcy**, whose residential mortgage loans are serviced by the Banks.

Information concerning the Settlement and its impact on borrowers in bankruptcy can be found at a dedicated page on the United States Trustee Program’s website at www.justice.gov/ust/eo/public_affairs/consumer_info/nms

In addition, the website www.nationalmortgagesettlement.com provides resources about the Settlement, including a copy of the Settlement, an executive summary of the Settlement, a fact sheet, and FAQs. The FAQs on that website discuss general issues, including:

- What Bank conduct is covered by the Settlement?

- What loans are covered by the Settlement?
- What are the financial provisions of the Settlement?
- How will the Settlement be enforced?

Finally, the Settlement requires the appointment of an independent monitor to oversee the Banks' compliance with the Settlement. The website for the monitor is: www.mortgageoversight.com.

Table of Contents for FAQs

Question 1: What do these FAQs cover?

Question 2: What bankruptcy issues did the Settlement address?

Question 3: Will the Settlement impact borrowers in bankruptcy?

Question 4: How will borrowers in bankruptcy know if they are eligible for financial assistance under the Settlement?

Question 5: What if a borrower in bankruptcy already has a claim against a Bank?

Question 6: Can borrowers in bankruptcy participate in the Settlement and receive financial assistance from other sources?

Question 7: Is there someone at the Banks whom borrowers in bankruptcy can contact with questions concerning their mortgage?

Question 8: How does the Settlement address the Banks' filings in bankruptcy courts going forward?

Question 9: What kind of information must the Banks provide concerning a mortgage when a borrower files for bankruptcy?

Question 10: How does the Settlement affect how the Banks apply mortgage payments made by borrowers in bankruptcy or a trustee?

Question 11: How does the Settlement affect what the Banks charge after a borrower files for bankruptcy?

Question 12: Should a trustee administering the case of a borrower in bankruptcy seek to recover funds received by the borrower under the Settlement?

Question 13: How does the Settlement affect the trustees' review of the Banks' proofs of claim?

Question 1: What do these FAQs cover?

The United States Trustee Program, the component of the Department of Justice responsible for overseeing the administration of bankruptcy cases and private trustees, has prepared these FAQs primarily for borrowers in bankruptcy or borrowers who are considering filing bankruptcy, including those who have lost their homes in foreclosure. These FAQs also address questions that trustees who administer bankruptcy cases may have.

These FAQs are provided as a basic resource and should not be considered legal advice. **The United States Trustee Program is prohibited from providing legal advice. If you have any questions, you should consult an attorney.**

Question 2: What bankruptcy issues did the Settlement address?

The Settlement addresses misconduct by the Banks in bankruptcy cases, including:

- Inflated or inaccurate claims.

Some of the Banks filed inflated or inaccurate documents in bankruptcy courts. When a borrower files for bankruptcy relief, the Bank may file a proof of claim or motion for relief from the automatic stay. These documents tell a bankruptcy court how much the Bank claims the borrower owes the Bank. The proof of claim also governs what a borrower in bankruptcy must pay through a chapter 13 repayment plan, and the motion for relief can determine whether the Bank may seek to commence to foreclose upon a home even if the borrower is in bankruptcy.

The accuracy of these documents is crucial. A number of parties, including the borrower in bankruptcy, the bankruptcy court, the trustee administering the case, the United States Trustee, and other creditors, rely on these documents.

When a Bank inflates or misstates what a borrower in bankruptcy owes in these documents, the consequences can be severe. For example, the Bank may be paid too much and other creditors may not receive amounts they are owed. At worst, the borrower in bankruptcy is unable to propose a repayment plan that can be approved and the bankruptcy case is dismissed, or the Bank improperly obtains relief from the automatic stay and is permitted to foreclose on the borrower's home. As a result, the borrower in bankruptcy loses the ability to keep the home and obtain a fresh start in bankruptcy.

- Improper accounting of mortgage payments made by borrowers in bankruptcy.

Some of the Banks misapplied payments made by borrowers in bankruptcy. When a Bank does this, it appears on the Bank's books as if the borrower has failed to make regular monthly payments and the Bank can file a motion seeking relief from the automatic stay to foreclose upon the borrower's home. This misapplication of payments also results in the Bank improperly asserting that the borrower is behind on mortgage payments and can lead to the Bank imposing loan default fees and other charges.

- Adding improper fees and charges to the mortgage accounts of borrowers in bankruptcy.

Some of the Banks charged borrowers in bankruptcy for services not warranted, or in amounts not allowed. For example, some of the Banks sought to recover escrow payments twice, and conducted unnecessary or excessive property inspections and appraisals.

- Charging "hidden fees" to the mortgage accounts of borrowers in bankruptcy.

Some of the Banks also imposed "hidden fees" – fees that are assessed during the bankruptcy case but are not disclosed until after a borrower in bankruptcy receives a discharge. This can result in borrowers believing they are

current on their mortgages, only to have a Bank claim the borrowers owe additional amounts. This deprives borrowers in bankruptcy of the “fresh start” promised by the bankruptcy discharge. These hidden fees also often violate bankruptcy court orders finding that borrowers are current on their mortgages.

- Seeking relief from stay to foreclose while borrowers in bankruptcy have pending applications for loan modifications.

Some of the Banks separated their bankruptcy operations from other aspects of their mortgage servicing business, so they did not have a clear picture of the status of a borrower in bankruptcy’s mortgage.

For example, the Banks sometimes provided borrowers in bankruptcy the opportunity to modify the terms of their home loans. Modification has benefits for both the Bank, which continues to receive payments, and the borrower, who receives a more manageable monthly payment.

However, while applications for loan modifications were being processed by one group of the Bank, its bankruptcy operations might move forward with requests for relief from the automatic stay so the Bank could commence foreclosure.

Question 3: Will the Settlement impact borrowers in bankruptcy?

Yes. The Settlement requires the Banks to collectively dedicate approximately \$20 billion toward various forms of financial relief for borrowers including principal reduction, forbearance of principal for unemployed borrowers, short sales and transitional assistance, and specific benefits for service members.

The Banks must also make payments to state and federal authorities exceeding \$5 billion. Of this amount, \$1.5 billion will be allocated to provide payments to eligible borrowers, including borrowers in bankruptcy, who lost their homes to foreclosure.

Much of this relief will be available to borrowers in bankruptcy. A borrower should contact the appropriate Bank (see question 4) to determine eligibility for relief.

Additionally, the Banks must implement extensive new mortgage servicing standards, **including provisions specific to borrowers in bankruptcy.** These

standards address what occurs when borrowers fall behind on their mortgage payments, including when borrowers file for bankruptcy relief. As explained in these FAQs (see questions 7 through 11), the servicing standards require, among other things:

- A single point of contact at each Bank for borrowers in bankruptcy, who want information or assistance when they fall behind on their mortgage payments;
- New processes to ensure that the Banks provide accurate information about the amount that borrowers in bankruptcy owe on their mortgages;
- Better dispute resolution processes;
- Clear itemization of the principal, interest, fees, expenses and other charges incurred prior to bankruptcy that the Banks claim in bankruptcy cases;
- Prompt posting of payments and proper designation of pre-and post-petition payments and charges;
- Timely disclosure of fees, expenses, and charges incurred after a borrower files for chapter 13 bankruptcy.

Question 4: How will borrowers in bankruptcy know if they are eligible for financial assistance under the Settlement?

The Banks may directly contact borrowers, **including borrowers in bankruptcy. However, borrowers should not wait to be contacted.** To determine eligibility, a borrower or their attorney should contact the appropriate Bank:

Ally/GMAC: 800-766-4622

Bank of America: 877-488-7814

(Available Monday – Friday, 7am to 9pm CT, and Saturdays, 8am CT to 5pm CT)

Citi: 866-272-4749

J.P. Morgan Chase: 866-372-6901

Wells Fargo: 800-288-3212
(Available Monday – Friday, 7am to 7pm CT)

Question 5: What if a borrower in bankruptcy already has a claim against a Bank?

The Settlement includes a release of liability by the federal government and the participating states for certain conduct by the Banks that occurred prior to the Settlement. **The Settlement does not release claims a borrower, including a borrower in bankruptcy, may have under state or federal law, and a borrower does not need to choose between accepting relief under the Settlement and pursuing those claims.**

Question 6: Can borrowers in bankruptcy participate in the Settlement and receive financial assistance from other sources?

Yes. Borrowers, **including borrowers in bankruptcy**, may participate in the programs offered under the Settlement and other programs. For example, borrowers may be eligible for a separate restitution process administered by the federal banking regulators, including the Office of the Comptroller of the Currency (the “OCC”). For more information about the federal banking regulator claims process, please visit www.independentforeclosurereview.com or call 1-888-952-9105.

Question 7: Is there someone at the Banks whom borrowers in bankruptcy can contact with questions concerning their mortgage?

Yes. Each Bank must have a single point of contact for borrowers (a “SPOC”), **including borrowers in bankruptcy**, who want information or assistance when they fall behind on their mortgage payments. The SPOCs for borrowers in bankruptcy must be knowledgeable about bankruptcy issues. Also, the Banks must have adequate staff to handle the calls. Further information concerning the SPOCs for each Bank will be provided as the Banks establish them.

Question 8: How does the Settlement address the Banks' filings in bankruptcy courts going forward?

The Settlement imposes new standards on the Banks to ensure the accuracy of information they provide to bankruptcy courts. These standards are designed to ensure that the Banks provide accurate information about the amount that borrowers in bankruptcy owe on their mortgages.

Moreover, under the new servicing standards, the Banks must implement better dispute resolution processes. If a Bank files inaccurate or misleading documents in a bankruptcy case, a borrower can use these new procedures and make a complaint with the Bank.

In addition, with respect to proofs of claim and certain affidavits attached to documents filed in bankruptcy courts, the Banks must correct any significant inaccuracies promptly and also provide notice of the correction to the affected borrower or counsel to the borrower.

Question 9: What kind of information must the Banks provide concerning a mortgage when a borrower files for bankruptcy?

For a borrower in a chapter 13 (repayment) case, if a Bank files a proof of claim, the Bank must include an accurate and clear statement of exactly what the Bank claims the borrower owes. That statement must itemize the principal, interest, fees, expenses, and other charges that the Bank claims is owed as of the filing of the bankruptcy case.

Question 10: How does the Settlement affect how the Banks apply mortgage payments made by borrowers in bankruptcy or a trustee?

The Banks must promptly post payments received from a borrower or trustee while a borrower is in bankruptcy and accurately designate payments between any arrearage owed before the bankruptcy filing and what is owed for regular mortgage payments after the filing. The Banks must also reconcile accounts, including funds held in suspense accounts, at the end of each bankruptcy case and update their records so they are consistent with the account reconciliation.

Question 11: How does the Settlement affect what the Banks charge after a borrower files for bankruptcy?

The Banks must timely disclose fees, expenses, and charges incurred after a borrower files a chapter 13 bankruptcy case. A Bank waives fees, expenses, and charges of which the Bank has not given timely notice to the Borrower. The Banks must also timely give notice to a borrower of any changes in payments the borrower will have to make due to, for example, interest rate adjustments or changes in the escrow amount.

Question 12: Should a trustee administering the case of a borrower in bankruptcy seek to recover funds received by the borrower under the Settlement?

Eligible borrowers in bankruptcy may receive payments from the Banks as a part of the Settlement. A trustee should consider all relevant circumstances when deciding whether to seek turnover of the payments in a particular case. Factors to consider include:

- The payment amount and any interest of a non-debtor spouse or other person in the payment;
- The cost of recovering and administering the payment, including litigation with a borrower in bankruptcy who may seek a judicial determination regarding whether the funds are subject to administration;
- The extent to which recovering the payment will enable creditors to receive a meaningful distribution; and
- The applicability of state and federal exemptions.

The United States Trustee Program will not seek to compel a trustee to recover payments that the trustee, in the exercise of discretion, decides not to recover.

Question 13: How does the Settlement affect the trustees' review of the Banks' proofs of claim?

Generally, the Settlement will not alter a trustee's review of claims filed by the Banks. Importantly, however, the United States Trustees Program insisted that each Bank create a toll-free hotline, staffed by employees with special training in bankruptcy, that chapter 13 trustees can use to resolve issues related to the Banks' claims. More information on these hotlines will be provided as the Banks establish them.

If a trustee concludes, based on a review of a Bank's bankruptcy filings, that a Bank violated the Settlement, the trustee should contact the United States Trustee's office in the jurisdiction in which the case was filed.

NATIONAL MORTGAGE SETTLEMENT

FACT SHEET: MORTGAGE SERVICING SETTLEMENT

FINANCIAL RELIEF FOR HOMEOWNERS:

The servicers will be required to dedicate \$20 billion to various forms of relief to borrowers.

- *Principal reduction.* At least \$10 billion will be dedicated to reducing principal for borrowers who, as of the date of the settlement, owe more on their mortgages than their homes are worth and are either delinquent or at imminent risk of default.
- *Refinancing.* At least \$3 billion will be dedicated to a refinancing program for borrowers who are current on their mortgages but who owe more on their mortgages than their homes are worth. All borrowers who meet basic eligibility criteria will be eligible for the refinancing, which will reduce interest rates for borrowers who are currently paying much higher rates or whose adjustable rate mortgages are due to soon rise to much higher rates.
- *Other forms of relief.* Servicers will be required to dedicate up to \$7 billion to other forms of relief, including forbearance of principal for unemployed borrowers, anti-blight programs, short sales and transitional assistance, benefits for service members who are forced to sell their homes at a loss as a result of a Permanent Change in Station, and other programs.

To encourage servicers to provide relief quickly, there are incentives for relief provided within the first 12 months – and additional cash payments required for any servicer that fails to meet its obligation within three years.

Servicers will receive only partial credit for every dollar spent on some of the required activities, so the settlement will provide direct benefits to borrowers in excess of \$20 billion.

PAYMENTS TO STATE AND FEDERAL GOVERNMENTS:

In addition to the \$20 billion of financial relief for homeowners, the servicers will make \$5 billion in cash payments to the states and federal government. Of the \$5 billion:

- *Payments to Foreclosed Borrowers.* Through the settlement, a \$1.5 billion Borrower Payment Fund will be established to provide cash payments to borrowers whose homes were sold or taken in foreclosure between and including Jan. 1, 2008 and Dec. 31, 2011, and who meet other criteria. This program is distinct from, but complimentary to, the restitution program currently being administered by federal banking regulators to compensate those who suffered direct financial harm as a result of wrongful servicer conduct.

MORTGAGE SERVICING SETTLEMENT FACT SHEET

- *State and federal payments.* The remaining funds will go to state and federal governments to be used to repay public funds lost as a result of servicer misconduct, fund housing counselors, legal aid, and other similar purposes determined by state attorneys general. The funds coming to the federal government will primarily be allocated to the FHA Capital Reserve Account, with portions also going to the Veterans Housing Benefit Program Fund and to the Rural Housing Service.

FINANCIAL OBLIGATIONS OF INDIVIDUAL SERVICERS:

INSTITUTION	FEDERAL AND STATE PAYMENTS	RELIEF TO BORROWERS <i>(Principal Writedown, Refinancing, and Other Programs)</i>
Ally Financial, Inc.	\$110 million	\$200 million
Bank of America Corp. <i>* including EDNY FHA origination settlement</i>	\$3.24 billion	\$8.58 billion
Citigroup, Inc.	\$415 million	\$1.79 billion
J.P. Morgan Chase & Co.	\$1.08 billion	\$4.21 billion
Wells Fargo & Co.	\$1.01 billion	\$4.34 billion

NEW SERVICING STANDARDS:

Servicers are agreeing to implement extensive new servicing standards, designed to correct the kinds of conduct that harmed consumers during recent years.

- Stop many past foreclosure abuses, such as robo-signing, improper documentation and lost paperwork through new mortgage servicing standards.
- Require strict oversight of foreclosure processing, including of third-party vendors.
- Impose new standards to ensure the accuracy of information provided in federal bankruptcy court, including pre-filing reviews of certain documents.
- Make foreclosure a last resort, by requiring servicers to evaluate homeowners for other loan mitigation options first.
- Restrict banks from foreclosing while the homeowner is being considered for a loan modification.
- Set procedures and timelines for reviewing loan modification applications, and give homeowners the right to appeal denials.
- Create a single point of contact for borrowers seeking information about their loans and adequate staff to handle calls.

MORTGAGE SERVICING SETTLEMENT FACT SHEET

BENEFITS TO SERVICEMEMBERS AND VETERANS:

The settlement contains a number of provisions designed both to protect servicemembers' rights under the law and to provide them significant additional benefits.

- *Wrongful foreclosures.* To resolve allegations of liability that have not previously been settled, Chase, Citi, Wells Fargo, and Ally have agreed to conduct a full review, overseen by the Department of Justice's Civil Rights Division, to determine whether any servicemembers were foreclosed on in violation of the Servicemembers Civil Relief Act (SCRA) since January 1, 2006. Ally, Citi, Wells Fargo will be required to provide any servicemember who was a victim of a wrongful foreclosure as a result of a violation of the SCRA with a payment equal to the servicemember's lost equity, plus interest, and an additional \$116,785 or an amount provided for the same violation under the review conducted by the banking regulators, whichever is higher. To ensure consistency with an earlier settlement, JP Morgan Chase will provide any servicemember who was a victim of a wrongful foreclosure as a result of a violation of the SCRA either his or her home free and clear of any debt plus compensation for additional harm or the cash equivalent of the full value the home at the time of sale plus compensation for additional harm. The compensation for servicemembers wrongfully foreclosed on is in addition to the \$25 billion settlement amount.
- *Interest Charged in Excess of 6%.* To resolve allegations of liability that have not previously been settled, Citi, Wells Fargo, and Ally have also agreed to conduct a thorough review, overseen by the Department of Justice's Civil Rights Division, to determine whether any servicemember, from January 1, 2008 to the present, was charged interest in excess of 6% on their mortgage, after a valid request to lower the interest rate, in violation of the SCRA. Servicers will be required to provide any servicemember who was wrongfully charged interest in excess of 6% with a payment equal to a refund, with interest, of any amount charged in excess of 6% plus triple the amount refunded or \$500, whichever is larger. This compensation for servicemembers is in addition to the \$25 billion settlement amount.
- *PCS orders.* Under the Department of Defense's Homeowners' Assistance Program (HAP), certain service members who are forced to sell their home at a specified loss due to a Permanent Change in Station (PCS) may be partially compensated for the loss in their home's value. However, under the governing statute for HAP, only certain PCS servicemembers are eligible for benefits. Under this settlement, all of the participating servicers will provide mandatory short sale agreements and deficiency waivers to certain servicemembers who are currently ineligible for HAP.
- *Veterans Housing Benefit Program.* \$10 million will be paid into the Veterans Housing Benefit Program Fund through which the Department of Veterans Affairs guarantees loans provided on favorable terms to eligible veterans. In addition, except where prohibited by statutory requirements, veterans with VA-guaranteed mortgages will be eligible for relief provided through the servicers' \$20 billion consumer relief obligations.
- *Foreclosure Protections for Servicemembers Receiving Hostile Fire / Imminent Danger Pay.* For loans secured by servicemembers when they were not on active duty, the SCRA prohibits servicers from foreclosing on active duty servicemembers without first securing a court order. The settlement extends this protection to all servicemembers, regardless of when their mortgage was secured, who within nine months of the foreclosure received Hostile Fire / Imminent Danger Pay and were stationed away from their home.

MORTGAGE SERVICING SETTLEMENT FACT SHEET

CLAIMS RESOLVED:

While resolving certain violations of civil law based on the banks' mortgage loan servicing activities, the United States and the state attorneys general preserved authorities in a number of areas.

- *Criminal authorities.* The United States and the state attorneys general can still pursue criminal enforcement actions.
- *Securities claims.* The agreement does not prevent the United States from pursuing action against the banks related to misrepresentations of the quality of loans that were packaged into mortgage-based securities or the conduct that is the focus of the new Residential Mortgage-Backed Securities Working Group. The states have also preserved their rights to bring actions related to securitization activities and MERS.
- *Loan Origination claims.* The United States retains its full authority to recover losses – and penalties – caused to the federal government when a bank failed to satisfy underwriting standards on a government-insured or government-guaranteed loan, with the exception of certain faulty origination practices by Bank of America on FHA-insured loans. These claims were resolved for \$1 billion as part of the settlement. FHA retained its administrative authority to recover its actual losses when Bank of America submits an FHA loan for insurance review in the future.
- *Borrower claims.* The settlement does not prevent any claims by individual borrowers who wish to bring their own lawsuits.

ENFORCEMENT:

Compliance with the settlement will be overseen by Joseph A. Smith, who will serve as Monitor in enforcing the consent judgment. As North Carolina's banking commissioner since 2002, Smith oversaw implementation of a leading foreclosure-prevention program; he has also served as Chairman of the Conference of State Banks Supervisors and was President Obama's nominee to serve as Director of the Federal Housing Finance Agency. The Monitor will oversee implementation of the extensive servicing standards required by the settlement; impose penalties of up to \$1 million per violation (or up to \$5 million for certain repeat violations); and publish regular public reports that identify any quarter in which the Servicer fell short of the standards imposed in the settlement. The settlement will be filed as a Consent Judgment in the United States District Court for the District of Columbia and remain in effect for three-and-a-half years.

The National Mortgage Settlement and Bankruptcy



United States Trustee Program (USTP)
May 2012

1

Settlement Overview

Global settlement among:

- The nation's five largest banks and their affiliates -- Bank of America, JP Morgan Chase, Citigroup (CitiMortgage), Ally Financial (GMAC Mortgage), and Wells Fargo;
- DOJ (including the USTP);
- Various federal agencies, including HUD, FTC and Consumer Financial Protection Bureau; and
- 49 states.

2

Settlement Overview

This settlement is the largest joint federal and state civil settlement ever obtained.

- Reflects unprecedented cooperation among federal and state enforcement and regulatory agencies.
- A critical step in addressing the problems that have plagued the mortgage servicing industry.

3

USTP Involvement

- The settlement is the culmination of several years of intensive investigation and litigation by USTP offices throughout the country.
- As part of the DOJ-led enforcement effort, the USTP stepped up its investigation of select servicers in certain jurisdictions across the country.

4

USTP Involvement – cont'd

- In select jurisdictions, the USTP reviewed 100% of mortgage claims and contested motions for relief.
- Over an eight month period, the USTP reviewed 37,000 claims and motions.
- The USTP sought formal discovery from Banks regarding facially deficient bankruptcy filings.

5

Settlement Overview

Among the claims resolved through the settlement are those relating to Bank:

- Deficiencies in bankruptcy practices resulting in inflated claims, overcharging or improper charging of default-related fees, misaccounting and misapplication of payments, documentation issues, and misrepresentations in bankruptcy filings;
- Deficiencies in foreclosure practices; and
- Deficiencies relating to use and supervision of attorneys and other vendors.

6

Settlement Overview – cont'd

The settlement provides:

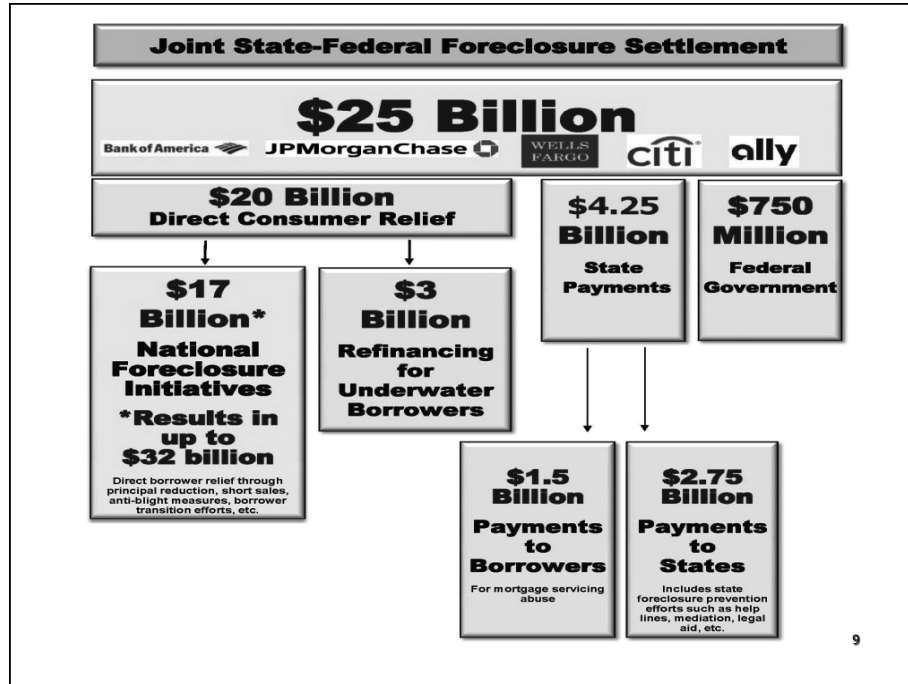
- Banks will pay \$25 billion in cash and financial assistance to homeowners;
- Banks must implement comprehensive mortgage servicing standards, including bankruptcy provisions;
- An enforcement mechanism, including an independent monitor to oversee Banks' compliance with servicing standards and consumer relief obligations; and
- A release of claims.

7

Financial Relief

- \$5 billion in cash to state and federal governments.
- \$20 billion dedicated to various forms of financial relief for borrowers including principal reductions, refinancing, short sales, forbearance agreements, and anti-blight measures.
- Much of this relief is available to borrowers in bankruptcy.

8



New Mortgage Servicing Standards

Banks agreed to comply with a new set of national servicing standards:

- Designed to prevent abusive servicing practices, including for borrowers in bankruptcy.
- Uniformity in servicing standards and transparency for borrowers.

Servicing Standards Highlights

- Heightened documentation standards to eliminate robo-signing and improve transparency.
- Require strict oversight of foreclosure processing, including of third-party vendors.
- Restrictions to ensure that borrowers will be given every opportunity to first modify their loans before facing foreclosure.

11

Servicing Standards Highlights – cont'd

- Establish procedures and timelines for loan modification applications, including the right to appeal denials.
- Banks are required to have an appropriate number of well-trained staff members to promptly respond to the needs of distressed borrowers; and
- Borrowers will have the right to deal with a reliable, single point of contact when looking for alternatives to foreclosure.

12

Servicing Standards for Borrowers in Bankruptcy

- Establish standards to ensure the accuracy of information in bankruptcy filings, including pre-filing review of proofs of claim (POC).
- Banks required to promptly correct inaccuracies in POCs and affidavits filed in support of motions for relief.
- Exceed requirements of FRBP by requiring *waiver* of "hidden fees."
- Require accountability for third-party providers by requiring stringent oversight.

13

Servicing Standards for Borrowers in Bankruptcy – cont'd

- Attach properly endorsed notes and assignments where required by law.
- Ensure accuracy of account information including promptly posting payments and properly designating between pre- and post-petition payments and charges.
- Treat accounts as current so long as borrowers in bankruptcy make payments required under the confirmed plan and any notices of payment change.

14

Servicing Standards for Borrowers in Bankruptcy – cont'd

- Default-related fees and charges must be bona fide and reasonable.
- Special Point of Contact (SPOC) for borrowers looking for options to avoid foreclosure, including staff who are specially trained in bankruptcy issues.
- Special contact for chapter 13 trustees, and management level contact for United States Trustees.

15

Enforcement

- Monitor will oversee Banks' compliance with the servicing standards and consumer financial relief obligations.
- Banks will report on their compliance in the form of agreed-upon metrics and outcome measures, which includes testing bankruptcy documents.
- Monitor can employ professionals and will issue periodic reports filed in court, including violations of agreement.

16

Federal Release –

The release excludes:

- Criminal conduct;
- Third party claims;
- Covered Conduct after 2/8/2012; and
- Securitization claims.