



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.

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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 on 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.