

Servicing Guide Announcement SVC-2011-19

November 9, 2011

Updates to Bankruptcy Proceeding Policy

Amendments to the Federal Rules of Bankruptcy Procedure become effective December 1, 2011. These amendments require additional information with respect to proofs of claim in cases involving individual debtors and proofs of claim secured by property that is a debtor's principal residence. In addition, in certain Chapter 13 cases, the amendments require the filing and service of notices of payment changes, notices of post-bankruptcy fees, expenses, and charges, and responses to notices of final cure payments served by Chapter 13 trustees.

Fannie Mae reminds servicers that when a borrower files for bankruptcy, the servicer is:

- required to take all actions that are necessary to protect Fannie Mae's interests;
- responsible for providing a complete referral package to the bankruptcy attorney; and
- responsible for providing any missing or requested additional documentation, verifications, certifications, information, or signatures to the bankruptcy attorney within three to five business days of the bankruptcy attorney's request.

If the servicer fails to take appropriate actions or is unable to document that it took appropriate actions for a specific bankruptcy, Fannie Mae may pursue any of its available remedies, which may include, but are not limited to, indemnification, "make whole," repurchase, or compensatory fees.

This Announcement describes policy changes to the following:

- Timeline for referring Chapter 7, 12, or 13 cases to a bankruptcy attorney
- Allowable attorney fees for bankruptcy actions
- Monthly reporting requirements on foreclosure prevention opportunities

Timeline for Referring Chapter 7, 12, or 13 Cases to a Bankruptcy Attorney

Servicing Guide, Part VII, Section 502.03: Referring Case to Bankruptcy Attorney

Currently, the timeline for referring a Chapter 7, 12, or 13 case to a bankruptcy attorney varies depending upon the status of the loan at the time the bankruptcy case is filed.

- With respect to loans that have been previously referred to foreclosure, a referral to a bankruptcy attorney must be made within two weeks of the date of the bankruptcy filing. In these cases, Fannie Mae will reimburse servicers for the cost of preparing the proof of claim and, in Chapter 12 and 13 cases, the cost of preparing the proof of claim and reviewing the debtor's plan.
- With respect to loans that have not yet been referred to foreclosure, a referral to a bankruptcy attorney is required only when the loan becomes 60 days delinquent. If a loan is not 60 or more days delinquent, Fannie Mae requires the servicer to prepare the proof of claim at its own expense.

Effective December 1, 2011, Fannie Mae will permit servicers to refer all delinquent loans in Chapter 7, 12, and 13 cases to a bankruptcy attorney for preparation of the proof of claim and, in Chapter 12 and 13 cases, review of the debtor's plan. Loans that have not yet been referred to foreclosure need not be 60 or more days

delinquent in order to be referred to a bankruptcy attorney. Fannie Mae will reimburse servicers for the cost of having the bankruptcy attorney prepare the proof of claim and, in Chapter 12 and 13 cases, for reviewing the debtor's plan. Fees for Chapter 12 cases must be submitted as excess fee requests.

The timeline for the referral of Chapter 11 cases is unchanged and is set forth in Part VI, Section 502.03 of the *Servicing Guide*. Chapter 11 cases must be referred to a bankruptcy attorney within two weeks of the bankruptcy filing whether the loan is current or delinquent.

The *Bankruptcy Referral and Completion Timelines* exhibit posted to eFannieMae.com has been updated.

Allowable Attorney Fees for Bankruptcy Actions

***Servicing Guide*, Part VII, Section 501.03: Allowable Attorneys Fees**

Fannie Mae is updating the allowable attorney fees for bankruptcy actions related to proof of claim preparation and filing and for new required notices. The updates are effective for:

- all referrals made to bankruptcy attorneys on or after December 1, 2011; and
- for all notices of payment changes, notice of post-bankruptcy fees, expenses, or charges, and responses to notices of final cure payments required after December 1, 2011, regardless of the date of the referral.

All relevant details are shown in the *Allowable Bankruptcy Attorney Fees* exhibit posted to eFannieMae.com.

Servicers requesting reimbursement for bankruptcy attorney fees for the new notices should follow these procedures:

- For reimbursement requests submitted through the Asset Management Network, the requested fees should be included in the Bankruptcy Attorney Fee field.
- For reimbursement requests submitted through the Invoice Management system, the requested fees should be submitted using one of two new line items:
 - Payment Change Notice, or
 - Post Petition Fees, regardless of how the attorney bills the fees.

Servicers must also provide the supporting attorney invoices from the bankruptcy attorney.

Monthly Reporting Requirements on Foreclosure Prevention Opportunities

***Servicing Guide*, Part VII, Section 502.11: Foreclosure Prevention Opportunities**

Currently, the *Servicing Guide* requires servicers to ask the bankruptcy attorney to send a monthly report about the foreclosure prevention opportunities that are pursued during the handling of a particular bankruptcy case. Effective immediately, Fannie Mae is discontinuing this requirement.

Servicers and bankruptcy attorneys must continue to work together to actively pursue foreclosure prevention alternatives during the bankruptcy process, but a monthly report is no longer required. Servicers are expected to develop a documented process and tracking methodology with the bankruptcy attorney to communicate foreclosure prevention opportunities. Fannie Mae reserves the right to request a report of the documented communication between the servicer and the attorney.



Servicers should contact their Servicing Consultant, Portfolio Manager, Investor Reporting Business Analyst, or Fannie Mae's National Servicing Organization's Servicing Solutions Center at 1-888-FANNIE5 (1-888-326-6435) with any questions regarding this Announcement.

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