

## Frequently Asked Bankruptcy Cramdown Questions

\*This FAQ applies to all chapters

November 28, 2022

### Q1. Now that the bankruptcy plan has been confirmed, how do I report the terms to Fannie Mae?

Effective September 21, servicers may begin using the SMDU User Interface (UI) to report a bankruptcy cramdown to Fannie Mae. Servicers must implement using the SMDU UI for reporting bankruptcy cramdowns by March 1, 2023.

[Review the user guide](#)

Fannie Mae encourages servicers to report a bankruptcy cramdown through SMDU UI; however, we will continue to accept the request via email until March 1, 2023. To report a bankruptcy cramdown through email, please use the [Bankruptcy Cramdown Template](#), as outlined below, and submit to [etm\\_delmods@fanniemae.com](mailto:etm_delmods@fanniemae.com). If the bankruptcy case includes more than one Fannie Mae loan, please include all loans from the case on the same template. If there are multiple loans that were included in more than one case, please submit one template per case (with the corresponding loans for the case).

A	B	C	D	E	F	G	H	I	
FNMA Loan #	Servicer Name	Servicer Loan #	Pre-Mod UPB	Pre-Mod LPI	Interest Capitalized	Interest Deemed Unsecured	Principal Deemed Unsecured	Advances Capitalized	
J	K	L	M	N	O	P	Q	R	S
Total capitalized Amount (Interest capitalized +Advances capitalized)	Post-Mod UPB	Post-Mod LPI	New Note Rate	New Payment Amount	1st Payment Due Date	Post Mod Maturity Date	Additional comments. BK file date for pre Mod UPB and LPI	CLASS	unsecured portion pd thru plan

**Column A – FNMA Loan #** – Note Fannie Mae’s 10-digit loan number.

**Column B – Servicer Name** – Include submitting servicer’s name.

**Column C – Servicer Loan #** – Note servicer’s loan number.

**Column D – Pre MOD UPB** – This figure is the Gross UPB at the time the debtor files the petition. For Chapter 13 bankruptcy cases, this figure must match what is captured on the POC filed by the servicer. For Chapter 11 bankruptcy cases, this figure should match what is captured on the POC filed by the servicer but may be supplemented by screenshots regarding adequate protection payments to account for any difference. *Please refer to Q2 for further explanation and an example.*

**Column E – Pre MOD LPI** - This is the LPI (Last Paid Installment) date prior to the bankruptcy plan confirming.

**Column F – Interest Capitalized** – This is to be noted by the servicer and will sum into Column J – Total Capitalized Amount (Column F plus Column I).



**Column G – Interest Forgiven** – This is to be noted by the servicer if interest is deemed unsecured as a result of the cramdown.

**Column H – Principal Forgiven** – This will be the difference in the Pre MOD UPB and Post MOD UPB awarded in the bankruptcy case. This field should account for the difference in the two UPBs reported on the template and is a *decrease* in principal owed.

**Column I – Advances Capitalized** – This is to be noted by the servicer and will sum into Column J – Total Capitalized Amount (Column F plus Column I).

**Column J – Total Capitalized Amount** – The figure in the “Total Capitalized Amount” column equals the sum of Column F (Interest Capitalized) plus Column I (Advances Capitalized) and will need to total the difference of the Pre MOD UPB and Post MOD UPB when we are capitalizing on the cramdown. A Capitalization occurs in a cramdown only when the Post-MOD UPB is greater than the Pre-MOD UPB (an *increase* in the principal owed). *Please refer to Q2 for further explanation and an example.*

**Column K – Post- MOD UPB** – This is the amount of the secured claim awarded in the bankruptcy per the court documents or as outlined on the Proof of Claim (POC).

**Column L – Post-MOD LPI** – Generally, this date is 30 days less than the 1<sup>st</sup> Payment Due Date (Column O). An example would be, if the 1<sup>st</sup> payment due is 8/1/2012, then the Post MOD LPI would be 7/1/2012. In some circumstances in Chapter 13 plans, the court may call for payments that start a few months into the plan rather than at filing. In that situation, the Post- MOD LPI may be more than 30 days before the 1<sup>st</sup> Payment Due Date.

**Column M – New Note Rate** – This is outlined in the bankruptcy plan treatment and is awarded at confirmation.

**Column N – New Payment Amount** – This will be a product of the amortization OR a specific amount awarded by the courts. If the court specifies a certain monthly payment in the court documents as opposed to merely giving a new value, rate, and term, the template must reflect the court’s payment—even if the court did not properly amortize the payment. In the event the New Payment Amount does not correctly amortize to the Post Mod UPB, a balloon may be due at maturity (depending on the wording in the court orders). Conversely, the loan could mature several months early, if the monthly amount is greater than the actual amortized payment. If this situation is identified by the servicer, please note Column Q “Comments,” as referenced below.

**Column O – 1<sup>st</sup> Payment Due Date** – The 1<sup>st</sup> Payment Due Date will differ for Chapter 11 and Chapter 13 bankruptcies. In a Chapter 13 bankruptcy, the 1<sup>st</sup> Payment Due Date will be the 1<sup>st</sup> day of the month following the filing date of the case, unless the effective date is defined differently in the plan. Example: If the Chapter 13 BK was filed on 10/15/2011, the 1<sup>st</sup> Payment Due Date on the template would be 11/1/2011.

In a Chapter 11 bankruptcy, the representative must read the effective date definition in the plan and apply a similar concept used with Chapter 13 bankruptcies. Example: If the effective date is noted as 60 days after confirmation and the plan confirms on 11/19/2011, the 1<sup>st</sup> Payment Due Date will be 2/1/2012 (this was calculated off of the confirmation date of 11/19/2011 plus 60 days is 1/19/2012, therefore the due date would roll to February as we would not request a payment due mid-month).



*\*While Fannie Mae’s systems are set up to take payments on the first of every month, in rare occasions the court will specify a payment date other than the first of the month and will use specific language indicating this (see screenshot below). Only in those situations will Fannie Mae book the 1<sup>st</sup> Payment Due Date for a date that is not the first of the month.*



Claim will be amortized over a period of 20 years, payable at an interest rate of 5.25% per annum, which results in equal monthly payments in the amount of \$539.08 (principal and interest only), with payments commencing on May 15, 2012 and continuing on the 15<sup>th</sup> day of each calendar month thereafter until paid in full and, by the agreement of the parties, said 2808

**Column P – Post-Mod Maturity** – Generally, the Post-Mod Maturity date will be the same month and day as the Post-MOD LPI. The year is to reflect a calculation of the proper terms awarded by the court, e.g., 60 months, 180 months, 360 months, 20 years, 30 years, etc. as outlined in the plan. On occasion, the court will specify an uneven term (for instance, 57 months) or will specify that the maturity date is to remain that which is in the current note—in those instances, the Post-Mod Maturity date will not be the same month and date as the Post-MOD LPI.

**Column Q – Comments** – Include additional notes that you would like to make Fannie Mae aware of when reviewing the cramdown submission. For Chapter 13 Bankruptcies, please include the case filing date. For Chapter 11 Bankruptcies, please include the Class Identification (e.g., Class 2-b). **\*\*In the event a bankruptcy cramdown is approved by the courts with principal forbearance, you must enter the amount of principal forbearance and specific details here.\*\***

**Column R- Class** – the Class is also known as a treatment and identifies where, how the claim is paid out. It is most important in a Chapter 11 where there are multiple creditors and treatments, the Class helps identify where the specific creditor and lien can be found in the confirming plan. Class is usually alpha numeric or number.

**Column S- Unsecured Portion** – Amount of unsecured portion of claim eligible to receive a distribution through the plan. This will apply where a cramdown is ordered and Fannie Mae’s claim is bifurcated into secured and unsecured portions, with the unsecured portion eligible to receive a pro-rate distribution of the funds available for distribution among general unsecured creditors.

**Q2. Can late charges be capitalized on a bankruptcy cramdown?**

No, although some bankruptcy jurisdictions will allow the inclusion of late charges, Fannie Mae does not allow the capitalization of late charges.

**Q3. What is the difference between Principal Deemed Unsecured and Capitalization on the Bankruptcy Cramdown Template?**

When the courts award a lesser UPB than our current UPB, this will result in a principal write-down of the UPB, meaning the Pre-MOD UPB is *more than* the Post-MOD UPB (Pre-MOD UPB > Post-MOD



UPB). This write-down figure is reported in Column H of the BankruptcyCramdown Template.

D	E	F	G	H	I	J	K
Pre-Mod UPB	Pre-Mod LPI	Interest Capitalized	Interest Deemed Unsecured	Principal Deemed Unsecured	Advances Capitalized	Total capitalized Amount (Interest capitalized +Advances capitalized)	Post-Mod UPB
\$167,693.52	5/1/2011	\$0.00	\$0.00	\$76,693.52			\$91,000.00

The Pre-Mod UPB *minus* the Principal Deemed Unsecured should *equal* the Post-Mod UPB.

The Post-Mod UPB has decreased from \$91K to \$79K—this means principal has been deemed unsecured.

When the courts award the POC (proof of claim) amount or a value higher than our currentUPB (Pre MOD UPB) in the Bankruptcy case, this will result in a Capitalization, meaning thePre MOD UPB is *less than* the Post MOD UPB (Pre MOD UPB < Post MOD UPB). This figure(the difference) is reported in Column J of the Bankruptcy CramdownTemplate.

D	E	F	G	H	I	J	K
Pre-Mod UPB	Pre-Mod LPI	Interest Capitalized	Interest Deemed Unsecured	Principal Deemed Unsecured	Advances Capitalized	Total capitalized Amount (Interest capitalized +Advances capitalized)	Post-Mod UPB
\$125,735.74	4/1/2012	\$10,458.13	\$0.00	\$0.00	\$16,270.69	\$26,728.82	\$152,464.56

Interest Capitalized *plus* Advances Capitalized *equals* Total Amount Capitalized (F+I=J).

The Post-Mod UPB has *increased* from \$125K to \$152K—this is a capitalization.

The Pre-MOD UPB *plus* the Total Capitalized Amount should *equal* the Post-MOD UPB (D+J=K)

**Q4. Hard Rejects and Bankruptcy Loans: Why do I have a Hard Reject for a BankruptcyCramdown Loan in the System?**

A “Hard Reject” occurs when Fannie Mae’s system is not updated with the servicer-reported LPI and UPB. A few examples include invalid LPI date movement, UPB movement/possible amortization error, or note rate change past due. Hard Rejects, while a loan is in Bankruptcy with an active cramdown, typically result due to the servicer updating its system to reflect the treatment terms prior to advising and allowing Fannie Mae to update first. The servicer must notify Fannie Mae of the updated treatment prior to updating its system to reflect the new terms.

**Q5. Will Fannie Mae accept an 1111(b) election? If so, when is it appropriate and what do I need to do?**

Fannie Mae will consider 1111(b) elections on a case-by-case basis. We require servicers obtain approval from Fannie Mae by submitting a [Form 20](#) prior to making and accepting the election. If servicer’s counsel recommends making the election, the servicer is still required to obtain Fannie Mae approval prior to moving forward with the election. This election is not to be used as standard practice for cramdowns. Ultimately, Fannie Mae wants the outcome that minimizes cramdown losses, but also protects its interests both in the short term and long term. *This election will require Fannie Mae approval in every instance.*



**Q6. Modifications beyond Servicing Guide Terms vs. Cramdowns: What is the difference and how are they handled?**

A cramdown occurs when a plan of reorganization that changes the terms of a loan owned by Fannie Mae is confirmed by an order of the bankruptcy court. Separate from cramdowns, servicers may wish to agree to loan modifications to resolve disputes in bankruptcy cases (or for other reasons). If the servicer seeks to offer the debtor loan modification terms that go beyond those authorized under the Servicing Guide and any applicable delegations, the servicer must seek approval from Fannie Mae using Form 20 before the case can be submitted via SMDU/HSSN. When submitting such a modification via SMDU/HSSN you will select Campaign ID-Special with Trial or Special without Trial which follows the same approval process as other Fannie Mae Modifications. If you have any questions on these modifications, they should be sent to [loss\\_mitigation@fanniemae.com](mailto:loss_mitigation@fanniemae.com). These modifications should not be submitted using the cramdown template. Once a cramdown occurs through confirmation order, the cramdown template must be submitted for processing. It is not permissible to have both a modification and a cramdown in the same case.

**Q7. How do I seek reimbursement for the legal fees and costs associated with handling the cramdown on behalf of Fannie Mae?**

Requests for approval of excess attorney fees are required to be submitted by the attorney directly to Fannie Mae through the Property 360 system. If necessary, law firms can request excess fee training by contacting [Excess\\_Fee\\_Request@FannieMae.com](mailto:Excess_Fee_Request@FannieMae.com)

**Q8. What is an LAR?**

LAR stands for “Loan Activity Report,” an item which is submitted by your Investor Reporting group. FNMA Investor Reporting may request that you submit an LAR when the Pre-MOD UPB and Pre-MOD LPI figures reported on the template do not match those in Fannie Mae’s system. The cramdown terms cannot be booked until these figures match. After you submit your cramdown template to FNMA Investor Reporting, we suggest that you do not apply payments to the loan until you have received an email confirming that the cramdown has been booked on Fannie Mae’s systems—this will offset the forgiveness/capitalization snapshot we are trying to capture and cause a figure mismatch. Additionally, do not book the treatment on your own systems before you have received booking confirmation from Fannie Mae—this will also result in a figure mismatch and you will have to submit an LAR.

**Q9. How do I submit funds to be applied to the unsecured portion of a claim?**

1. For Actual/Actual loans, servicers must remit funds through CRS using remittance code 001. For Scheduled/Scheduled and Scheduled/Actual loans, servicers must make all funds due to Fannie Mae available for drafting by the 18th calendar day of the month (or the preceding business day if the 18th is not a business day).
2. Servicer will report the bifurcated amount to be applied by sending an email to [ETM\\_DelMods@fanniemae.com](mailto:ETM_DelMods@fanniemae.com). Include in the email Seller Servicer ID number, Fannie Mae loan number and the date funds were remitted.