

**COMMENTS FROM THE AUGUST 2023 PUBLICATION  
OF PROPOSED AMENDMENTS TO FEDERAL RULES & FORMS**

To view the proposed amendments to bankruptcy rules and forms that were published for this comment period, please visit the Rules & Policies page of the judiciary's website at <https://www.uscourts.gov/> to download the 2023 preliminary draft of proposed amendments.

Comments were submitted at <https://www.regulations.gov/> under docket number USC-RULES-BK-2023-0002.

The comment period started August 15, 2023 and closed February 16, 2024.



## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–442 and 731–TA–1095–1096 (Third Review)]

### Lined Paper School Supplies From China and India

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the countervailing duty order on lined paper school supplies from India and the antidumping duty orders on lined paper school supplies from China and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

#### Background

The Commission instituted these reviews on February 1, 2023 (88 FR 6787) and determined on May 8, 2023 that it would conduct expedited reviews (88 FR 37096, June 6, 2023).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on August 4, 2023. The views of the Commission are contained in USITC Publication 5450 (August 2023), entitled *Lined Paper School Supplies from China and India: Investigation Nos. 701–TA–442 and 731–TA–1095–1096 (Third Review)*.

By order of the Commission.

Issued: August 4, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–17085 Filed 8–8–23; 8:45 am]

**BILLING CODE 7020–02–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Advisory Committees on Appellate, Bankruptcy, and Civil Rules; Hearings of the Judicial Conference

**AGENCY:** Judicial Conference of the United States.

**ACTION:** Advisory Committees on Appellate, Bankruptcy, and Civil Rules; notice of proposed amendments and open hearings.

**DATES:** All written comments and suggestions with respect to the proposed amendments may be submitted on or after the opening of the period for public comment on August 15, 2023, but no later than February 16, 2024.

**ADDRESSES:** Written comments must be submitted electronically, following the instructions provided on the website. Comments will be posted on the website and available to the public.

Public hearings either virtually or in person are scheduled on the proposed amendments as follows:

- Appellate Rules on October 18, 2023, and January 24, 2024;
- Bankruptcy Rules and Forms on January 12, 2024, and January 19, 2024; and
- Civil Rules on October 16, 2023, January 16, 2024, and February 6, 2024.

Those wishing to testify must contact the Secretary of the Committee on Rules of Practice and Procedure by email at: *RulesCommittee\_Secretary@ao.uscourts.gov*, at least 30 days before the hearing.

**FOR FURTHER INFORMATION CONTACT:** H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee\_Secretary@ao.uscourts.gov*.

**SUPPLEMENTARY INFORMATION:** The Advisory Committees on Appellate, Bankruptcy, and Civil Rules have proposed amendments to the following rules:

- Appellate Rules 6 and 39;
- Bankruptcy Rules 3002.1 and 8006;
- Bankruptcy Official Forms 410, 410C13–M1, 410C13–M1R, 410C13–N, 410C13–NR, 410C13–M2, and 410C13–M2R; and
- Civil Rules 16, 26, and new Rule 16.1.

The text of the proposals will be posted August 15, 2023, on the Judiciary’s website at: <https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>.

(Authority: 28 U.S.C. 2073.)

Dated: August 3, 2023.

**Shelly L. Cox,**

*Management Analyst, Rules Committee Staff.*

[FR Doc. 2023–16976 Filed 8–8–23; 8:45 am]

**BILLING CODE 2210–55–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA–1238]

#### Bulk Manufacturer of Controlled Substances Application: Chemtos, LLC

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Chemtos, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 10, 2023. Such persons may also file a written request for a hearing on the application on or before October 10, 2023.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on July 6, 2023, Chemtos, LLC., 16713 Picadilly Court, Round Rock, Texas 78664–8544, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

<sup>1</sup> The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

[Docket \(/docket/USC-RULES-BK-2023-0002\)](/docket/USC-RULES-BK-2023-0002)[/ Document \(USC-RULES-BK-2023-0002-0001\) \(/document/USC-RULES-BK-2023-0002-0001\)](/document/USC-RULES-BK-2023-0002-0001) / [Comment](#)**PUBLIC SUBMISSION**

## Comment from Gieseke, Michael

Posted by the **United States Courts** on Aug 16, 2023[View More Comments](/document/USC-RULES-BK-2023-0002-0001/comment) 5 (/document/USC-RULES-BK-2023-0002-0001/comment)[View Related Comments](/docket/USC-RULES-BK-2023-0002/comments) 5 (/docket/USC-RULES-BK-2023-0002/comments)

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Comment

The proposed amendments to Rule 3002.1 would allow a debtor or trustee to file a motion to determine the status of a claim secured by a security interest in a debtor's principal residence and for which the plan provides for the trustee or debtor to make contractual payments. If a mortgage creditor fails to respond to the motion, the remedy is that the court may grant the facts set forth in the motion. I question whether that is a sufficient remedy for a creditor's failure to respond. A debtor that is making direct mortgage payments may only be seeking clarification as to whether payments are current or delinquent, and in what amount. From my experience, debtors have a difficult time obtaining information from their mortgage servicers and such information often conflicts with what is due post-petition in direct/ongoing payments and what is due from chapter 13 Trustee in arrears payments. And chapter 13 debtors are often delinquent on post-petition direct mortgage payments. Such debtors (and their attorneys), could not in good faith assert in motions to determine status that the debtors are, in fact, current on those post-petition obligations. If the creditor fails to respond to the motion, the proposed rule does not appear to provide an adequate remedy (granting facts alleged) for those debtors. Perhaps an alternative remedy similar to that in FRBP 3002.1(i) - allowing the court to award other appropriate relief, including reasonable expenses and attorney's fees caused by the creditor's failure to respond - would compel compliance and assist such debtors in obtaining the requested information.

**Comment ID**

USC-RULES-BK-2023-0002-0003

**Tracking Number**

llc-qwjb-nmdm



close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission’s Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (“Docket No. 3712”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures <sup>1</sup>). Please note the Secretary’s Office will accept only electronic filings during this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary [atEDIS3Help@usitc.gov](mailto:atEDIS3Help@usitc.gov).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records

of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission’s Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 13, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–27767 Filed 12–15–23; 8:45 am]

**BILLING CODE 7020–02–P**

**JUDICIAL CONFERENCE OF THE UNITED STATES**

**Advisory Committee on Bankruptcy Rules; Hearing of the Judicial Conference**

**AGENCY:** Judicial Conference of the United States.

**ACTION:** Advisory Committee on Bankruptcy Rules; Notice of cancellation of open hearing.

**SUMMARY:** The following public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure has been canceled: Bankruptcy Rules Hearing on January 12, 2024. The announcement for this hearing was previously published in the **Federal Register** on August 9, 2023.

**DATES:** January 12, 2024.

**FOR FURTHER INFORMATION CONTACT:** H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, [RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov).

(Authority: 28 U.S.C. 2073.)

Dated: December 13, 2023.

**Shelly L. Cox,**

*Management Analyst, Rules Committee Staff.*

[FR Doc. 2023–27766 Filed 12–15–23; 8:45 am]

**BILLING CODE 2210–55–P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA–1308]

**Bulk Manufacturer of Controlled Substances Application: Kinetochem LLC**

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Kinetochem LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 16, 2024. Such persons may also file a written request for a hearing on the application on or before February 16, 2024.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on November 28, 2023, Kinetochem LLC, 96 Market Street, Suite 102, Georgetown, Texas 78626–3618, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana .....	7360	I
Tetrahydrocannabinols .....	7370	I

The company plans to bulk manufacture the listed controlled substances as Active Pharmaceutical Ingredients to its customers as well as for research and clinical trials. In reference to drug codes 7360

<sup>1</sup> Handbook for Electronic Filing Procedures: [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): <https://edis.usitc.gov>.





potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3713") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures<sup>1</sup>). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at [EDIS3Help@usitc.gov](mailto:EDIS3Help@usitc.gov).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information,

including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 19, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023-28307 Filed 12-22-23; 8:45 am]

**BILLING CODE 7020-02-P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Advisory Committee on Bankruptcy Rules; Hearing of the Judicial Conference

**AGENCY:** Judicial Conference of the United States.

**ACTION:** Advisory Committee on Bankruptcy Rules; notice of cancellation of open hearing.

**SUMMARY:** The following public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure has been canceled: Bankruptcy Rules Hearing on January 19, 2024.

**DATES:** January 19, 2024.

**FOR FURTHER INFORMATION CONTACT:** H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Phone (202) 502-1820, [RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov).

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:** The announcement for this hearing was previously published in the **Federal Register** on August 9, 2023 at 88 FR 53917.

(Authority: 28 U.S.C. 2073.)

Dated: December 20, 2023.

**Shelly L. Cox,**

*Management Analyst, Rules Committee Staff.*

[FR Doc. 2023-28386 Filed 12-22-23; 8:45 am]

**BILLING CODE 2210-55-P**

## DEPARTMENT OF JUSTICE

[CPCLO Order No. 006-2023]

### Privacy Act of 1974; Systems of Records

**AGENCY:** Office of Justice Programs, United States Department of Justice.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A-108, notice is hereby given that the Office of Justice Programs (OJP), a component within the United States Department of Justice (DOJ or Department), proposes to modify a system of records notice titled Public Safety Officers' Benefits System, JUSTICE/OJP-012. The component proposes to revise Routine Uses B, G, and L.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Therefore, please submit any comments by January 25, 2024.

**ADDRESSES:** The public, OMB, and Congress are invited to submit any comments: by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, National Place Building, 1331 Pennsylvania Avenue NW, Suite 1000, Washington, DC 20530; by facsimile at 202-307-0693; or by email at [privacy.compliance@usdoj.gov](mailto:privacy.compliance@usdoj.gov). To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Hope Janke, Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street NW, Washington, DC 20531; [AskPSOB@usdoj.gov](mailto:AskPSOB@usdoj.gov); (888) 744-6513.

**SUPPLEMENTARY INFORMATION:** The Department is updating the system of records notice for JUSTICE/OJP-012, last published in its entirety in the **Federal Register** at 64 FR 25070 (May

<sup>1</sup> Handbook for Electronic Filing Procedures: [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).

Docket (/docket/USC-RULES-BK-2023-0002)

/ Document (USC-RULES-BK-2023-0002-0001) (/document/USC-RULES-BK-2023-0002-0001) / Comment



PUBLIC SUBMISSION

## Comment from Bailey, January

Posted by the **United States Courts** on Feb 2, 2024

View More Comments 5 (/document/USC-RULES-BK-2023-0002-0001/comment)

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Comment

I like that the proposed Official Form 410C13-NR requires the lender to list the unpaid principal balance of the loan. However, I think that there should also be a checkbox for the lender to check stating that this balance matches the amortization schedule from the note or the last loan modification.

I have found a few instances where the lender said the debtor was now current, but they had applied payments differently, and the principal balance remaining did not match what the amortization schedule would have been.

### Comment ID

USC-RULES-BK-2023-0002-0006



### Tracking Number

lrz-229h-26f4

### Comment Details

### Submitter Info

#### Submitter Name

January Bailey

Docket (/docket/USC-RULES-BK-2023-0002)

/ Document (USC-RULES-BK-2023-0002-0001) (/document/USC-RULES-BK-2023-0002-0001) / Comment

 PUBLIC SUBMISSION

## Comment from Anderson, Kurt

Posted by the **United States Courts** on Feb 6, 2024

View More Comments 5 (/document/USC-RULES-BK-2023-0002-0001/comment)

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Comment

With the addition of lots of new forms to an already long list, I think the entire form numbering system needs to be revamped to track with the rules numbering. Many decades ago the US Courts required local Bky rule numbering to track the national rule numbering, which now is vital in assuring us that we have considered both the national and local procedural requirements. Forms should follow the same principle. It is confusing for a non-regular practitioner on a specific issue such as this one – despite references in the rules themselves – to try to correlate a 400 series form with a 3000 series rule. I note that my district’s local form numbers closely track the related rule numbering.

### Comment ID

USC-RULES-BK-2023-0002-0007



### Tracking Number

Is9-p92g-ybgn

### Comment Details

### Submitter Info

#### Received Date

Feb 5, 2024



Minnesota  
State Bar  
Association

February 8, 2024

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Suite 380  
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55402-1039

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Via Email

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE OF THE JUDICIAL CONFERENCE OF  
THE UNITED STATES

Dear Committee Members,

On December 7, 2023, the Minnesota State Bar Association's (MSBA) Assembly, its policy-making body, voted to support the proposed amendments to the following Federal rules and forms, as well as one new rule:

- Appellate Rules 6 and 39;
- Bankruptcy Rules 3002.1 and 8006; • Bankruptcy Official Forms 410, 410C13-M1, 410C13-M1R, 410C13-N, 410C13- NR, 410C13-M2, and 410C13-M2R; and
- Civil Rules 16, 26, and new Rule 16.1.

The MSBA believes the proposed changes will foster increased transparency and possibly efficiency between parties and the court.

Sincerely,

A handwritten signature in black ink that reads "Cheryl Dalby". The signature is written in a cursive, flowing style.

Cheryl Dalby  
Chief Executive Officer

**NATIONAL BANKRUPTCY CONFERENCE**

*A Voluntary Organization Composed of Persons Interested in the  
Improvement of the Bankruptcy Code and Its Administration*

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PROF. JAY L. WESTBROOK

BRADY C. WILLIAMSON

February 9, 2024

***Submitted Electronically***

Judicial Conference of the United States  
Committee on Rules of Practice and Procedure  
Advisory Committee on Bankruptcy Rules  
Washington, DC 20544

Re: Proposed Amendments to the Federal Rules of Bankruptcy Procedure  
Docket No. USC-RULES-BK-2023-0002

**Members of the Advisory Committee:**

The National Bankruptcy Conference (“NBC”) is a voluntary, non-partisan, not-for-profit organization composed of about 60 of the nation’s leading bankruptcy judges, professors, and practitioners. The NBC has provided advice to Congress regarding bankruptcy legislation for approximately 80 years. We enclose a Fact Sheet providing further information about the NBC. The following comments are submitted to the proposed amendments to Bankruptcy Rule 3002.1 and the related new Official Forms.

**Deletion of “installment” in Rule 3002.1(a)**

- The 2016 amendment that deleted the reference to section 1322(b)(5) from Rule 3002.1(a) and replaced it with “for which the plan provides that either the trustee or the debtor will make contractual installment payments” created ambiguity as to whether the rule applies to reverse mortgages, which arguably have no “installment” payments. The proposed amendment that would delete “installment” in Rule 3002.1(a) and the related Committee Note clarify that Rule 3002.1 applies to reverse mortgages. We support these changes.

**Deletion of “contractual” in Rule 3002.1(a)**

- We suggest that “contractual” should also be deleted in Rule 3002.1(a). This change would make all claims secured by a security interest in the debtor’s principal residence that are being paid in a chapter 13 case subject to Rule 3002.1. Mortgage holders and servicers have successfully argued that Rule 3002.1 does not apply in chapter 13 cases in which the mortgage is being paid in any manner other than according to strict “contractual” terms. This is true for:



- “full payment” chapter 13 cases in which the mortgage will be paid in full through the plan but with monthly payments, interest rate or total payments different than stated in the mortgage contract, *see In re Davenport*, 627 B.R. 705 (Bankr. D.D.C. 2020); *In re Anderson*, 2020 WL 6821796 (Bankr. D. Kan. Nov. 16, 2020); *In re Clancy*, 2020 WL 5668734 (Bankr. S.D. Fla. Sept. 23, 2020).
- “short term” mortgages that are modified and paid as permitted by section 1322(c)(2), consistent with section 1325(a)(5), *see In re Tavares*, 547 B.R. 204 (Bankr. S.D. Tex. 2016).
- any mortgage – short or long term -- that is not protected from modification by section 1322(b)(2) that is paid by modification of any contract term – with or without “cramdown,” *see In re White*, 641 B.R. 717 (Bankr. S.D. Ga. 2022).
- claims held by homeowners’ associations and condominium associations that are often secured by security interests but with respect to which no contractual terms exist, *see In re Hadfeg*, 585 B.R. 208 (Bankr. S.D. Fla. 2018).
- Deleting “contractual” would carry out the original intent of Rule 3002.1 as to all creditors holding claims secured by a home and eliminate the potential “gotcha” at the end of a chapter 13 case when such creditors declare default and threaten foreclosure notwithstanding completion of plan payments. It will also provide an opportunity for court review of the reasonableness of fees, costs and charges imposed by these creditors during all chapter 13 cases in which a claim secured by a home is treated by the plan.

#### **HELOC amendments - Rule 3002.1(b)(2)**

- The proposed amendment requires an annual notice for HELOCs, which shall include notice of the payment due for the month when the notice is filed, a reconciliation amount, and the amount of the next payment. Because the Committee has not proposed a new Official Form for the annual notice, a HELOC creditor will need to use the existing Form 410-S1. However, that form currently provides only for disclosure of the “new total payment.” We suggest that Form 410-S1 should be modified to provide for the new HELOC disclosures. Alternatively, the form instructions should indicate that, notwithstanding Rule 9009(a), the claim holder is permitted to alter the form to make the disclosures.

#### **Fee Dispute Procedure - Rule 3002.1(e)**

- The existing rule provides that “on a party in interest’s motion filed within one year ...,” the court must determine whether any claimed fee is required to cure a default or maintain payments. Courts have held that the procedure set out in existing Rule

3002.1(e) based on the filing of a motion in a contested matter is not exclusive and does not preclude the debtor or trustee from seeking a determination related to disputed fees in an adversary proceeding, particularly when other claims seeking recovery of money damages that must be filed as an adversary proceeding are being asserted against the creditor. *E.g., In re Blanco*, 633 B.R. 714, 746 (Bankr. S.D. Tex. 2021) (finding it was appropriate for debtors to assert their Rule 3002.1 violations in adversary proceeding); *In re Trevino*, 535 B.R. 110 (Bankr. S.D. Tex. 2015). While the proposed amendments to Rule 3002.1(e) appear to be stylistic, they could be construed as changing the provision from a permissive to mandatory procedure by providing that a motion (and only a motion) “must” be filed, and that the motion must be filed within one year unless the court orders a shorter period. Thus, we suggest that the existing language in Rule 3002.1(e) not be changed.

- If our suggestion for maintaining the existing language is not adopted, we separately suggest the following change with respect to the one-year deadline: “... unless a party in interest requests and the court orders a shorter **or longer** period.” This would permit the court to enlarge the time period under Rule 9006 if the request is made before the expiration of the one-year period or on motion made after the expiration of the one-year period if the failure to make the timely request was due to excusable neglect.

#### **Proposed Rule 3002.1(f)(2)**

- Proposed Rule 3002.1(f)(2) provides that if the claim holder disagrees with facts asserted in the motion filed under Rule 3002.1(f)(1), it must file a response using Form 410C13-M1R. However, the proposed form contemplates that a response must be filed even if the claim holder agrees with the facts asserted in the motion. Part 3 of the form requires the claim holder to attach a payoff statement and provide certain information about the account even if “the debtor is current on all postpetition contractual payments.” As proposed, the language in the rule would control and fail to carry out the purpose of the proposed rule. For example, in a non-conduit jurisdiction, if a trustee files a Rule 3002.1(f)(1) motion to determine the status of the loan because the trustee is interested in knowing if the debtor is current with postpetition installment payments, the trustee’s motion will include only factual assertions about the arrearages and perhaps fees the trustee may have paid, but nothing about postpetition installment payments (because the trustee is not disbursing those payments). If the mortgage holder agrees with the amount the trustee asserts was disbursed for the arrearages, proposed Rule 3002.1(f)(2) states that the holder does not need to file a response. In that case, the court will grant the motion based only on the facts in the motion. There will be no determination of whether the debtor is current with postpetition installment payments, and the payoff statement and other information contemplated by Form 410C13-M1R will never be provided. We suggest that the first sentence of proposed Rule 3002.1(f)(2) should be changed to provide: “~~If t~~The claim holder disagrees with facts asserted in the motion, it must file a response within 21 days after the motion is served.”

- None of the notices and responses submitted by creditors under the existing Rule 3002.1 are entitled to presumptive validity, as the rule states that they are not subject to Rule 3001(f). However, the new creditor response under proposed Rule 3002.1(f)(2) does not state that explicitly. We suggest that the second sentence in proposed Rule 3002.1(f)(2) be changed as follows: “The response, **which is not subject to Rule 3001(f)**, must be prepared using Form 410C13-M1R and be served on the individuals listed in (b)(1).” This would be consistent with the corresponding provision in Rule 3002.1(g)(3).

### **Proposed Rule 3002.1(f)(3)**

- Proposed Rule 3002.1(f)(3) provides that if the claim holder’s response asserts a disagreement with facts set forth in the motion, the court must determine the status of the claim and enter an appropriate order. The second sentence provides that if the claim holder does not file a response or files a response agreeing with the facts set out in the motion, “the court may grant the motion based on those facts.”
- To be consistent with the first sentence and other similar provisions in the rule, and to avoid any “fair ground of doubt” (*Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019)) about what the court determined by granting the motion, we suggest changing the language in the second sentence as follows: “the court may grant the motion based on those facts **and enter an appropriate order.**”

### **Proposed deletion of Rule 3002.1(g)(3)**

- Existing Rule 3002.1(f) provides that if the trustee does not timely file and serve the notice of final cure (proposed to become Trustee’s End-of-Case Notice), the debtor may file and serve the notice. This provision is shown in the re-published rule as Rule 3002.1(g)(3), and it is proposed to be deleted. Proposed Rule 3002.1(g)(1) provides that the notice is filed only by the trustee. The procedure set out in proposed Rule 3002.1(g)(4) for a court determination of final cure is dependent upon the End-of-Case Notice being filed.
- Some chapter 13 trustees refuse to file the current notice of final cure. Simply changing the rule to state that the trustee “must” file the End-of-Case Notice is not likely to increase compliance. Thus, we propose that the option for the debtor to file and serve the notice to begin the end-of-case procedure as set out in the current rule should be retained in Rule 3002.1(g). This will ensure that debtors will have the opportunity for an end-of-case court determination of final cure if the trustee fails to initiate the process.

### **Proposed Rule 3002.1(g)(4)(A)**

- We suggest that “within” in the first sentence of proposed Rule 3002.1(g)(4)(A) be changed to “no later than.”

### **Proposed Rule 3002.1(g)(4)(C)**

- Proposed Rule 3002.1(g)(4)(C) provides that the court must determine after notice and a hearing whether the debtor has cured all defaults and paid all required postpetition amounts, but does not state that the court should enter an appropriate order to that effect. The second sentence states that if the claim holder does not file a response or files one that agrees with the facts set forth in the motion, “the court may enter an appropriate order based on those facts.”
- To be consistent and to avoid any ambiguity, we suggest that the rule should require that an order be entered in both situations. We suggest that the first sentence include at the end the following: “and enter an appropriate order.”

### **Sanctions under Proposed Rule 3002.1(h)**

- In addition to the stylistic changes to existing Rule 3002.1(i), proposed Rule 3002.1(h) adds new subsection (3), providing that the court may “take any other action authorized by this rule.” Existing Rule 3002.1(i) was initially modeled after the discovery sanction provision in Federal Rule of Civil Procedure 37. Now that the proposed changes to Rule 3002.1 provide for the entry of appropriate court orders at various stages in a chapter 13 case related to the status and end-of-case determinations, non-compliance with Rule 3002.1 may include not only the failure to provide information required by the rule but also the failure to comply with orders entered under Rule 3002.1. Thus, we suggest that Rule 3002.1(i) should include sanction provisions similar to FRCP 37(b)(2) for failure to comply with a court order entered under the rule. Our suggested changes are provided here:

**(h) Claim Holder’s Failure to Give Notice, ~~or Respond~~ or Comply with a Court Order.** If the claim holder fails to provide any information as required by this rule, **or to comply with any order entered under this rule**, the court may, after notice and a hearing, do one or more of the following:

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

(2) award other appropriate relief, including reasonable expenses and attorney’s fees caused by the failure; and

(3) ~~take any other action authorized by this rule~~ **issue further just orders, including:**

**(A) directing that the matters embraced in the order or other designated facts be taken as established for purposes of a contested matter or adversary proceeding arising in or related to the case;**

(B) prohibiting the claim holder from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; or

(C) treating as contempt of court the failure to obey any order.

### **Proposed Form 410C13-M1**

- In part 3.a of Form 410C13-M1, the trustee or debtor provides a dollar amount for: “Amount of postpetition fees, expenses, and charges noticed and allowed under Rule 3002.1(c).” Postpetition fees, expenses, and charges are not “allowed” under Rule 3002.1(c). If no motion is filed under Rule 3002.1(e), there is no court determination that the fees are allowed. Moreover, because the notice of fees is not subject to Rule 3002.1(f), the fees are not deemed allowed. The form should request that the trustee state the total amount of fees paid by the trustee even if the court has not entered an order providing for the payment of the fee. Thus, we suggest that “and allowed” be deleted from part 3.a of Form 410C13-M1. The instructions for the form might indicate that the amount should not include any fees, expenses, and charges that the court has determined are not required to be paid under Rule 3002.1(e).

### **Proposed Form 410C13-M1R**

- In part 2 of Form 410C13-M1, which is the motion filed under Rule 3002.1(f)(1), the trustee or debtor provides the dollar amounts for payments disbursed to cure arrearages, broken down as between prepetition and postpetition arrearages. However, proposed Form 410C13-M1R requires that the claim holder provide only an aggregate amount for all arrearages that remain unpaid. If the claim holder asserts that arrearages remain unpaid, we believe it is helpful for the holder to provide the total amount and a breakdown of that amount as between prepetition and postpetition arrearages. This change would also make Form 410C13-M1 consistent with the claim holder’s Response to Trustee’s Notice of Payments Made, proposed Form 410C13-NR, which includes an itemization of prepetition and postpetition arrearages.
- Consistent with our suggestion that “contractual” be deleted in Rule 3002.1(a), we suggest that the references to “postpetition contractual payments” in part 3 of Form 410C13-M1 be changed to “postpetition payments.”
- Part 3 of Form 410C13-M1 will provide more helpful responses if the information is requested in the following three categories: 1) the debtor is current on all postpetition payments (which would be limited to periodic payments for principal, interest and escrow), 2) the debtor is not current on all postpetition payments, and 3) the debtor has fees, expenses and costs due and owing. By including fees, costs and expenses as part of the “postpetition contractual payments,” the proposed form fails to distinguish between our designated categories 1 and 3.



- A more significant problem with part 3 of Form 410C13-M1 is that it requests the claim holder to provide a payoff statement and important account information about the status of the loan only if the debtor is current with postpetition payments. If the claim holder believes the debtor is not current, then the claim holder need only provide the date of the postpetition payment that first became due. Access to detailed information about the status of the loan by the trustee and debtor is even more critical when a default is being asserted and we therefore suggest that the form should request the claim holder to provide a payoff statement and a response to the seven listed data points even if the debtor is not current with postpetition payments.
- In part 4 of Form 410C13-M1, the form requests the claim holder to disclose in a payment history, if applicable, the amounts for “all fees, costs, escrow and expenses assessed to the mortgage.” It is not clear what “assessed to the mortgage” means and we therefore suggest that this be changed to: “all fees, costs, escrow and expenses assessed to the debtor.”
- Our suggested changes are reflected on the revised Form 410C13-M1R we attach to these comments.

#### **Proposed Form 410C13-N**

- In part 5 of Form 410C13-N, the trustee states: “Amount of allowed postpetition fees, expenses, and charges.” For the reasons stated in our comments to part 3.a of Form 410C13-M1, we suggest that “allowed” be deleted.

#### **Proposed Official Form 410C13-NR**

- We suggest that proposed Official Form 410C13-NR be changed consistent with our comments to proposed Form 410C13-M1R. Our suggested changes are reflected on the revised Form 410C13-NR we attach to these comments.

#### **Proposed Form 410C13-M2**

- In part 3.a of Form 410C13-M2, the trustee or debtor states: “Amount of postpetition fees, expenses, and charges noticed and allowed under Rule 3002.1(c).” For the reasons stated in our comments to part 3.a of Form 410C13-M1, we suggest that “and allowed” be deleted. The instructions for the form might also indicate that this amount should not include any fees, expenses, and charges that the court has determined are not required to be paid under Rule 3002.1(e).

**Proposed Form 410C13-M2R**

- We suggest that proposed Official Form 410C13-M2R be changed consistent with our comments to proposed Form 410C13-M1R. Our suggested changes are reflected on the revised Form 410C13-M2R we attach to these comments.

For these reasons, the National Bankruptcy Conference recommends the proposed rule amendments. Please contact us if the National Bankruptcy Conference can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Douglas G. Baird". The signature is written in a cursive, slightly slanted style.

Douglas G. Baird, Chair  
[dbaird@uchicago.edu](mailto:dbaird@uchicago.edu)  
773 459 2719

Official Form 410C13-M1R (12/25)

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_, Debtor Case No. \_\_\_\_\_

Chapter 13

**Response to [Trustee's/Debtor's] Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim**

\_\_\_\_\_ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

**Name of Claim Holder:** \_\_\_\_\_ **Court claim no.** (if known): \_\_\_\_\_

**Last 4 digits** of any number used to identify the debtor's account: \_\_\_\_\_

**Property address:** \_\_\_\_\_

City State ZIP Code

2. Arrearages

Check one:

As of the date of this response, the debtor has paid in full the amount required to cure any arrearage on this mortgage claim.

As of the date of this response, the debtor has not paid in full the amount required to cure any arrearage on this mortgage claim. The ~~total~~ arrearage amount remaining unpaid as of the date of this response is:

a. Total amount of prepetition arrearage remaining unpaid \$ \_\_\_\_\_

b. Total amount of postpetition arrearage remaining unpaid \$ \_\_\_\_\_

c. Total amount of arrearages remaining unpaid \$ \_\_\_\_\_

3. Postpetition ~~Contractual~~ Payments

Check all that apply:

The debtor is current on all postpetition ~~contractual~~ payments, including all fees, charges, expenses, escrow, and costs.

The debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: \_\_\_\_/\_\_\_\_/\_\_\_\_

The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is \$ \_\_\_\_\_.

The claim holder attaches a payoff statement and provides the following information as of the date of this response:

Date last payment was received on the mortgage: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date next postpetition payment from the debtor is due: \_\_\_\_/\_\_\_\_/\_\_\_\_

Amount of the next postpetition payment that is due: \$ \_\_\_\_\_

Unpaid principal balance of the loan: \$ \_\_\_\_\_

Additional amounts due for any deferred or accrued interest: \$ \_\_\_\_\_

Balance of the escrow account: \$ \_\_\_\_\_

Balance of unapplied funds or funds held in a suspense account: \$ \_\_\_\_\_

The debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: \_\_\_\_/\_\_\_\_/\_\_\_\_

~~□ The debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is \$\_\_\_\_\_.~~

4. Itemized Payment History

Include if applicable:

Because the claim holder asserts that the arrearages have not been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history—using the format of Official Form 410A, Part 5—disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the mortgage debtor; and
- all amounts the creditor contends remain unpaid.

\_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature

Print \_\_\_\_\_ Title \_\_\_\_\_

Name

Company \_\_\_\_\_

Official Form 410C13-NR

**Response to Trustee’s Notice of Payments Made**

12/25

**The claim holder must respond to the Trustee’s Notice of Payments Made within 28 days after it was served. Rule 3002.1(g)(2).**

**Part 1: Mortgage Information**

**Name of claim holder:** \_\_\_\_\_ **Court claim no. (if known):** \_\_\_\_\_

**Last 4 digits** of any number you use to identify the debtor’s account: \_\_\_\_\_

**Property address:**

_____	
Number	Street
_____	
_____	
City	State ZIP Code

**Part 2: Amount Needed to Cure Default**

*Check all that are applicable:*

- The amount required to cure any prepetition arrearage has been paid in full.
- The amount required to cure the prepetition arrearage has not been paid in full. Amount of prepetition arrearage remaining unpaid as of the date of this notice: \$ \_\_\_\_\_.
- The amount required to cure any postpetition arrearage has been paid in full.
- The amount required to cure the postpetition arrearage has not been paid in full. Amount of postpetition arrearage remaining unpaid as of the date of this notice: \$ \_\_\_\_\_.

**Part 3: Postpetition ~~Contractual~~ Payment**

*Check all that apply:*

- Debtor is current on all postpetition ~~contractual~~ payments, including all fees, charges, expenses, escrow, and costs.
- Debtor is not current on all postpetition payments. The claim holder asserts that the debtor is obligated for the postpetition payment(s) that first became due on: \_\_\_\_/\_\_\_\_/\_\_\_\_.
- Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The claim holder asserts that the total amount remaining unpaid as of the date of this response is \$\_\_\_\_\_.

The claim holder attaches a payoff statement and provides the following information as of the date of this response:

Date last payment was received on the mortgage: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date next postpetition payment from the debtor is due: \_\_\_\_/\_\_\_\_/\_\_\_\_



Amount of the next postpetition payment that is due: \$ \_\_\_\_\_  
Unpaid principal balance of the loan: \$ \_\_\_\_\_  
Additional amounts due for any deferred or accrued interest: \$ \_\_\_\_\_  
Balance of the escrow account: \$ \_\_\_\_\_  
Balance of unapplied funds or funds held in a suspense account: \$ \_\_\_\_\_

- ~~Debtor is not current on all postpetition contractual payments. The claim holder asserts that the debtor is obligated for the postpetition payment(s) that first became due on: \_\_\_\_/\_\_\_\_/\_\_\_\_.~~
- ~~Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The claim holder asserts that the total amount remaining unpaid as of the date of this response is \$ \_\_\_\_\_.~~

**Part 4: Itemized Payment History**

If the claim holder disagrees that the prepetition arrearage has been paid in full, states that the debtor is not current on all postpetition payments, or states that fees, charges, expenses, escrow, and costs are due and owing, it must attach an itemized payment history—using the format of Official Form 410A, Part 5—disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the **debtor mortgage**; and
- all amounts the claim holder contends remain unpaid.

**Part 5: Sign Here**

The person completing this response must sign it. Check the appropriate box:

- I am the claim holder.
- I am the claim holder’s authorized agent.

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

\_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_  
Signature

\_\_\_\_\_

First Name	Middle Name	Last Name
------------	-------------	-----------

\_\_\_\_\_

Number	Street
--------	--------

\_\_\_\_\_

City	State	ZIP Code
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Contact phone (\_\_\_\_) \_\_\_\_-\_\_\_\_ Email \_\_\_\_\_

Official Form 410C13-M2R (12/25)

United States Bankruptcy Court

District of \_\_\_\_\_

In re \_\_\_\_\_, Debtor Case No. \_\_\_\_\_  
Chapter 13

**Response to [Trustee's/Debtor's] Motion to Determine Final Cure and  
Payment of  
the Mortgage Claim**

\_\_\_\_\_ (claim holder) states as follows:

1. The following information relates to the mortgage claim at issue:

**Name of Claim Holder:** \_\_\_\_\_ **Court claim no.** (if known): \_\_\_\_\_

**Last 4 digits** of any number used to identify the debtor's account: \_\_\_\_\_

Property address: \_\_\_\_\_

\_\_\_\_\_ City State ZIP Code

2. Arrearage Provided for by the Plan

Check one:

- As of the date of this response, Debtor has paid in full the amount required to cure any arrearage on this mortgage claim.
- As of the date of this response, Debtor has not paid in full the amount required to cure any arrearage on this mortgage claim. The ~~total~~ arrearage amount remaining unpaid as of the date of this response is: \$ \_\_\_\_\_.

- a. Total amount of prepetition arrearage remaining unpaid \$ \_\_\_\_\_.
- b. Total amount of postpetition arrearage remaining unpaid \$ \_\_\_\_\_.
- c. Total amount of arrearages remaining unpaid \$ \_\_\_\_\_.

3. Postpetition ~~Contractual~~ Payments

Check all that apply:

- Debtor is current on all postpetition ~~contractual~~ payments, including all fees, charges, expenses, escrow, and costs.
- Debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: \_\_\_\_/\_\_\_\_/\_\_\_\_.
- Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is \$ \_\_\_\_\_.

The claim holder attaches a payoff statement and provides the following information as of the date of this response:

Date last payment was received on the mortgage: \_\_\_\_/\_\_\_\_/\_\_\_\_

Date next postpetition payment from the debtor is due: \_\_\_\_/\_\_\_\_/\_\_\_\_

Amount of the next postpetition payment that is due: \$ \_\_\_\_\_

Unpaid principal balance of the loan: \$ \_\_\_\_\_

Additional amounts due for any deferred or accrued interest: \$ \_\_\_\_\_

Balance of the escrow account: \$ \_\_\_\_\_

Balance of unapplied funds or funds held in a suspense account: \$ \_\_\_\_\_

~~Debtor is not current on all postpetition payments. The debtor is obligated for the postpetition payment(s) that first became due on: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_.~~

~~Debtor has fees, charges, expenses, negative escrow amounts, or costs due and owing. The total amount remaining unpaid as of the date of this response is \$ \_\_\_\_\_.~~

4. Itemized Payment History

Include if applicable:

Because the claim holder disagrees that the arrearages have been paid in full or states that the debtor is not current on all postpetition payments or that fees, charges, expenses, escrow, and costs are due and owing, the claim holder attaches an itemized payment history—using the format of Official Form 410A, Part 5—disclosing the following amounts from the date of the bankruptcy filing through the date of this response:

- all prepetition and postpetition payments received;
- the application of all payments received;
- all fees, costs, escrow, and expenses assessed to the **debtor mortgage**; and
- all amounts the creditor contends remain unpaid.

\_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature

Print \_\_\_\_\_ Title \_\_\_\_\_

Name

Company \_\_\_\_\_

If different from the notice address listed on the proof of claim to which this response applies:

Address \_\_\_\_\_

Number Street

City

State ZIP Code

Contact phone (\_\_\_\_) \_\_\_\_-\_\_\_\_ Email \_\_\_\_\_

The person completing this response must sign it. Check the appropriate box:

- I am the claim holder.
- I am the claim holder’s authorized agent.

# NATIONAL BANKRUPTCY CONFERENCE

*A non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws.*

**History.** The National Bankruptcy Conference (NBC) was formed from a nucleus of the nation's leading bankruptcy scholars and practitioners, who gathered informally in the 1930's at the request of Congress to assist in the drafting of major Depression-era bankruptcy law amendments, ultimately resulting in the Chandler Act of 1938. The NBC was formalized in the 1940's and has been a resource to Congress on every significant piece of bankruptcy legislation since that time. Members of the NBC formed the core of the Commission on the Bankruptcy Laws of the United States, which in 1973 proposed the overhaul of our bankruptcy laws that led to enactment of the Bankruptcy Code in 1978, and were heavily involved in the work of the National Bankruptcy Review Commission (NBRC), whose 1997 report initiated the process that led to significant amendments to the Bankruptcy Code in 2005. Most recently, the Conference played a leading role in developing the Small Business Reorganization Act of 2019, Pub. L. 116-54.

**Current Members.** Membership in the NBC is by invitation only. Among the NBC's 60 active members are leading bankruptcy scholars at major law schools, as well as current and former judges from eleven different judicial districts and practitioners from leading law firms throughout the country who have been involved in most of the major corporate reorganization cases of the last three decades. The NBC includes leading consumer bankruptcy experts and experts on commercial, employment, pension, mass tort, and tax-related bankruptcy issues. It also includes former members of the congressional staff who participated in drafting the Bankruptcy Code as originally passed in 1978 and former members and staff of the NBRC. The current members of the NBC and their affiliations are set forth on the second page of this fact sheet.

**Policy Positions.** The Conference regularly takes substantive positions on issues implicating bankruptcy law and policy. It does not, however, take positions on behalf of any organization or interest group. Instead, the NBC seeks to reach a consensus of its members - who represent a broad spectrum of political and economic perspectives - based on their knowledge and experience as practitioners, judges, and scholars. The Conference's positions are considered in light of the stated goals of our bankruptcy system: debtor rehabilitation, equal treatment of similarly situated creditors, preservation of jobs, prevention of fraud and abuse, and economical insolvency administration. Conferees are always mindful of their mutual pledge to "leave their clients at the door" when they participate in the deliberations of the Conference.

**Technical and Advisory Services to Congress.** To facilitate the work of Congress, the NBC offers members of Congress, Congressional Committees and their staffs the services of its Conferees as non-partisan technical advisors. These services are offered without regard to any substantive positions the NBC may take on matters of bankruptcy law and policy.

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## National Bankruptcy Conference

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## **Comment on Proposed Amendment to Bankruptcy Rule 3002.1**

Upon review of the proposed amendments for all the Federal Rules set to go into effect December 1, 2025, we recommend the following revisions to Federal Rule of Bankruptcy Procedure (FRBP) 3002.1.

### **FRBP 3002.1(b)(3)(A)**

Proposed amendment to Rule 3002.1(b)(3) sets the effective date of a new payment after an untimely notice is provided. Section (A) states that where the notice relates to a payment increase, the effective date of the new payment is “on the first payment due date that is at least 21 days after the untimely notice was filed and served.”

Triggering the time from the date the untimely notice was “filed and served” is problematic. The notice may not be filed and served simultaneously. While in most instances, the filing and service will occur on the same day, this is not always the case. If the notice is filed and served on different days, this creates ambiguity as to when the first payment is due. Is it 21 days after the filing or 21 days after the service? To avoid any confusion, we suggest the proposed rule be revised to refer simply to the date of filing of the notice.

For instance, Proposed Rule 3002.1(b)(3)(A) could be revised to state, “when the notice concerns a payment increase, on the first payment due date that is at least 21 days after the untimely notice was filed.”

### **FRBP 3002.1(b)(3)(B)**

Section (B) states that where the untimely notice relates to a payment decrease, the effective date of the new payment is “on the first payment due date after the date of the notice.”

To provide consistency with language used throughout the rest of Rule 3002.1, we suggest that the proposed rule be revised to state that the effective date is “on the first payment due date after the date of filing of the notice.” This will also avoid any confusion as to what is considered the “date of the notice.”

Thank you for your time and consideration.

Cheryl L. Siler, Esq.

Director, Docketing Operations

Aderant

**NACTT**  
**National Association of Chapter 13 Trustees**  
**Mortgage Committee**  
**3002.1 Subcommittee**

TO: The Committee on Rules of Practice and Procedure  
Judicial Conference of the United States  
FROM: The NACTT Mortgage Committee Subcommittee on Proposed Rule 3002.1  
RE: Comment on Proposed Changes to Rule 3002.1

The NACTT Mortgage Committee established a subcommittee to study and comment on proposed revisions to rule 3002.1 (“NACTT Sub-Committee”). The subcommittee has over 50 members and is composed of Chapter 13 Trustees and representatives of mortgage lenders and servicers.

Although the NACTT Sub-Committee members cannot agree on the solutions to all of the issues raised in this memo, our subcommittee submits this memo to point out the issues identified by the members of our subcommittee. We appreciate your consideration of these issues.

Some members of our subcommittee may choose to respond individually and propose solutions to resolve these issues.

## **Proposed Rule Provisions:**

### **3002.1(a), IN GENERAL:**

The proposed revisions continue to make the Rule applicable only to the debtor’s principal place of residence. The Southern District of Florida has a local Rule that makes the provisions of Rule 3002.1 applicable to any real property in which the debtor has an ownership interest. Would the Rules Committee consider expanding the applicability of the Rule? If so, the NACTT Sub-Committee suggests that this provision be permissive rather than mandatory as to real property that is not the principal place of residence. Further, it should be made clear that the Trustee is not required to comply with Rule 3002.1 as to any property that is not the principal place of residence. The critical issue is to make it clear that a lender or loan servicer that provides Notices of Payment Change or Notices of Fees, Expenses, and Charges regarding property that is not the principal place of residence should not, as has been the case in some districts, be sanctioned for simply providing these notices so long as they do not charge the debtor any additional amounts for sending these documents. Frequently the real property in question is income producing and the income may be relied upon by the debtor to fund the plan. Notices under Rule 3002.1 could be of assistance in completion of the plan.

Another issue is that the update to subsection (a) of the rule removes the word “installment”. This does not completely clarify what types of transactions are subject to the Rule such as reverse mortgages; statutory liens like tax lien transferees and HOA liens; and total debt plans (a plan in which the entire debt owed on the mortgage is paid through the plan), cramdowns, or non-traditional liens on primary residences.

As to reverse mortgages, the Committee Notes indicate that the provisions of the Rule are applicable to these types of loans. However, members of the subcommittee have pointed out that they do not believe the language of the proposed Rule applies to reverse mortgages because, although there are contractual financial obligations in a reverse mortgage, like the obligation of the mortgagor to pay taxes and insurance, those payments are not made to the mortgage claimant and, therefore, proposed Rule 3002.1 would not apply to reverse mortgages.

As to liens that are statutory in nature, because of the definition of “security interest” in Section 101(51) of the Bankruptcy Code as a lien created by an agreement, holders of liens that are statutory, like tax lien transferees, HOA and condominium lienholders, and mechanic and materialman lien holders, often assert that they are not required to comply with Rule 3002.1. Yet these claimants routinely assess charges against the debtor such as attorney fees and inspection fees. These lienholders often do not file an application for payment of fees, expenses, or charges (collectively “Post-Petition Charges”) from the estate and simply wait until the conclusion of the case to collect these Post-Petition Charges. The debtor frequently is not notified of the amount of the Post-Petition Charges during the pendency of the case. This deprives the debtor of the opportunity to modify the Chapter 13 Plan to provide for payment of the Post-Petition Charges during the plan term. It also means that the debtor does not have the opportunity to have the bankruptcy court assess the reasonableness of the Post-Petition Charges or decide whether there is a contractual or statutory obligation to pay these charges. If these claim holders were subject to Rule 3002.1, the debtor would be aware of the Post-Petition Charges as they are incurred, could pay those Post-Petition Charges through a modified Chapter 13 Plan, would have the chance to dispute the Post-Petition Charges in the bankruptcy court, and could emerge from the bankruptcy truly current on all payments on their principal residence.

As to total debt claims (and also reverse mortgages), the mortgage claimant may make post-petition payments for taxes and insurance to protect the claimant’s position if the debtor does not make these payments. Servicers/attorneys do not have a definitive answer as to whether a Notice of Post-Petition Fees, Expenses and Charges under Rule 3002.1(c) is required for recovery of these post-petition escrow advances, or if another procedure is more appropriate (i.e. a motion for reimbursement, a Rule 2016(a) application, or a motion for relief). Clarity would be appreciated.

### **3002.1(b)(3)(B), EFFECT OF AN UNTIMELY NOTICE:**

This section concerns the effective date of a payment decrease and currently provides that the effective date of a payment decrease is the “first payment due date after the date of the notice.” The problem is that there could be instances where the payment decrease notice is not filed prior to the effective date for the payment. Examples are PMI (private mortgage insurance) or MIP (mortgage insurance premium) decreases which retroactively reduce the payment due to delays in

receipt and application of payments for a given month. Mortgage claimants would appreciate clarification in the Rule that a payment decrease is effective on the actual payment due date, even if such date is in the past. Mortgage claimants emphasize that they are not promoting non-compliance with Rule 3002.1, but there are instances where the payment decrease is retroactively applied, and the debtor should get the benefit of that decrease. However, if the Trustee has disbursed funds to a mortgage claimant and the amount that should have been disbursed is later decreased because of a Notice of Payment Change filed after the disbursement, the Trustee should be allowed, but not obligated, to recover the difference or adjust any subsequently made payment by subtracting any overage on the payment from the subsequent payment.

### **3002.1(b)(4), PARTY IN INTEREST’S OBJECTION:**

The proposed provision (and the current provision) states that if a motion to determine a payment change’s validity is not filed prior to the effective date of the payment change, the change goes into effect. That is a short period of time to get that motion filed. In reality, debtors file a motion to determine the validity of a payment change much later, since there is no deadline for filing that motion. The motion is often filed after other Notices of Payment Change have been filed, creating confusion and complicating the process. Would the Committee consider amending this provision to provide for a three to six month deadline for filing a motion to determine the validity of a payment change to add some finality to the process?

Mortgage claimants also request that there be a deadline for filing an objection to the claimant’s proof of claim. The suggestion is one year from the date of filing of the proof of claim unless an earlier deadline is set by local rule or general order. If the loan is consensually modified, the suggested objection period to an amended proof of claim would be a year from the date that amended proof of claim is filed.

### **3002.1(e):**

Mortgage claimants suggest a shorter time deadline for a party-in-interest to file a motion to determine fees, expenses or charges. A year is a long time, particularly as a case nears conclusion. A shorter time frame, like 60 to 90 days, would be very helpful, would give the bankruptcy court an opportunity to resolve the issues between the debtor and mortgage claimant before the conclusion of the case, and would add some finality to the process.

Additionally, there is nothing in the proposed rule that requires the debtor to state how and when the fees, expenses or charges will be paid. Mortgage claimants would appreciate knowing how the debtor intends to make these payments.

## **3002.1(f), MOTION TO DETERMINE STATUS; RESPONSE; COURT DETERMINATION:**

This new procedure could be initiated by either the Trustee or the debtor at any time during the case until the Trustee files a (g)(1) notice at the end of the case. There is no limit on the number of times the Trustee or debtor can utilize this provision/new form motion. The Committee Note states that this “should be used only when necessary and appropriate” which seems to recognize the potential for misuse or vexatious behavior, but the Note on its own will not prevent potential abuse. Mortgage claimants would prefer the language of the Rule to allow the debtor and/or the Trustee to file this motion to be informed of any deficiencies and to reconcile payments as needed and appropriate while also including clear limitations/parameters to help curb misuse. Mortgage claimant recommendations include:

- (1) Defining the timeframe for when a debtor or Trustee may file this motion. Remove the phrase “At any time” and replace that language. An example would be “At any time between 18-36 months after the date of the order for relief . . .”
- (2) Alternatively, specifying the frequency with which the debtor or the Trustee may file this motion in a case.
- (3) Specifying potential remedies for the mortgage claimant if the provision is misused or used in a vexatious manner.
- (4) Providing that a pro-se debtor must provide an attestation as to the facts set forth in the motion.
- (5) Providing that it is a ground for setting an adverse order aside if the movant has failed to name and serve the correct mortgage claimant /servicer with the Motion to Determine Status, based on the documents filed in the case as of the time the motion is filed and served.

One member of the subcommittee stated that in a direct pay situation, the debtor should be responsible for filing the motion, rather than the Trustee.

Additionally, the Rule gives the claimant 21 days to file a response to the Motion to Determine Status. Our committee suggests that the response deadline should be 28 days to match the response deadline on an End-of-Case Notice of Payments Made [see proposed 3002.1 (g)(3)]. The work required for a response to either motion is substantially the same and 28 days appears to be a more appropriate response deadline.

## **3002.1(g)(1)(B):**

3002.1(g)(1)(B) - the Trustee’s End-of-Case Notice of Payments Made requires the Trustee to state what amount, if any, the Trustee has paid to the mortgage claimant on post-petition contractual payments. Is the Trustee responsible for filing an End-of-Case notice when the claim secured by the principal residence is modified in the plan and not paid per the contract, like in a total debt case? Is the Trustee required to file the end of case notice if the Trustee did not make any disbursements to the mortgage claimant because the plan provided that payments to cure any

arrearage and ongoing payments were to be disbursed by the debtor? Clarification would be appreciated.

### **3002.1(g)(3) and (4):**

Subpart (g)(3) requires the claimant to file a response to the Trustee's Notice of Payments Made. Subpart (g)(4) provides that "after service of the response ... the debtor or the trustee *may* file a motion to determine whether the debtor has cured all defaults and paid all required post petition amounts on a claim." What if neither debtor nor the Trustee file this motion?

For example, if a creditor files a "disagreed" response to the Notice of Payments Made, the proposed Rule does not mandate a motion to resolve the disagreement. If the debtor/Trustee just allows the case to discharge, what is the controlling status of the account? The creditor's disagreed response? The Rule does not make this clear. Are mortgage claimants left with uncertainty as to the status of a claim after the case closes?

In subpart (g)(4), the time for filing the Motion to Determine Final Cure is somewhat confusing. It is clear that if the claimant does not file the required response, the deadline for filing the motion to determine final cure must be filed within 45 days after service of the Trustee's notice under (g)(1). It is not clear what the deadline is if the claimant files the required response. The provision just states that it can be filed "After the service of the response under (g)(3)" but does not provide an actual deadline. Clarity on the deadline after the response is filed for the filing of the Motion to Determine Final Cure would be appreciated.

Mortgage claimants request a provision that it is a ground for setting an adverse order aside if the movant has failed to name and serve the correct mortgage claimant /servicer with either (1) the Trustee's End-of-Case Notice of Payments Made or (2) the Motion to Determine Final Cure and Payment of Mortgage Claim, based on the documents filed in the case as of the time the motion is filed and served.

Additionally, 3002.1(g)(3) provides that the mortgage claimant must file a response to the Trustee's End-of-Case Notice as a supplement to the proof of claim. This provision of the Rule is not new, but there has always been confusion over exactly what this means. "Response" indicates it is a document to be filed in the main case which is where most of us would assume that a response to a notice or motion would be filed. "Supplement to the proof of claim" indicates that the document should be filed in the claims record. It would add clarity to state that the response must be filed in the main case and will be construed as a supplement to the proof of claim.

## **FORMS**

As a general comment regarding the forms, the NACTT Sub-Committee suggests the creation of a set of instructions for each form detailing what specific information should be included in each

line item to provide clarity and uniformity in the completion of the forms. The NACTT Sub-Committee members anticipate that individual members will comment separately on this issue.

### **410C13-M1, Motion Under Rule 3002.1 (f)(1) to Determine the Status of the Mortgage Claim and Official Form 410C13-M2, Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of Mortgage Claim:**

These forms require a debtor or Trustee to provide payment dates and amounts, but here is no affidavit or oath requirement. With regard to debtor filed motions, mortgage claimants recommend the addition of an affidavit or oath requirement to ensure the accuracy of the information being provided. This would limit the opportunity for misuse or vexatious filings.

### **410C13-M1R, Response to [Trustee’s/Debtor’s] Motion Under Rule 3002.1 (f)(1) to Determine the Status of the Mortgage Claims; 410C13-NR, Response to Trustee’s Notice of Payments Made; and 410C13-M2R, Response to [Trustee’s/Debtor’s] Motion to Determine Final Cure and Payment of the Mortgage Claim:**

These forms require that the claim holder’s itemized payment history must be provided “using the format of Official Form 410A, Part 5.” Part 5 of Official Form 410A often requires manual completion (which can be prone to scrivener error) and may cause unnecessary confusion as the format of Part 5 may not be responsive to a specific request. Questions and confusion may arise, in part, because Part 5 of the 410A is intended to capture a pre-petition payment history and does not lend itself to distinguishing between outstanding pre-petition arrears from any post-petition delinquency. Instead, a payment history would provide the information in a more concise and clear manner. The recommendation is to remove the requirement to use the format of the Official 410A or to specify that the claim holder “may” use the Official 410A format but is not required to do so.

### **410C13-N, Trustee’s Notice of Payments Made:**

Part 2 – This sub-part requires the Trustee to state the date on which the debtor completed plan payments. Is that the date the debtor submitted the payment to the Trustee or the date the Trustee received the payment or the date the Trustee was assured that the payment was made with good funds following the expiration of any applicable payment hold? Is the date of the payment even necessary or is it sufficient to delete the date and just state “The debtor completed all payments due . . .”?



Part 3 - In a direct pay jurisdiction in which the debtor disburses the ongoing post-petition mortgage payments to the mortgage claimant, the Trustee may not know whether a post-petition payment default has occurred so therefore may not know if there is a post-petition arrearage, the amount of that arrearage, and whether or not that arrearage has been cured. This would make completing Part 3 accurately impossible.

Part 4 - There are cases in which a post-petition payment default occurs, and the debtor modifies the plan to pay the defaulted payments through disbursements by the Trustee. This is a fairly common situation. There is confusion as to how the Trustee is to complete part 4 of form 410C13-N in that situation. Which box should the Trustee mark when a portion of the post-petition payments were disbursed directly by the debtor to the mortgage claimant and part of the post-petition payments, that part that was in default, was disbursed by the Trustee? Further, although the Trustee will have made disbursements on the defaulted post-petition payments and can state the total amount paid in Part 4, duplicating information already provided in part 3, because the Trustee did not disburse all of the post-petition contractual payments, the Trustee is not in a position to state whether the debtor is current on all of the post-petition contractual payments or to state when the next mortgage payment is due, information required in Part 4.

Another issue with stating when the next mortgage payment is due, even when the Trustee has made all the post-petition contractual payments, is that by the time the Trustee files the Notice of Payments Made, other ongoing contractual payments will have come due and may have been paid by the debtor following completion of the plan payments. Take the example a conduit case in which the last payment disbursed by the Trustee was the payment due on October 1, 2023. By the time the Trustee files the Notice of Payments Made, at least one more payment will probably have come due, post plan term, but the Trustee will not know whether that payment was made by the debtor. It can create confusion if the Notice states that the next payment due is the payment for November 1, 2023, but that payment has already been made, so that in reality the next payment due is the December 1, 2023 payment. It would be less confusing to state that the next mortgage payment following the completion of the plan would be due on (in this example) November 1, 2023 or, alternatively, to state that the last payment made by the Trustee pursuant to the plan was the payment due on October 1, 2023.

Part 5 – In jurisdictions in which the debtor disburses payments to the mortgage claimant, the Trustee does not track the allowed amount or payment of post-petition fees, expenses, and charges. While that Trustee can insert -0- in the blank next to “Amount of postpetition fees, expense, and charges paid by the trustee as of the date of notice”, the Trustee will not be able to state the allowed amount of those fees, expenses, and charges.

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TO: The Committee on Rules of Practice and Procedure  
Judicial Conference of the United States  
FROM: Pam Bassel, Standing Chapter 13 Trustee for the Northern District of Texas, Fort Worth  
Division  
RE: Comment on Proposed Changes to Rule 3002.1 (August, 2023 draft)  
DATE: February 15, 2024

I appreciate the opportunity to comment on the proposed changes to Rule 3002.1. I have been a Chapter 13 trustee in the Northern District of Texas, Fort Worth Division since 2013 and a conduit trustee since 2016. I have recently served as a co-chair of the NACTT sub-committee to study and comment on the proposed changes to Rule 3002.1. Just to be clear, these are my individual comments and not the comments of the NACTT sub-committee which were filed separately.

**3002.1(a), IN GENERAL:**

One of the issues discussed at length in the NACTT sub-committee was the applicability of the Rule to reverse mortgages. Although it is clear from the Committee Notes that the Rule is supposed to apply to reverse mortgages, it is not clear from the language of the Rule itself. Lender representatives argue that although there are contractual financial obligations in reverse mortgage agreements, like paying *ad valorem* taxes and maintaining insurance, these payments are not made to or through the mortgage lender, making Rule 3002.1 inapplicable to reverse mortgages.

Another proposed addition to the Rule is simply to clarify that application of the Rule ceases when the plan term ceases.

The suggested language to clarify these points in the Rule is:

(a) **IN GENERAL.** This rule applies in a chapter 13 case to secured claims which are secured by the debtor's principal place of residence when the plan provides that the trustee or the debtor will make payments required by a contract with the claimant, whether the payments are made to the claimant or to some other entity. Unless the court orders otherwise, the notice requirements of this rule cease to apply at the earlier of an order terminating or annulling the automatic stay becoming effective with respect to the residence that secures the claim or the conclusion of the chapter 13 plan term.

Lender representatives have also asked if the Rule applies to total debt plans in which the debtor pays the balance owed on the loan before the end of the case, generally in monthly payments through the plan which usually are not in the same amount or paid on the same date set out in the contract between the debtor and the mortgage claimholder. Additionally, there is no escrow

component in the payments made pursuant to a total debt plan. Because of these differences, total debt payments are not contractual payments and the Rule would not be applicable in total debt cases. If the Rule is not applicable in total debt cases, and it does not appear to be, can that be stated in the Rule so there is no confusion and no inconsistency in court holdings on that point? Lenders simply need to know under what circumstances they are required to comply with the Rule and that should not change from jurisdiction to jurisdiction.

**3002.1(g)(1)(B):**

The trustee’s End-of-Case Notice of Payments Made requires the trustee to state what amount, if any, the trustee has paid to the mortgage claimant on post-petition contractual payments or to cure a default or to pay post-petition fees, expenses, and charges. In a total debt case, the trustee will have made payments to the claimant but those will not be payments of this type. Trustees would like to know if they are required to file a Notice of Payments Made when the claim is not paid per the contract, like in a total debt case. If so, how should the trustee complete the Notice of Payments Made? The Notice form does not fit a total debt case since what is paid is the principal balance plus interest, not contractual payments. Additionally, since, by definition, the Rule is not applicable to a total debt case, the trustee will not be aware of any fees, expenses, and charges since the claimant will not be required to file notices of those amounts. If the trustee is required to file a Notice of Payments Made, could a section be added that is to be completed only in a total debt case stating the principal owed, the principal paid, and the interest paid?

**3002.1(g)(3) and (g)(4)(A):**

3002.1(g)(3) provides that the mortgage claimant must file a response to the trustee’s Notice of Payments Made as a supplement to the proof of claim. This provision of the Rule is not new, but there has always been confusion over exactly what this means. “Response” indicates it is a document to be filed in the main case which is where most of us would assume that a response to a notice or motion would be filed. “Supplement to the proof of claim” indicates that the document should be filed in the claims record. It would add clarity to state that the response must be filed in the main case and will be construed as a supplement to the proof of claim.

In (g)(4)(A), it is clear that if the claimant does not file the required response, the deadline for filing the motion to determine final cure must be filed within 45 days after service of the trustee’s Notice of Payments Made under (g)(1). It is not clear what the deadline is if the claimant files the required response. The provision just states that it can be filed “After the service of the response under (g)(3)” but does not provide an actual deadline.

The suggested revision to (g)(4)(A) is:

Within 45 days after service of the response under (g)(3) or, if no response is filed, within 45 days after service of the trustee’s notice under (g)(1), the debtor or trustee may file a motion to determine . . .

#### 410C13-N, Trustee’s Notice of Payments Made:

Part 3, Amount Needed to Cure Default - In a direct pay case in which the debtor disburses the ongoing post-petition mortgage payments to the mortgage claimant, the trustee may not know whether a post-petition payment default has occurred and therefore may not know if there is a post-petition arrearage, the amount of that arrearage, or whether that arrearage has been cured. This would make it impossible for the trustee to accurately complete Part 3. The trustee can provide information only about what the trustee tracks and what the trustee pays.

The suggested revision is:

- c. Total amount of postpetition arrearage to be paid by the trustee as of the date of the notice.
- e. Total amount of arrearages paid by the trustee as of the date of the notice.

Has the trustee paid all arrearages known to the trustee?

- Yes
- No

Part 4, Postpetition Contractual Payment - Part 4 contains a statement about when the next mortgage payment is due. Even when a conduit trustee has made all the post-petition contractual payments, by the time the trustee files the Notice of Payments Made, other ongoing contractual payments will have come due and may have been paid by the debtor following completion of the plan payments. Take the example of a conduit case in which the last payment disbursed by the trustee was the payment due on February 1, 2024. By the time the trustee files the Notice of Payments Made, at least one more payment will probably have come due, post plan term, but the trustee will not know whether that payment was made by the debtor. Additionally, it will be confusing, particularly for the debtor, if the Notice states that the next payment due is the payment for March 1, 2024, especially if that payment has already been made by the debtor, so that in reality the next payment due is the April 1, 2024 payment. It would be much clearer to state that the last payment made by the trustee pursuant to the plan was the payment due on February 1, 2024 and that all subsequent payments must be made directly by the debtor to the mortgage claimant.

The suggested language is:

- c. The last ongoing mortgage payment made by the trustee was the payment due on \_\_\_\_\_. All subsequent ongoing mortgage payments must be made directly by the debtor to the mortgage claimant.

Part 5, Postpetition Fees, Expenses, and Charges – In direct pay cases, the trustee does not track the allowed amount or payment of post-petition fees, expenses, and charges. While the trustee can insert -0- in the blank next to “Amount of postpetition fees, expense, and charges paid by the

trustee as of the date of notice”, the trustee will not be able to state the allowed amount of those fees, expenses, and charges because they are not tracked.

The suggested revision is to simply delete the line reading, “Amount of allowed postpetition fees, expenses, and charges” or change the language to read, “Amount of allowed postpetition fees, expenses, and charges to be paid by the trustee.”

**FORM 410C13-NR:**

Responses would be more consistent and complete if Part 3 was rearranged slightly. Pursuant to the current draft of the Form, the respondent must provide the detailed information in the seven lines in Part 3 only if the respondent agrees that the account is current and in good standing. However, the information in those seven lines is also very useful if the respondent asserts that the debtor is not current on all post-petition payments and/or that the debtor owes fees, charges, expenses, negative escrow amounts, or other costs. The suggestion is to move all the check boxes so that they are above the line beginning “Date next postpetition payment from the debtor is due”. The respondent can then check the applicable box and include the relevant information.

Once again, I appreciate the opportunity to comment on the proposed changes to Rule 3002.1. Thank you for considering these comments.

O/pdocs/Rule 3002.1/Comments on the August, 2023 draft



**USFN** AMERICA'S  
MORTGAGE BANKING  
ATTORNEYS®

**MBA**®

MORTGAGE BANKERS ASSOCIATION

February 16, 2024

TO: The Committee on Rules of Practice and Procedure  
Judicial Conference of the United States

FROM: The USFN Bankruptcy Section's Subcommittee on Amendments to the Federal Rules of  
Bankruptcy Procedure and the MBA's Loan Administration Committee

RE: Comment on Proposed Changes to Rule 3002.1

Founded in 1988, the USFN - America's Mortgage Banking Attorneys® ("USFN") is a national, not-for-profit association of law firms that specialize in matters of real estate finance. USFN consists of law firms that represent banks, mortgage lenders, mortgage servicing companies and government sponsored enterprises in connection with foreclosure, bankruptcy, loan modifications and other workouts, inventoried properties, and litigation related to these areas of representation. Membership also includes industry-affiliated suppliers of products and services.

USFN was established to promote competent, professional, and ethical representation among its membership and for the mortgage servicing industry, and to represent the collective interests of its membership to the mortgage servicing industry. As part of its mission, USFN also supports the interests of its members and the mortgage servicing industry through education, political and governmental advocacy, and by encouraging the use of industry standard procedures, technologies, and best practices.

The Bankruptcy Section of the USFN established a subcommittee to study and comment on proposed revisions to Rule 3002.1. The subcommittee is a group of 5 lawyers that are members of the USFN's Bankruptcy Section, which consists of 17 members who are attorneys from Law Firms throughout the United States that represent mortgage lenders and servicers.

9001 AIRPORT FREEWAY, SUITE 740  
NORTH RICHLAND HILLS, TX 76180

## **Proposed Rule Provisions:**

### **3002.1(a), IN GENERAL:**

The proposed revisions continue to make the Rule applicable only to the debtor's principal place of residence. If so we suggest that this provision be permissive rather than mandatory as to real property that is not the principal place of residence. The critical issue is to make clear that a lender or loan servicer that provides Notices of Payment Change or Notices of Fees, Expenses, and Charges regarding property that is not the principal place of residence should not, as has been the case in some districts, be sanctioned for simply providing these notices. Frequently the real property in question is income producing which income may be relied upon by the debtor to fund the plan and notices under Rule 3002.1 could be of assistance.

The update to subsection (a) of the rule removes the word "installment". This does not completely clarify what types of transactions are subject to the Rule such as reverse mortgages; statutory liens like tax lien transferees and HOA liens; and total debt plans (a plan in which the entire debt owed on the mortgage is paid through the plan), cramdowns, or non-traditional liens on primary residences.

As to reverse mortgages, the Committee Notes indicate that the provisions of the Rule are applicable to these types of loans. It is our belief the proposed Rule does not apply to reverse mortgages because, although there are contractual financial obligations in a reverse mortgage, like the obligation of the mortgagor to pay taxes and insurance, those payments are not made to the mortgage claimant and, therefore, proposed Rule 3002.1 would not apply to reverse mortgages.

As to total debt claims (and also reverse mortgages), the mortgage claimant may make post-petition payments for taxes and insurance to protect the claimant's position if the debtor does not make these payments. Servicers/attorneys do not have a definitive answer as to whether a Notice of Post-Petition Fees, Expenses and Charges under Rule 3002.1(c) is required for recovery of these post-petition escrow advances, or if another procedure is more appropriate (i.e. motion for reimbursement, Rule 2016(a) application, or a motion for relief). Clarity would be appreciated.

### **3002.1(b)(3)(B), EFFECT OF AN UNTIMELY NOTICE:**

This section concerns the effective date of a payment decrease and currently provides that the effective date of a payment decrease is the "first payment due date after the date of the notice." Clarification in the Rule that a payment decrease is effective on the actual payment due date, even if such date is in the past is suggested.

### **3002.1(b)(4), PARTY IN INTEREST’S OBJECTION:**

There is no stated deadline to file a motion to determine the validity of a payment change, We suggest that the Committee consider amending this provision to provide for a three to six month deadline for filing a motion to determine the validity of a payment change to add some finality to the process.

### **3002.1(e):**

We suggest a shorter time deadline for a party-in-interest to file a motion to determine fees, expenses or charges. In the average case 60 days from the date the creditor’s notice is filed is an adequate period of time for the diligent Debtor and Debtor’s counsel to file such an action and would give the bankruptcy court an opportunity to resolve the issues between the debtor and mortgage claimant before the conclusion of the case, and, as noted regarding the Notices of Payment Change, would add some finality to the process.

Additionally, there is nothing in the proposed rule that requires the debtor to state how and when the fees, expenses or charges will be paid. This often results in objections to the notice of final cure that could otherwise be avoided.

### **3002.1(f), MOTION TO DETERMINE STATUS; RESPONSE; COURT DETERMINATION:**

This new procedure could be initiated by either the Trustee or the debtor at any time during the case until the Trustee files a (g)(1) notice at the end of the case. There is no limit on the number of times the Trustee or debtor can utilize this provision/new form motion. The Committee Note states that this “should be used only when necessary and appropriate” which seems to recognize the potential for misuse or vexatious behavior, but the Note on its own will not prevent potential abuse. We suggest a modification to the language of the Rule to allow the debtor and/or the Trustee to file this motion to be informed of any deficiencies and to reconcile payments as needed and appropriate while also including clear limitations/parameters to help curb misuse. We support the following recommendations:

- (1) Define the timeframe for when a debtor or Trustee may file this motion. Remove the phrase “At any time” and replace that language. An example would be “At any time between 18-36 months after the date of the order for relief . . .”
- (2) Alternatively, specify the frequency with which the debtor or the Trustee may file this motion in a case, we suggest no more than twice per case.
- (3) Specify potential remedies for the mortgage claimant if the provision is misused or used in a vexatious manner.
- (4) Providing that a pro-se debtor must provide an attestation as to the facts set forth in the motion.



- (5) Providing that it is a ground for setting an adverse order aside if the movant has failed to name and serve the correct mortgage claimant /servicer with the motion, based on the documents filed in the case as of the time the motion is filed and served.

### **Rule 3002.1 (f)(2):**

The response period for creditors to reply to the Trustee or debtor's motion is listed as 21 days. We suggest that as this review and investigation as to the status of payments is substantially similar to that as required by 3002.1(f)(1), that the response period mirror that section at 28 days.

### **3002.1(g)(3) and (4):**

Subpart (g)(3) requires the claimant to file a response to the Trustee's Notice of Payments Made. Subpart (g)(4) provides that "after service of the response ... the debtor or the trustee *may* file a motion to determine whether the debtor has cured all defaults and paid all required post petition amounts on a claim."

The proposed Rule states the Trustee "must" file the notice, and the creditor "must" file a response, and the pleadings "must" be on the official forms. However, (g)(4)(A) says the debtor or Trustee "*may*" file a motion to determine. What if neither debtor nor the Trustee file this motion? Mortgage claimants may be left with uncertainty as to the status of a claim after the case closes.

If a creditor files a "disagreed" response to the final cure, the proposed Rule does not mandate a motion to resolve the disagreement. If the debtor/Trustee just allows the case to discharge does the credit's disagreed response serve as the controlling status of the account? The proposed Rule should be amended to provide clarity.

We request a provision that it is a ground for setting an adverse order aside if the movant has failed to name and serve the correct mortgage claimant /servicer with either (1) the Trustee's End-of-Case Notice of Payments Made or (2) the Motion to Determine Final Cure and Payment of Mortgage Claim, based on the documents filed in the case as of the time the motion is filed and served.

Additionally, 3002.1(g)(3) provides that the mortgage claimant must file a response to the Trustee's End-of-Case Notice as a supplement to the proof of claim. "Response" indicates it is a document to be filed in the main case which is where most of us would assume that a response to a notice or motion would be filed. "Supplement to the proof of claim" indicates that the document should be filed in the claims record. It would add clarity to state that the response must be filed in the main case and will be construed as a supplement to the proof of claim.

## FORMS

### **410C13-M1, Motion Under Rule 3002.1 (f)(1) to Determine the Status of the Mortgage Claim and Official Form 410C13-M2, Motion Under Rule 3002.1(g)(4) to Determine Final Cure and Payment of Mortgage Claim:**

These forms require a debtor or Trustee to provide payment dates and amounts, but here is no affidavit or oath requirement. With regard to debtor filed motions, we recommend the addition of an affidavit or oath requirement to ensure the accuracy of the information being provided.

### **410C13-M1R, Response to [Trustee’s/Debtor’s] Motion Under Rule 3002.1 (f)(1) to Determine the Status of the Mortgage Claims; 410C13-NR, Response to Trustee’s Notice of Payments Made; and 410C13-M2R, Response to [Trustee’s/Debtor’s] Motion to Determine Final Cure and Payment of the Mortgage Claim:**

These forms require that the claim holder’s itemized payment history must be provided “using the format of Official Form 410A, Part 5.” Part 5 of Official Form 410A often requires manual completion (which can be prone to scrivener error) and may cause unnecessary confusion as the format of Part 5 may not be responsive to a specific request. Questions and confusion may arise, in part, because Part 5 of the 410A is intended to capture a pre-petition payment history and does not lend itself to distinguishing between outstanding pre-petition arrearages from any post-petition delinquency. Instead, a payment history would provide the information in a more concise and clear manner. The recommendation is to remove the requirement to use the format of the Official 410A or to specify that the claim holder “may” use the Official 410A format but is not required to do so. Additionally, with respect to the requirement that the responding creditor attach a payoff statement in support of its response, such requirement is somewhat onerous and exceeds the scope of a typical Notice of Final Cure/Motion to Determine inquiry – which is usually limited to the whether the subject loan is current. The recommendation is that such requirement be removed.

### **410C13-N, Trustee’s Notice of Payments Made:**

An issue with stating when the next mortgage payment is due, even when the Trustee has made all the post-petition contractual payments, is that by the time the Trustee files the Notice of Payments Made, other ongoing contractual payments will have come due and may have been paid by the debtor following completion of the plan payments. Take the example a conduit case in which the last payment disbursed by the Trustee was the payment due on October 1, 2023. By the time the Trustee files the Notice of Payments Made, at least one more payment will probably have come due, post plan term, but the Trustee

will not know whether that payment was made by the debtor. It can create confusion if the Notice states that the next payment due is the payment for November 1, 2023, but that payment has already been made, so that in reality the next payment due is the December 1, 2023, payment. It would be less confusing to state that the next mortgage payment following the completion of the plan would be due on (in this example) November 1, 2023.

On behalf of USFN



Pamela L. Donahoo, CAE  
CEO, USFN

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February 16, 2024

The Committee on Rules of Practice and Procedure  
The Judicial Conference of the United States  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle NE, Suite 7-300  
Washington, DC 20544

**RE:** Proposed Changes to Bankruptcy Rule 3002.1

The Mortgage Bankers Association (MBA)<sup>1</sup> offers the following comments in response to the proposed changes to Bankruptcy Rule 3002.1 and its associated forms by the Judicial Conference of the United States (the Conference). MBA submits these additional comments to highlight the operational complexities and uncertainty that would be created by this proposed Rule. The Conference should adopt the following changes to reduce the administrative burden and create clear procedures for debtors and claim holders.

**I. Limit the Number of Times a Debtor or Trustee Can File a Motion to Determine Status**

Under the changes to Rule 3002.1(f), the debtor or trustee may file a Motion to Determine Status at any time after the date of the order for relief until the trustee files the notice under a Rule 3002.1(g)(1) Motion for Final Cure. There is no limit to the number of times either the debtor or trustee may make such a request. Yet, despite being subject to an unlimited number of such motions during the pendency of a single Chapter 13 case, the mortgage servicer would be bound to respond to each and every request to the extent that it disagrees with the facts asserted therein. Then, for every disagreement, the parties must attend a hearing for an adjudication on the dispute. This change will needlessly add operational complexity for

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 300,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, commercial banks, mortgage brokers, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

**RE: Proposed Changes to Bankruptcy Rule 3002.1**

February 16, 2024

Page 2 of 3

servicers and significantly increase the amount of attorney's fees for little benefit. In order to avoid misuse, debtors and trustees should be limited to two requests during this timeframe.

Debtors will not be prejudiced by restricting the number of times a motion under 3002.1(f) can be filed. Debtors will already have access to much of the information that claim holders must provide in Form 410C13-NR. The Consumer Financial Protection Bureau requires that servicers provide debtors with a modified monthly billing statement for closed-end mortgage that contains much of the information required in Form 410C13-NR.<sup>2</sup> Each month, the billing statements are required to provide detailed information regarding post-petition payments (next due date, payment amount, past-due total, etc.) as well as pre-petition payments (amount received since last statement, amount received since the beginning of the bankruptcy case, and the current balance of the arrearage). Then, mortgage servicers are *also* required to file post-petition fee notices that itemize all post-petition fees that it seeks to recover from the mortgagor pursuant to Rule 3002.1(c). Thus, the stated goal of this new provision "to give the debtor an opportunity to cure any post-petition defaults" is already served on a routine, monthly basis.

**II. Clarify the Procedures Used to Determine a Final Cure**

Under the changes to Rule 3002.1, section (g)(4) says the debtor or trustee may file a Motion for Final Cure, allowing the Court to rule whether the debtor has cured the mortgage default. While 3002.1(g)(4) is clear, the procedural requirements for filing the motion opens the door to unfair treatment for the mortgage claim holder.

The first step in the new Final Cure rule requires the Trustee to file a Notice of Payments Made utilizing form 410C13-N. Then the mortgage claim holder must file a response using form 410C13-NR within 28 days. If the claim holder fails to file a response, the Trustee or Debtor have 45 days to file the Motion for Final Cure. If the claim holder does file a response, then the Trustee or Debtor has an unlimited timeframe to file the Motion for Final Cure. This deadline difference in the rule provides an unworkable timeframe for resolving the status of the debt and bringing finality to the proceedings. With no maximum deadline to file the Motion, claim holders may be stuck in these proceedings for an unknown period of time – possibly until the Court administratively closes the matter months into the future.

To prevent this uncertainty, Debtors or trustees should be required to file a motion under 3002.1(g)(4) within 45 days after serving Form 410C13-N regardless of whether they receive a response from the claim holder. Further the rule should be expanded to give finality to the mortgage claim process as to all parties involved. Failure of the Debtor or Trustee to file a Final Cure motion within the 45-day period should be given the same preclusive effects of 3002.1(h) by preventing the introduction of evidence at any future hearing and the granting of appropriate sanctions.

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<sup>2</sup> 12 CFR § 1026.41(f) (Periodic statements for residential mortgage loans).

**RE: Proposed Changes to Bankruptcy Rule 3002.1**

February 16, 2024

Page 3 of 3

Additionally, the Rule should specify that a claim holder does not need to respond to a motion to determine whether the debtor has cured if they agree with the facts asserted. Proposed Rule 3002.1(h) allows the Court to take several actions if a claim holder does not provide information required under the rule. The Conference should state that a failure to file Form 410C13-M2R or respond to a motion to determine whether the debtor has cured does not trigger a hearing under Rule 3002.1(h).

**III. Provide Instructions for Filling Out the Required Forms**

MBA suggests adding instructions to several forms to clarify several points.

- Forms 410C13-M1R, 410C13-NR, 410C13-M2R: Several forms require the claim holder to provide payment history using the format of Official Form 410A, Part 5. However, Part 5 of the 410A is intended to capture a pre-petition payment history and does not lend itself to distinguishing outstanding pre-petition arrears from any post-petition delinquency. The Conference should either remove this requirement, make using the form optional, or explain how this information can be provided on the form.
- Form 410C13-N: Part 4 of this form requires the claim holder to state when the next mortgage payment is due. However, by the time a debtor receives this form it is possible that this next payment date has already passed. The Conference should specify which of the next possible due dates to use.

Thank you for considering these comments. Should you have questions or wish to discuss these issues further, please contact Gabriel Acosta at [gacosta@mba.org](mailto:gacosta@mba.org).

Sincerely,

Brendan Kelleher  
Associate Director, Loan Administration Policy  
Residential Policy and Strategic Industry Engagement  
Mortgage Bankers Association



February 16, 2024

The Judicial Conference of the United States  
Committee on Rules of Practice and Procedure  
Washington, DC 20544

Re: Proposed Amendments to the Federal Rules of Bankruptcy Procedure Docket No. USC-RULES-BK-2023-0002

ICE Mortgage Technology Holdings, Inc. (IMT) appreciates the opportunity to comment on the proposed amendments to Bankruptcy Rule 3002.1 and the related new Official Forms. IMT is a leading provider of integrated technology and data to a broad range of constituents in housing finance, including financial institutions, corporations, and government entities. IMT's interconnected, end-to-end solutions deliver efficiencies across the entire real estate and mortgage continuum as part of our mission to make the path to homeownership – and the experience from then on – as transparent, accessible, and simple as possible.

### **3002.1(b)(2) NOTICE OF A CHANGE IN A HOME EQUITY LINE OF CREDIT (HELOC ANNUAL RECONCILIATION)**

IMT supports the amendment to reduce the need to send monthly Notice of Payment Changes (NPC) for small payments changes associated with HELOCs. However, automating this process will be complex. Moreover, mortgage claim holders often continue to send monthly billing statements for HELOCs with the actual amount due each month to debtors in bankruptcy. These monthly billing statements will become inconsistent with the NPCs under this proposal. This amendment should be clear that claim holders that choose to use the HELOC reconciliation process are permitted to continue to send billing statements with the actual payment due versus having to match the amount identified in the NPC.

### **3002.1(b)(3) – EFFECT OF AN UNTIMELY NOTICE:**

The proposed rule states at 3002.1(b)(3):

“(3) *Effect of an Untimely Notice.* If the claim holder does not timely file and serve the notice required by (b)(1) or (b)(2), the effective date of the new payment amount is as follows:

. . . .

(B) when the notice concerns a payment decrease, on the first payment due date after the date of the notice”



IMT requests clarity on how to address an untimely decrease in payment that is retroactive to a prior month.

## **ALL NEW FORMS AND PROCESS FOR DETERMINATIONS OF STATUS AND FINAL CURE:**

Modernization: As a technology provider and leader in innovating mortgage servicing, IMT believes this is a perfect opportunity to consider better ways to exchange data anticipated by this proposed rule. One suggestion is to leverage the National Data Center for the electronic exchange of information required for determinations of status and final cure. The electronic exchange of information is efficient and cost-effective and allows for automated analysis of data and identification of variances.

Instructions: In order to provide the appropriate information for the determinations of status and final cure, it is critical that the final rules provide line-by-line instruction on what data needs to be provided and to define certain terms and phrases.

### **MOTION UNDER RULE 3002.1(f)(1) TO DETERMINE THE STATUS OF THE MORTGAGE CLAIM – OFFICIAL FORM 410C13-M1 (page 88)**

#### **Section 2:**

- Section 2.a. and 2.b: Please define “prepetition arrearage” and indicate if post-petition arrearages that become supplements to the proof of claim are considered pre-petition amounts. If they are not, please indicate where those amounts would be identified.
- Section 2.c and 2.d: Please define “allowed amount of postpetition arrearage” and “total amount of postpetition arrearage.” Do these amounts include all delinquent post-petition payments, including agreed orders related to post-petition amounts due? Do these amounts include approved post-petition fees that remain unpaid?
- Section 2.e: Please define what comprises “total amount of arrearages paid.” Is this figure the sum of 2.b. and 2.d.?

### **RESPONSE TO MOTION UNDER RULE 3002.1(f)(1) TO DETERMINE THE STATUS OF THE MORTGAGE CLAIM – OFFICIAL FORM 410C13-M1R (page 90):**

#### **Section 2: Arrearages**

- Please define what comprises the term “any arrearage.” Is this section intended to address only pre-petition amounts or all arrearages including delinquent post-petition amounts due and fees and charges that are allowed but unpaid?
- We believe that this section should only address pre-petition payments. Past due post-petition payments and fee and charges that remain unpaid should be addressed in section 3.

**Section 3: Post-petition Contractual Payments**

- Regarding the last/third box, it appears to be reserved for fees and charges. As a result, please define “negative escrow amounts.” In addition, please identify under what circumstances this amount should be included here instead of stated on the line called, “Balance of the escrow account,” which would identify an escrow deficiency.

**Section 4: Itemized payment history**

- This part requires the claim holder to use Official Form 410A, Part 5, to itemize the loan’s payment history if arrearages are not paid in full and/or post-petition amounts are not current. Part 5, and the automation created to produce it, provides a contractual payment history. It is not designed to represent pre- and post-petition application of payments. As a result, we respectfully request that the final rule not require a specific form or format to report the information requested in this section. We have included a sample layout as one example for how to present the information.

**TRUSTEE’S NOTICE OF PAYMENTS MADE – OFFICIAL FORM 410C13-N  
(302.1(g)(1)) (page 93)**

**Part 3: Amount Needed to Cure Default**

- Part 3.a. and 3.b.: Please define “prepetition arrearage” and indicate if post-petition arrearages that become supplements to the proof of claim are considered pre-petition amounts. If they are not, please indicate where those amounts would be identified.
- Part 3.c. and 3.d.: Please define “amount of postpetition arrearages” and “Total amount of arrearages.” Do these amounts include delinquent post-petition payments, including agreed orders related to post-petition amounts due? Do these amounts include approved post-petition fees that remain unpaid?
- Part 3.e.: Please define what comprises “total amount of arrearages paid...” Is this figure the sum of 3.b. and 3.d.?

**RESPONSE TO TRUSTEE’S NOTICE OF PAYMENTS MADE – OFFICIAL  
FORM 410C13-NR (302.1(g)(2)) (page 95)**

**Part 2: Amount Needed to Cure Default**

- Fourth box: Please indicate if “the amount required to cure the postpetition arrearage” includes allowed fees and charges that remain unpaid.

**Part 3: Postpetition Contractual Payments**

- Regarding the last/third box, it appears to be reserved for fees and charges. As a result, please define “negative escrow amount.” In addition, please identify under what circumstances this amount should be included here instead of stated on the line called, “Balance of the escrow account,” which would identify an escrow deficiency.

**Part 4: Itemized Payment History**

- This part requires the claim holder to use Official Form 410A, Part 5, to itemize the loan's payment history if arrearages are not paid in full and/or post-petition amounts are not current. Part 5, and the automation created to produce it, provides a contractual payment history. It is not designed to represent pre- and post-petition application of payments. As a result, we respectfully request that the final rule not require a specific form or format to report the information requested in this section. Please see the sample layout as one example for how to present the information.

**MOTION UNDER RULE 3002.1(g)(4) TO DETERMINE FINAL CURE AND PAYMENT OF MORTGAGE CLAIM. (page 98)**

- Please see comments associated with Motion Under Rule 3002.1(f)(1) to Determine the Status of the Mortgage Claim – Official Form 410C13-M1.

**RESPONSE TO [TRUSTEE'S/DEBTOR'S] MOTION TO DETERMINE FINAL CURE AND PAYMENT OF MORTGAGE CLAIM. (page 100)**

- Please see comments associated with Response To Motion Under Rule 3002.1(f)(1) To Determine the Status of The Mortgage Claim – Official Form 410C13-M1R.

IMT welcomes the opportunity to discuss these matters further, at your convenience. For further information, please contact Vicki Vidal, Senior Regulatory Counsel, IMT, [vicki.vidal@bkfs.com](mailto:vicki.vidal@bkfs.com) or (202) 309 0291. Thank you.

Attachment

Transaction Type	Transaction Date	Funds Received	Description	Pre Due Date	Post Due Date	Payment Amount	Pre Balance Due	Post Balance Due	Amt Applied to Principal	Amount Applied to Interest	Amount Applied to Escrow	Amount applied to Fees/Cst	Unapplied Funds	Principal B	Accrued Interest	Escrow Bl	Pre Fee/Charges Balance	Post Fee/Charges Balance
Pre-Petition	1/1/2023	\$ 100.00	Arreage Payment	1/1/2023		\$ 300.00	\$ 5,000.00		\$ -	\$ -	\$ -	\$ -	\$ 100.00	\$ 100,000.00	\$ -	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
Post-Petition	1/15/2023	\$ 500.00	Ongoing Payment		2/1/2023	\$ 500.00	\$ -	\$ 150.00	\$ 150.00	\$ 250.00	\$ 100.00	\$ -	\$ -	\$ 99,500.00	\$ -	\$ 2,100.00	\$ 2,100.00	\$ 2,100.00
Post-Petition	2/15/2023	\$ 500.00	Ongoing Payment		3/1/2023	\$ 500.00	\$ -	\$ 150.00	\$ 150.00	\$ 250.00	\$ 100.00	\$ -	\$ -	\$ 99,350.00	\$ -	\$ 2,200.00	\$ 2,200.00	\$ 2,200.00
Esc Disbursement	2/24/2023	\$ 700.00	Hazard Premium			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
Pre-Petition	2/27/2023	\$ 200.00	Arreage Payment	1/1/2023		\$ 300.00	\$ 4,700.00	\$ 75.00	\$ 75.00	\$ 125.00	\$ 100.00	\$ -	\$ -	\$ 99,275.00	\$ -	\$ 1,600.00	\$ 1,600.00	\$ 1,600.00
Pre-Petition	3/11/2023	\$ 500.00	Ongoing Payment		4/1/2023	\$ 500.00	\$ -	\$ 150.00	\$ 150.00	\$ 250.00	\$ 100.00	\$ -	\$ 50.00	\$ 99,125.00	\$ -	\$ 1,700.00	\$ 1,700.00	\$ 1,700.00
Post-Petition	4/10/2023	\$ 150.00	Ongoing Payment	12/1/2023		\$ 300.00	\$ 4,550.00	\$ 150.00	\$ 150.00	\$ 125.00	\$ 100.00	\$ -	\$ 150.00	\$ 98,975.00	\$ -	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00
Pre-Petition	4/20/2023	\$ 200.00	Ongoing Payment	12/1/2023		\$ 300.00	\$ 4,250.00	\$ 75.00	\$ 75.00	\$ 125.00	\$ 100.00	\$ -	\$ -	\$ 98,700.00	\$ -	\$ 1,900.00	\$ 1,900.00	\$ 1,900.00
Post-Petition	5/11/2023	\$ 450.00	Ongoing Payment		6/1/2023	\$ 500.00	\$ -	\$ 150.00	\$ 150.00	\$ 250.00	\$ 100.00	\$ -	\$ -	\$ 98,625.00	\$ -	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
Pre-Petition	9/11/2023	\$ 600.00	Arreage Payment	1/1/2023		\$ 300.00	\$ 3,650.00	\$ 75.00	\$ 75.00	\$ 125.00	\$ 100.00	\$ 300.00	\$ -	\$ 98,750.00	\$ -	\$ 2,100.00	\$ 2,100.00	\$ 2,100.00
Post-Petition	9/15/2023	\$ 800.00	Agreed Order Payment		10/1/2023	\$ 800.00	\$ -	\$ 2,500.00	\$ 150.00	\$ 250.00	\$ 100.00	\$ -	\$ 300.00	\$ 98,750.00	\$ -	\$ 2,200.00	\$ 2,200.00	\$ 1,000.00

February 15, 2024

TO: Judicial Conference of the United States  
Committee on Rules of Practice and Procedure  
Advisory Committee on Bankruptcy Rules

FROM: Nancy J. Whaley, Melissa J. Davey, K. Edward Safir  
Standing Chapter 13 Trustees  
Northern District of Georgia

RE: Comments on Proposed Changes to Bankruptcy Rule 3002.1 and  
Official Form 410C13-N

We are the three Standing Chapter 13 Trustees in the Northern District of Georgia. Together, our three offices administer approximately 15,000 active Chapter 13 cases and prior to the Covid-19 pandemic we had a combined caseload of over 30,000 cases. With very few exceptions, the Northern District of Georgia is a direct-pay mortgage jurisdiction (as opposed to a conduit mortgage jurisdiction) in which the Chapter 13 plans provide for the debtor to make post-petition mortgage payments directly to the mortgage lender, while curing the arrearage through payments to the Chapter 13 Trustee. In light of the unique issues raised in the administration of direct-pay Chapter 13 cases, we respectfully submit the following comments on the proposed amendments to Bankruptcy Rule 3002.1 and Official Form 410C13-N.

**Bankruptcy Rule 3002.1**

We agree with the comment submitted by the National Bankruptcy Conference (“NBC”) recommending that the term “contractual” be deleted from Rule 3002.1(a). While the majority of the Chapter 13 cases we administer that involve mortgages provide for the debtor to make post-petition payments directly to the mortgage lender, we do administer Chapter 13 plans that provide for the entire mortgage balance to be paid by the Chapter 13 Trustee. For example, a debtor might propose such a provision in a Chapter 13 Plan when the mortgage debt has matured

pre-petition. Another example would be a Chapter 13 plan that modifies a mortgage debt that is not subject to the anti-modification provision of 11 U.S.C. § 1322(b)(2). Because the mortgage debt in these cases is to be paid by the Trustee according to the terms of the Chapter 13 plan rather than under the contractual terms of the mortgage, the use of the term “contractual” in the Rule could be interpreted to mean that the Rule does not apply in these circumstances. Such an interpretation would thwart the intent of Rule 3002.1 in providing debtors with finality with regard to the mortgage at the end of a Chapter 13 case.

Furthermore, in 3002.1(g)(1) we propose extending the time for Chapter 13 Trustees to file the End-of-Case Notice of Payments Made from forty-five (45) days to sixty (60) days after the debtor completes all payments due to the trustee under a Chapter 13 plan. In determining if the debtor has completed all payments due under the plan, the trustee must audit the case, review the payments to all creditors, and ensure that the last payment made to the trustee is in good funds. As further stated in our additional comments below, the additional information required by the proposed Official Form 410C13-N imposes additional administrative burdens on trustees, particularly those in direct pay jurisdictions. An extension of this time requirement would help relieve these administrative burdens on the trustee. While we believe that in the vast majority of cases the notice would be filed within 45 days at our current case load, we believe additional time is necessary for some cases and if/when our caseloads increase, it may become more needed.

## **Official Form 410C13-N**

As currently proposed, Official Form 410C13-N appears to be drafted with conduit mortgage jurisdictions in mind. Much of the information it requires is not relevant in a direct pay Chapter 13 case. As such, we suggest that there would be two separate official forms – one for conduit mortgages and one for direct pay mortgages. Specifically, our concerns are as follows:

### **Part 2 Statement of Completion**

In the first sentence of this section, we propose eliminating the requirement of entering the date of the debtor’s last payment to complete the Chapter 13 plan. This information may not always be easily discernable and the inclusion of this date does not seem to serve any function. Furthermore, the determination of this date may vary by jurisdiction, making the value of this date even less relevant.

Furthermore, we ask that the Committee take note of the apparent contradiction between the Form and the Committee notes with regard to the second sentence of Part 2. While the Official Form states that the trustee may attach a disbursement ledger for the claimant *or* provide the web address where such a ledger may be found, the Committee Notes at lines 38 and 39 states that the ledger must be attached to the Form.

### **Part 3 Amount Needed to Cure Default**

In this part of the Form, lines b, c, d, and e, are problematic for trustees with direct pay mortgage cases. While it is common for post-petition mortgage arrearages to arise in direct-pay cases, how these are addressed can vary greatly. Because of this, a trustee in such a jurisdiction may simply lack the knowledge, without conducting extensive research, to correctly complete

this part of the Form. For example, in some cases the lender and debtor may resolve a post-petition arrearage by amending the pre-petition arrearage claim to include the post-petition arrearage. In that case, it may be difficult for the trustee, at the time of case closure, to distinguish between the pre- and post-petition arrears. In other cases, the lender and debtor might agree to resolve the post-petition arrears by having the debtor make additional direct payments to the lender. In that case, the trustee, without combing through multiple Orders, would have no way of accounting for those payments and would not be able to accurately complete this section of the Form.

**Part 4 Postpetition Contractual Payment**

As outlined in our comment above regarding the Rule, we suggest that the term “contractual” be removed from this part of the Form. Furthermore, we suggest adding a third and maybe a fourth checkbox. This third checkbox could be used for other scenarios that do not lend themselves to the first two checkboxes. Such a scenario could include total debt claims in which the trustee is paying the entire mortgage debt, but as provided for in the Chapter 13 plan rather than the mortgage contract. A third checkbox may be “Trustee paid claim in full” and fourth may be “Other:”

**Part 5 Postpetition Fees, Charges, and Expenses**

We propose deleting this part of the Form in its entirety for direct pay cases. The first line of this Part of the Form requires the Trustee to list the total amount of allowed post-petition fees, charges, and expenses. However, lenders are already required to file notices of these fees, charges, and expenses under Rule 3002.1(c). Furthermore, it is the practice in our jurisdiction for the trustee to not automatically pay these post-petition fees, charges, and expenses unless



specifically directed to do so by the Chapter 13 plan or an order of the court. Requiring the trustee to tally and list them in this Part of the form when they are already in the record is burdensome and unnecessary.

We thank you for the opportunity to comment on these proposed rules and forms.