Marie-Ann Greenberg
Chapter 13 Standing Trustee
30 Two Bridges Road
Suite 330
Fairfield, NJ 07004-1550

Phone 973-227-2840
Fax 973-227-3272

For Payments Only:

PO Box 520
Memphis, TN 38101-0520

Joseph D. Petrolino, Jr.
Staff Attorney

Brian M. Knapp
Staff Attorney

February 5, 2010

09-BK-037

Secretary of the Committee on
Rules of Practice and Procedure
Administrative Office of the United
States Courts
Washington, D.C. 20544

Re: Notice of Final Cure Payment and Proposed National Bankruptcy Rules – 3002.1(d) & (e)

Dear Committee:

The District of New Jersey has implemented the proposed national bankruptcy rules in advance of them becoming final. We are fortunate, in my opinion, to have adopted the proposed rules locally, and well in advance of the expiration of the comment period. The rules adopted locally are almost verbatim to those proposed. Having implemented and worked with the rules for the past few months we are in a unique position to comment from experience. It is clear that these rules are necessary and I applaud the efforts made in setting them forth on a national level. I wish to comment on proposed rule 3002.1(d). The effectiveness of these rules, specifically 3002.1(d) Notice of Final Cure Payment and (e) Response to Notice of Final Cure, can be improved, however.

The underlying assumption is that the Notice of Final Cure Payment is intended to avoid the situation where a debtor who completes his plan and makes all payments finds out post-petition that there remains a deficiency of some sort which then results in another foreclosure action. At that point such a debtor would be faced with defending the foreclosure, filing another bankruptcy, or re-opening the completed bankruptcy to object to or address the additional sums due. To avoid that, the proposed rules aim to require complete transparency and accountability with regard to payments, fees, costs and expenses. However, it appears that the rules as drafted work best in jurisdictions where conduit payments are made by the Standing Trustee. The District of New Jersey is *not* a conduit jurisdiction. In jurisdictions such as ours, the proposed rules do not work as well together; they are disjointed and the intended results may not be met. Below are some scenarios that we have come across which highlight the issues.

1. Subsection(d) states in pertinent part, "no later than 30 days after making final payment of any cure amount on a claim…., the trustee…shall file and serve…a notice stating that the amount required to cure the default has been paid in full." In a non-conduit jurisdiction, the only certification a trustee may make is that she has paid the claim as

Marie-Ann Greenberg
Chapter 13 Standing Trustee
30 Two Bridges Road
Suite 330
Fairfield, NJ 07004-1550

Phone 973-227-2840
Fax 973-227-3272

For Payments Only:

PO Box 520
Memphis, TN 38101-0520

Joseph D. Petrolino, Jr.
Staff Attorney

Brian M. Knapp
Staff Attorney

filed. The trustee cannot certify as to any other payments made, or not, by the debtor. Thus, the relevance of the notice is limited to the amount listed in the proof of claim as paid by the trustee. Thus, in cases where realty is sold, refinanced, or a loan modification is entered prior to the completion of payments due under the claim, the trustee will not be in a position to certify that the claim has been paid as filed, because the funds will most likely not be tendered through the trustee's office in those scenarios. This may be most problematic where there is a loan modification, as some form of post petition payment continues.

2. Where the arrears listed in the proof of claim are small, said Notice may be filed early in the case. That leaves potentially years where the debtor may incur additional fees and costs or where a post-petition discrepancy may be at issue. Thus, the Notice only provides information indicating that the claim was paid, nothing more. It must be clarified that the date of the disbursement by the trustee is the date at issue and the "cure" status is effective only on said date.

3. In the example mentioned in #2, if after the claim arrears are cured and the Notice is filed, there may be additional post-petition fees, or missed payments added to the plan, in those instances is the Standing Trustee to file another Notice? Since the roll in or additional payments would typically be as a result of an order, is another Notice necessary? If continuous Notices must be filed, then we truly do not have a "Final Cure Payment". We suggest that in a non-conduit jurisdiction, the Standing Trustee should only have to file the Notice once at the time the original cure of the arrears in the proof of claim are satisfied.

4. Is the disbursement of a final check by the trustee to the holder of the claim the point where the 30 day period should run for the trustee's obligation to file the Notice of Final Cure Payment, or is it upon the cashing of the check? We suggest that it be upon the disbursement, rather than upon cashing of the check; however, some clarification is warranted.

5. Subsection (d) refers to a cure amount on a claim. Subsection (e) however refers in part to a supplement to the claim based on potential post-petition amounts due. This raises several issues. One is that if the Notice is filed on the docket, but the Statement is filed as a supplement to the claim, then that will be placed on the registry. If there is disagreement as to the Notice, or there are post-petition deficiencies, the reply Statement should also be on the docket. Second, why should any docket or registry be cluttered with statements when the holder of the claim agrees with the Notice? Will the filing of the Statement in such cases ultimately cause additional fees for the Debtor? Is it

Marie-Ann Greenberg
Chapter 13 Standing Trustee
30 Two Bridges Road
Suite 330
Fairfield, NJ 07004-1550

Phone 973-227-2840
Fax 973-227-3272

For Payments Only:

PO Box 520
Memphis, TN 38101-0520

Joseph D. Petrolino, Jr.
Staff Attorney

Brian M. Knapp
Staff Attorney

necessary to file a Statement of agreement, especially in light of the fact that the holder of the claim is also required under Subsection (c) to file notices of post-petition fees, costs and charges? Necessitating the filing of a Statement when there is agreement is busy work and benefits no one. If there is a post-petition delinquency the claim holder may always file a motion for relief, or does the proposed rule intend to curtail that right if the holder fails to file a reply? Third, where the Statement is filed as a supplement to the claim, is the Trustee to simply set up a claim for those payments? Shouldn't the Debtor have to file an amended plan? Fourth, does the filing of the Statement indicating that there are post-petition deficiencies obviate the need for the claim holder to file the Notice required under Subsection (c) for that time period?

6. If it is determined that the Notice shall be filed by the Trustee at the end of the case, then the rule as proposed must be changed. There is a downside to waiting to the end of the case: at that point there is little if any time left for the debtor to address any deficiencies. Where there is a contest as to amounts due which is brought at the end of the case, cases will not close timely either. Also, note that at the end of the case, albeit after the debtor has completed plan payments, the trustee has to file a final report which will provide the same information. We suggest that in non-conduit jurisdictions the filing of the Notice by the Standing Trustee must be at the time of final disbursement and not at the end of the case [unless that disbursement occurs at the end of the case]. Thus, it is for the debtor to file a motion to deem the mortgage current.

These comments are meant to be helpful and not at all meant to criticize the efforts made in drafting the rules. Having tried to implement the rules, I would be remiss should I have chosen not to comment on them from the perspective of a non-conduit jurisdiction. The rules will be very helpful and some slight re-drafting will likely lead to the intended results.

Please note that Isabel Balboa, Ch. 13 Standing Trustee, District of New Jersey, Camden vicinage, joins me as I relay these comments.

Respectfully submitted,

Marie-Ann Greenberg
Chapter 13 Standing Trustee