MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON CONSUMER ISSUES

SUBJECT: PROPOSED REVISION OF RULE 3002.1 AMENDMENTS IN RESPONSE TO COMMENTS

DATE: AUGUST 22, 2022

In a series of meetings this summer, the Subcommittee completed its review of the comments submitted in response to the 2021 publication of proposed amendments to Rule 3002.1 (Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence). As discussed below, the Subcommittee now recommends that the Advisory Committee ask the Standing Committee to republish the amendments as revised in response to the comments. The rule as proposed for revision by the Subcommittee and summaries of the comments follow in the agenda book. Attachment 1 shows the changes to the published version of the rule. Attachment 2 shows the changes to the restyled version of the current rule.

This memo provides an overview of the comments, discusses the changes to the published amendments that the Subcommittee recommends, and then explains why it recommends that the amendments be republished.

The Comments

As the Subcommittee reported at the spring meeting, 27 comments were submitted on the proposed amendments. Some of them were lengthy and detailed; others briefly stated an opinion in support of or opposition to the amendments. All were well thought-out and worthy of careful consideration.

The comments included a letter from a group of 68 chapter 13 trustees who questioned whether there is a need for the amendments. They were particularly concerned about the midcase review because they said that it would impose an unnecessary burden on them and that the needed information about the home mortgages is already available. They and other trustees also contended that the new requirements for the end-of-case motion would not work well in a non-conduit case because the trustee lacks records about postpetition mortgage payments paid by the debtor.

The comments from some debtors' attorneys, on the other hand, welcomed the requirement of a midcase review. They pointed out that mortgage servicers' records are often inconsistent with trustees' and debtors' records and that an earlier opportunity to reconcile them would be beneficial. Some also stated support for the adoption of a motion practice, rather than just a notice requirement, that would result in an enforceable order.

The National Conference of Bankruptcy Judges ("NCBJ"), while stating that it did not oppose the amendments, raised questions about the authority to promulgate several provisions. In particular, it questioned the requirement of annual notices of payment change for home equity lines of credit (HELOCs) and the end-of-case procedures for obtaining an order determining the status of the mortgage. NCBJ also questioned whether the benefits of a midcase assessment and the revised end-of-case procedures were sufficient to outweigh the added burden on courts and parties imposed by the provisions.

Proposed Changes

At the spring meeting, the Advisory Committee indicated its agreement with the Subcommittee's conclusion that there is a need for some revisions to Rule 3002.1 and that there is authority to promulgate them. The Subcommittee therefore proceeded with its consideration

of possible changes to the published amendments in response to the comments. The version of the rule in Attachment 1 shows by underling in red and strikethroughs the changes that the Subcommittee is recommending be made to the published draft.

Subdivision (a). Only two stylistic changes are proposed to this subsection. They are the capitalization of "chapter" to conform to the convention of the restyled rules and the substitution of "provides for" for "requires" to reflect the nature of a chapter 13 plan more accurately.

Subdivision (b). The Subcommittee recommends several changes to this subdivision. One is a structural change: the texts of (b)(2) and (b)(3) are reversed, so that the requirements for giving notice of HELOC changes in payment amounts are addressed before the provision on late payments. The Subcommittee thought that this order is more logical.

In response to several comments, the Subcommittee recommends making optional the provision for annual notices of HELOC-payment changes. The provision is intended to be for the benefit of the claim holder, so if such a claim holder prefers to provide notices more frequently, the Subcommittee could see no reason not to allow it to do so. Other changes in this subdivision that the Subcommittee recommends with respect to HELOCs include a clarification of the amounts of the next two payments following an annual notice and the addition of an explicit exception for HELOCs in (b)(1). References to the HELOC provision—(b)(2)—are added to other provisions where appropriate.

The Subcommittee recommends several changes to (b)(4) (*Party in Interest's Objection*) in response to comments. A service requirement is added, and the effective date of a payment change when there is no objection is clarified ("on that date" instead of "immediately"). The reference to § 1322(b)(5) is also deleted. A reference to this Code provision was deleted from

subdivision (a) in 2016 to make clear that the rule applies even if there is no prepetition arrearage, but two other references to the provision in the rule were overlooked at that time.

The changes the Subcommittee recommends to subdivisions (c), (d), and (e) are primarily stylistic. In addition, the words "or imposed" were deleted in (c) to restore the provision to its current wording. A comment pointed out that the date of imposition could be different from the date of incurrence and that the addition of those words was unnecessary in one place and confusing in another. In (e) "the party" was changed to "a party in interest" because, as a comment noted, the moving party would not need to seek a shortening of the time to file the motion; it could just file its motion earlier. The reference to § 1322(b)(5) was also deleted.

The Subcommittee recommends that significant changes be made to subdivision (f). This provision, which as published required a midcase review of the status of the mortgage claim, received the most criticism. As revised, it would be optional, not mandatory; could be initiated by either the trustee or the debtor, not just the trustee; could be sought at any time during the case, not just between 18 and 24 months after the petition was filed; and would be initiated by a motion, not a notice. The claim holder would have to respond to the motion only if it disagreed with the facts set forth in the motion, rather than in all cases. Finally, a sentence was added that authorizes the court to enter an order favorable to the moving party if the claim holder does not respond.

These proposed changes are responsive to comments that said such a determination during the case is not needed. Now it would not have to be sought if neither the trustee nor the debtor wanted it. On the other hand, if either the trustee or debtor wanted to reconcile records with the claim holder or obtain a court order that payments were current, either one could seek such a determination at any time (although the committee note says that such a motion should be

limited to when it is necessary and appropriate for carrying out the plan). The change from a notice—with an order to compel a response and an objection to the response—to a motion, followed by a response if there is a disagreement, responds to comments that said the procedure as published was too complex.

The Subcommittee recommends that all of the provisions about an end-of-case determination be consolidated in subdivision (g), rather than being addressed in two subdivisions. In response to comments that the current rule is working well, the Subcommittee recommends that the current procedure of Rule 3002.1(f)-(h) be retained, with some changes to make it more effective. Rather than starting with a motion by the trustee, as the published rule did, the end-of-case procedure would continue to start with a notice by the trustee indicating whether and in what amounts he or she had cured any prepetition arrearage and made any payments to the claim holder that came due postpetition. Rather than being triggered by the debtor's final cure payment, the notice would have to be filed "within 45 days after the debtor complete[d] all payments due to the trustee" under the plan. This change would clarify that the trustee's obligation to file a notice applied whether or not there was a prepetition arrearage to cure so long as "the trustee has made any payments on a claim described in (a)." As under the current rule, the claim holder would be required to file a response to the notice. The time limits for both the notice and response would be longer than under the current rule, and Official Forms would be created for both filings.

If the trustee or debtor wanted the court to determine whether the debtor had cured any default and paid all required postpetition amounts, either one could file a motion for a court determination. This procedure is similar to the existing procedure under Rule 3002.1(h). Proposed subdivision (g)(3) sets out deadlines for the motion. The Subcommittee recommends

that the rule not specify what information must be in the court's order, as the published rule did, but instead that a Director's Form be created for this purpose that a court could choose to use.

In addition to a stylistic change, the Subcommittee recommends two changes to the final subdivision, now (h), in response to comments. First, the word "as" would be reinserted in the first sentence—which begins, "If the claim holder fails to provide any information as required by this rule"—in order to require compliance with the provisions for how information must be provided. Second, authorization would be given for "noncompensatory sanctions" in appropriate circumstances. Several comments suggested this addition in response to the Second Circuit's decision in PHH Mortg. Corp. v. Sensenich (*In re* Gravel), 6 F.4th 503 (2021), which held that "[p]unitive sanctions do not fall within the 'appropriate relief' authorized by Rule 3002.1." *Id.* at 515. The court reasoned that "'other appropriate relief' is limited to non-punitive sanctions, as that would cabin it to the most general attribute shared with an award of expenses and fees." *Id.* at 514-15. The Subcommittee agreed with comments that noncompensatory relief, whether punitive, declaratory, or injunctive, could be appropriate under some circumstances and therefore should be expressly authorized.

Finally, the Subcommittee recommends changes to the committee note to reflect the changes made to the rule.

Republication

After the discussion of all the changes that the Subcommittee is recommending be made to the published rule, the recommendation of republication may seem obvious. The Subcommittee did, however, discuss why republication might not be necessary before reaching its conclusion.

Judiciary policy regarding rulemaking provides the following guidance:

> If the advisory committee makes substantial changes, the proposed rule should be republished for an additional period of public comment unless the advisory committee determines that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees.

Guide to Judiciary Policy ¶ 440.20.50(b). The Subcommittee recognized that it clearly is recommending that "substantial changes" be made to the published amendments. The question it debated was whether republication was needed in order to achieve adequate public comment and to assist the Advisory and Standing Committees. It might be argued that the proposed changes are within the scope of what was published and are responsive to comments that were submitted. The most extensive changes are to what would now be subdivisions (b), (f), and (g), and they make some parts optional, simplify others, and return another provision closer to the existing rule. A new round of comments might not be needed because the public has already weighed in on these topics.

The Subcommittee, however, concluded that republication would be helpful. There is not such an urgency to amend Rule 3002.1 that a year's delay would be harmful. And there are some new provisions—such as the authorization of noncompensatory sanctions and the elimination of any restriction on when a motion to determine the status of a mortgage claim can be filed—that might attract significant comment. Furthermore, the rule addresses some fairly technical issues on which further input from mortgage experts and trustees might be useful to the Committee.

Therefore, the Subcommittee recommends that the Advisory Committee approve for republication the proposed amendments to Rule 3002.1 as shown in Attachment 2. Because the Forms Subcommittee still needs to review the implementing forms in light of the comments and proposed changes to the rule, the Subcommittee recommends that the revised rule not go to the Standing Committee until the June 2023 meeting.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

Rule 3002.1. Chapter 13—-Claim Secured by a Security Interest in the Debtor's Principal Residence

(a) IN GENERAL. This rule applies in a ~~chapter~~ Chapter 13 case to a claim that is secured by a security interest in the debtor's principal residence and for which the plan ~~requires~~ provides for the trustee or debtor to make contractual payments. Unless the court orders otherwise, the requirements of this rule cease when an order terminating or annulling the automatic stay related to that residence becomes effective.

(b) NOTICE OF A PAYMENT CHANGE; ~~EFFECT OF AN UNTIMELY NOTICE;~~ HOME-EQUITY LINE OF CREDIT; EFFECT OF AN UNTIMELY NOTICE; OBJECTION.

[1] New material is underlined in red; matter to be omitted is lined through. The changes shown are to the rule as published in 2021 (without showing changes to the existing rule).

(1) *Notice by the Claim Holder*. The claim holder ~~shall~~must file a notice of any change in the payment amount—including any change resulting from an interest-rate or escrow-account adjustment. Except as provided in (b)(2), ~~At~~ at least 21 days before the new payment is due, the notice must be filed and served on:

- the debtor;
- the debtor's attorney; and
- the trustee.

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

~~(A) 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 and served, or~~

~~(B) when the notice concerns a payment decrease, on the date stated in the untimely notice.~~

~~(3)~~ *Notice of a Change in a Home-Equity Line of Credit*.

(A) *Deadline.* If the claim arises from a home-equity line of credit, the notice of a payment change ~~shall~~ must be filed and served either as provided in (b)(1) or within one year after the bankruptcy petition was filed and then at least annually.

(B) *Contents of the Annual Notice.* The annual notice ~~shall~~must:

(1) state the payment amount due for the month when the notice is filed; and

(2) include a reconciliation amount to account for

any overpayment or underpayment during the prior year.

(C) *Amount of the Next Payment.* The first payment due ~~after the effective date of the annual notice shall be increased or decreased by the reconciliation amount~~ at least 21 days after the annual notice is filed and served must be increased or decreased by the reconciliation amount.

(D) *Effective Date.* The new payment amount stated in the annual notice (disregarding the reconciliation amount) ~~shall~~ will be effective on the first payment due date ~~that is at least 21 days after the annual notice is filed and served~~ after the payment under (C) is made and ~~shall~~will remain effective until a new notice becomes effective.

(E) *Payment Changes Greater Than $10.* If the claim holder opts to give annual notices under (b)(2) and the monthly payment increases or decreases by more than $10 in any month, the claim holder ~~shall~~must file and serve (in addition to the annual notice) a notice under (b)(1) for that month.

(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 is as follows:

(A) 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 and served, or

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

(4) *Party in Interest's Objection*. A party in interest who objects to a payment change noticed under (b)(1) or (b)(2) may file and serve a motion to determine ~~whether~~ the validity of the payment change ~~is required to maintain payments under § 1322(b)(5) of the Code~~. Unless the court orders otherwise, if no motion is filed before the day the new payment is due, the change goes into effect ~~immediately~~on that date.

(c) FEES, EXPENSES, AND CHARGES INCURRED AFTER THE CASE WAS FILED; NOTICE BY THE CLAIM HOLDER. The claim holder ~~shall~~must file a notice itemizing all fees, expenses, and charges that the claim holder has incurred ~~or imposed~~ after the case was filed that the claim holder asserts are recoverable against the debtor or the debtor's principal residence. Within 180 days after the fees, expenses, or charges are incurred ~~or imposed~~, the notice ~~shall~~ must be filed and served on~~: the debtor; the~~

~~debtor's attorney; and the trustee.~~ the individuals listed in (b)(1).

(d) FILING NOTICE AS A SUPPLEMENT TO A PROOF OF CLAIM. A notice under (b) or (c) ~~shall~~must be filed as a supplement to a proof of claim, and be prepared using ~~the appropriate~~ Official Form 410S-1 or 410S-2, respectively. The notice is not subject to Rule 3001(f).

(e) DETERMINING FEES, EXPENSES, OR CHARGES. On a party in interest's motion, the court ~~shall~~must, after notice and a hearing, determine whether paying any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law ~~to cure a default or maintain payments under § 1322(b)(5) of the Code~~. The motion ~~shall~~must be filed within one year after the notice under (c) was served, unless ~~the~~ a party in interest has requested and the court orders a shorter period.

(f) ~~TRUSTEE'S MIDCASE NOTICE OF THE STATUS OF A MORTGAGE CLAIM~~ MOTION TO

DETERMINE STATUS; RESPONSE; COURT DETERMINATION.

(1) *Timing; Content and Service.* ~~Between 18 and 24 months~~ At any time after the ~~bankruptcy petition was filed~~ date of the order for relief under Chapter 13 and until the case is closed, the trustee or debtor ~~shall~~ may file a ~~notice about~~ motion to determine the status of ~~any~~ any ~~mortgage~~ claim described in (a). The ~~notice~~ ~~shall~~ motion must be prepared using ~~the appropriate~~ Official Form [ ] and be served on:

- the debtor and the debtor's attorney, if the trustee is the movant;
- ~~the debtor's attorney~~ the trustee, if the debtor is the movant; and
- the claim holder.

(2) *Response; ~~Motion to Compel a Response; Objection to the Response; Court~~*

~~*Determination*~~ *Content and Service*. ~~(A)~~ ~~*Deadline; Content and Service.*~~ If the~~The~~ claim holder disagrees with facts set forth in the motion, it ~~shall~~ must file a response ~~to the trustee's notice~~ within 21 days after ~~it~~ the motion is served. The response ~~shall~~ must be prepared using ~~the appropriate~~ Official Form [ ] and be served on:~~the debtor; debtor's counsel~~attorney~~; and the trustee~~ the individuals listed in (b)(1).

~~(B) *Motion for an Order Compelling a Response.* If the claim holder does not timely file a response, a party in interest may move for an order compelling one.~~

~~(C) *Objection.* A party in interest may file an objection to the claim holder's response.~~

(~~D~~3) *Court Determination.* If ~~a party in interest objects to the response~~ the claim holder's

response asserts a disagreement with facts set forth in the motion, the court ~~shall~~ must, after notice and a hearing, determine the status of the ~~mortgage~~ claim and enter an appropriate order. If the claim holder does not respond to the motion, the court may enter an order favorable to the moving party based on the facts set forth in the motion.

(g) TRUSTEE'S END-OF-CASE ~~MOTION TO DETERMINE THE STATUS OF~~ NOTICE OF PAYMENTS MADE ~~ON A MORTGAGE CLAIM~~; RESPONSE; COURT DETERMINATION.

(1) *Timing; Content and Service.* Within 45 days after the debtor completes all payments due to the trustee under a ~~chapter~~ Chapter 13 plan, the trustee—if the trustee has made any payments on a claim described in (a)—~~shall~~ must file a ~~motion~~ notice stating:

(A)~~to determine the status of a mortgage claim, including whether any prepetition arrearage has been cured.~~ the amount, if any, the trustee paid to the claim holder to cure any default and whether the default has been cured; and

(B) the amount, if any, the trustee paid to the claim holder for contractual payments that came due during the pendency of the case and whether contractual payments are current as of the date of the notice.

The notice must also inform the claim holder of its obligation to respond under (g)(2). The ~~motion shall~~ notice must be prepared using ~~the appropriate~~ Official Form [ ] and be served on:

- the claim holder;
- the debtor;
- and debtor's ~~counsel~~ attorney.

(2) *Response; ~~Motion to Compel a Response; Objection to the Res ponse~~*. ~~(A) Deadline; Content and Service.~~ The claim holder ~~shall~~ must file a response to the ~~motion~~ notice within 28 days after its service ~~of the motion~~. The response must be filed as a supplement to the claim holder's proof of claim and is not subject to Rule 3001(f). The response ~~shall~~ must be prepared using ~~the appropriate~~ Official Form [ ] and be served on~~: the debtor; debtor's counsel; and the trustee~~ the individuals listed in (b)(1).

~~(B) *Motion for an Order Compelling a Response.* If the claim holder does not timely file a response, a party in interest may move for an order compelling one.~~

~~(C) *Objection.* Within 14 days after service of a response, a party in interest may file an objection to the response.~~

~~(h) ORDER DETERMINING THE STATUS OF A MORTGAGE CLAIM.~~

(~~1~~3) ~~*No Response*~~ *Court Determination of Final Cure and Payment.* ~~If the claim holder fails to comply with an order under (g)(2)(B) to respond to the trustee's motion, the court may enter an order determining that:~~

~~(A) as of the date of the motion, the debtor is current on all payments that the plan requires to be paid to the claim holder, including all escrow amounts; and~~

~~(B) all postpetition legal fees, expenses, and charges incurred or imposed by the claim holder have been satisfied in full.~~

~~(2) *No Objection.* If the claim holder timely responds and no objection is filed, the court may, by order, determine that the amounts stated in~~

~~the claim holder's response reflect the status of the claim as of the date the response was filed.~~

~~(3) *Contested Motion.* If an objection is filed, the court shall, after notice and a hearing, determine the status of the mortgage claim and issue an appropriate order.~~ On motion of the debtor or trustee and after notice and hearing, the court must determine whether the debtor has cured any default and paid all required postpetition amounts. The trustee or debtor may seek such a determination within the following time periods:

- within 28 days after service of the response under (g)(2);
- within 45 days after service of the trustee's notice under (g)(1) if no response is filed by the claim holder under (g)(2); or

- before the Chapter 13 case is closed if the trustee does not file the notice under (g)(1).

~~(4) *Contents of the Order.*~~

~~(A) *Issued Under (h)(2) or (h)(3).*~~ ~~An order issued under (h)(2) or (h)(3) shall include the following information, current as of the date of the claim holder's response or such other date that the court may determine:~~

~~(i) the principal balance owed;~~

~~(ii) the date that the debtor's next payment is due;~~

~~(iii) the amount of the next payment separately identifying the amount due for principal, interest, mortgage insurance, taxes, and other escrow amounts, as applicable;~~

~~(iv) the amounts held in any escrow, suspense, unapplied funds, or similar account; and~~

~~(v) the amount of any fees, expenses, or charges properly noticed under (c) that remain unpaid.~~

~~(B) *Issued Under (h)(1).* An order issued under (h)(1) may include any of the information described in (A) and may address the treatment of any payment that becomes delinquent before the court grants the debtor a discharge.~~

(~~i~~h) CLAIM HOLDER'S FAILURE TO GIVE NOTICE OR RESPOND. If the claim holder fails to provide any information as required by 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

any contested matter or adversary proceeding in the case—unless the court determines that the failure was substantially justified or is harmless; ~~or~~

(2) award other ~~appropriate~~ relief, including reasonable expenses and attorney's fees caused by the failure and, in appropriate circumstances, noncompensatory sanctions; and

(3) take any other action authorized by this rule.

Committee Note

The rule is amended to encourage a greater degree of compliance with its provisions and to ~~provide a more straight-forward and familiar procedure for determining the status of a mortgage claim at the end of a chapter 13 case. It also provides for a new midcase~~ allow assessments of ~~the~~ a mortgage claim's status while a chapter 13 case is pending in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred. Stylistic changes are made throughout the rule, and its title and subdivision headings have been changed to reflect the amended content.

Subdivision (a), which describes the rule's applicability, ~~remains largely unchanged. However, the~~ is amended to delete the word "installment" in the phrase "contractual installment payment" ~~was deleted here and throughout the rule~~ in order to clarify the rule's applicability to reverse mortgages, which are not paid in installments.

In addition to stylistic changes, subdivision (b) is amended ~~to add provisions about the effective date of late payment change notices and~~ to provide more detailed provisions about notice of payment changes for home-equity lines of credit ("HELOCs") and to add provisions about the effective date of late payment change notices. ~~Subdivision (b)(2) now provides that late notices of a payment increase do not go into effect until the required notice period (at least 21 days) expires. There is no delay, however, in the effective date of an untimely notice of a payment decrease.~~

———The treatment of HELOCs presents a special issue under this rule because the amount owed changes frequently, often in small amounts. Requiring a notice for each change can be overly burdensome. Under new subdivision (b)(~~3~~2),

a HELOC claimant ~~only needs~~ may choose to file only annual payment change notices—including a reconciliation figure (net overpayment or underpayment for the past year)—unless the payment change in a single month is for more than $10. This provision also ensures at least 21 days' notice before a payment change takes effect.

As a sanction for noncompliance, subdivision (b)(3) now provides that late notices of a payment increase do not go into effect until the first payment due date after the required notice period (at least 21 days) expires. The claim holder will not be permitted to collect the increase for the interim period. There is no delay, however, in the effective date of an untimely notice of a payment decrease.

~~Only stylistic~~ The changes ~~are~~ made to subdivisions (c) and (d) are largely stylistic. Stylistic changes are also made to subdivision (e). In addition, the court is given authority, upon motion of a party in interest, to shorten the time for seeking a determination of the fees, expenses, or charges owed. Such a shortening, for example, might be appropriate in the later stages of a chapter 13 case.

Subdivision (f) is new. It provides ~~the~~ a procedure for ~~a midcase assessment of~~ assessing the status of the mortgage at any point while the chapter 13 case is pending.~~,~~ ~~which~~ This optional procedure, which should be used only when necessary and appropriate for carrying out the plan, allows the debtor and the trustee to be informed of any deficiencies in payment and to reconcile records with the claim holder in time ~~in the chapter 13 case~~ to become current before the case is closed. The procedure ~~begins with the trustee providing notice of the status of the mortgage~~ is initiated by motion of the trustee or debtor. An Official Form has been adopted for this purpose. The ~~mortgage~~ claim holder then has to respond if it disagrees with facts

stated in the motion, again using an Official Form to provide the required information. ~~If the claim holder fails to respond, a party in interest may seek an order compelling a response. A party in interest may also object to the claim holder's response.~~ If ~~an objection is made~~the claim holder's response asserts such a disagreement, the court, after notice and a hearing, will determine~~s~~ the status of the mortgage claim. If the claim holder fails to respond, the court may enter an order favorable to the moving party by default.

As under the former rule, ~~there is an assessment of the status of the mortgage at the end of a chapter 13 case—when the debtor has completed all payments under the plan. The procedure is changed, however, from a notice to a motion procedure that results in a binding order, and time periods for the trustee and claim holder to act have been lengthened~~ the trustee must file a notice at the end of the case if the trustee has made payments to the claim holder on a claim covered by the rule. Under subdivision (g), ~~the trustee begins the procedure by filing~~—within 45 days after the last plan payment is made to the trustee~~,~~ ~~—a motion to determine the status of the mortgage~~ the trustee must file a notice of final cure and payment. An Official Form has been adopted for this purpose. The notice will state the amount that the trustee has paid to cure any default on the claim and whether the default has been cured. It will also state the amount, if any, that the trustee has paid on contractual obligations that came due during the case and whether those payments are current as of the date of the notice. The claim holder then must respond within 28 days after service of the ~~motion~~notice, again using an Official Form to provide the required information. ~~If the claim holder fails to respond, a party in interest may seek an order compelling a response. A party in interest may also object to the response.~~

~~This process ends with a court order detailing the status of the mortgage (subdivision (h)).~~ Either the trustee or the debtor may file a motion for a determination of final cure and payment. The motion must be filed within 28 days after the claim holder responds to the trustee's notice under (g)(1), or if ~~If~~ the claim holder fails to respond to the notice, within 45 days after the notice was served. If no notice was filed, the motion may be made at any time before the case is closed. ~~to an order compelling a response, the court may enter an order stating that the debtor is current on the mortgage. If there is a response and no objection to it is made, the order may accept as accurate the amounts stated in the response. If there is both a response and an objection, the~~ The court ~~must~~ will then determine the status of the mortgage. ~~Subdivision (h)(4) specifies the contents of the order.~~ A Director's Form provides guidance on the type of information that should be included in the order.

Subdivision (h) was previously subdivision (*i*). It has been amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule. It also expressly states that noncompensatory sanctions may be awarded in appropriate circumstances. Stylistic changes have also been made to the subdivision.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

Rule 3002.1. ~~Notice Relating to~~ Chapter 13 ~~Claims~~ Claim Secured by a Security Interest in the Debtor's Principal Residence ~~in a Chapter 13 Case~~ [2]

(a) IN GENERAL. This rule applies in a Chapter 13 case to a claim that is secured by a security interest in the debtor's principal residence and for which the plan provides for the trustee or debtor to make contractual ~~installment~~ payments. Unless the court orders otherwise, the ~~notice~~ requirements of this rule cease when an order terminating or annulling the automatic stay related to that residence becomes effective.

(b) NOTICE OF A PAYMENT CHANGE; HOME-EQUITY LINE OF CREDIT; EFFECT OF AN UNTIMELY NOTICE; OBJECTION.

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[1] New material is underlined in red; matter to be omitted is lined through.

[2] The changes indicated are to the restyled version of Rule 3002.1, not yet in effect.

(1) *Notice by the Claim Holder.* The claim holder must file a notice of any change in the payment amount ~~of an installment payment~~ including any change resulting from an interest-rate or escrow-account adjustment. Except as provided in (b)(2), ~~At~~ at least 21 days before the new payment is due,the notice must be filed and served on:

- the debtor;
- the debtor's attorney; and
- the trustee.

~~If the claim arises from a home-equity line of credit, the court may modify this requirement.~~

(2) *Notice of a Change in a Home-Equity Line of Credit.*

(A) *Deadline.* If the claim arises from a home-equity line of credit, the notice of a payment change must be filed and served either as provided in (b)(1) or within one year

after the bankruptcy petition was filed and then at least annually.

(B) *Contents of the Annual Notice.* The annual notice must:

(1) state the payment amount due for the month when the notice is filed; and

(2) include a reconciliation amount to account for any overpayment or underpayment during the prior year.

(C) *Amount of the Next Payment.* The first payment due at least 21 days after the annual notice is filed and served must be increased or decreased by the reconciliation amount.

(D) *Effective Date.* The new payment amount stated in the annual notice

(disregarding the reconciliation amount) will be effective on the first payment due date after the payment under (C) is made and will remain effective until a new notice becomes effective.

(E) *Payment Changes Greater Than $10.* If the claim holder opts to give annual notices under (b)(2) and the monthly payment increases or decreases by more than $10 in any month, the claim holder must file and serve (in addition to the annual notice) a notice under (b)(1) for that month.

(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 is as follows:

(A) 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 and served, or

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

(4) *Party in Interest's Objection.* A party in interest who objects to ~~the~~ a payment change noticed under (b)(1) or (b)(2) may file and serve a motion to determine ~~whether the change is required to maintain payments under § 1322(b)(5)~~the validity of the payment change. Unless the court orders otherwise, if no motion is filed ~~by~~ before the day ~~before~~ the new payment is due, the change goes into effect on that date.

(c) FEES, EXPENSES, AND CHARGES INCURRED AFTER THE CASE WAS FILED; NOTICE BY THE CLAIM HOLDER. The claim holder must file a notice itemizing all fees, expenses, and charges that the

claim holder has incurred after the case was filed that the holder asserts are recoverable against the debtor or the debtor's principal residence. Within 180 days after the fees, expenses, or charges ~~were~~ are incurred, the notice must be filed and served on the individuals listed in (b)(1).~~:~~

~~• the debtor;~~

~~• the debtor's attorney; and~~

~~• the trustee.~~

(d) FILING NOTICE AS A SUPPLEMENT TO A PROOF OF CLAIM. A notice under (b) or (c) must be filed as a supplement to ~~the~~ a proof of claim using Form 410S-1 or 410S-2, respectively. The notice is not subject to Rule 3001(f).

(e) DETERMINING FEES, EXPENSES, OR CHARGES. On a party in interest's motion ~~filed within one year after the notice in (c) was served~~, the court must, after notice and a hearing, determine whether paying any claimed fee, expense, or charge is required by the underlying

agreement and applicable nonbankruptcy law. ~~to cure a default or maintain payments under § 1322(b)(5).~~ The motion must be filed within one year after the notice under (c) was served, unless a party in interest has requested and the court orders a shorter period.

(f) MOTION TO DETERMINE STATUS; RESPONSE; COURT DETERMINATION.

(1) *Timing; Content and Service.* At any time after the date of the order for relief under Chapter 13 and until the case is closed, the trustee or debtor may file a motion to determine the status of any claim described in (a). The motion must be prepared using Official Form [ ] and be served on:

- the debtor and the debtor's attorney, if the trustee is the movant;
- the trustee, if the debtor is the movant; and
- the claim holder.

(2) *Response; Content and Service.* If the claim holder disagrees with facts set forth in the motion, it must file a response within 21 days after the motion is served. The response must be prepared using Official Form [ ] and be served on the individuals listed in (b)(1).

(3) *Court Determination.* If the claim holder's response asserts a disagreement with facts set forth in the motion, the court must, after notice and a hearing, determine the status of the claim and enter an appropriate order. If the claim holder does not respond to the motion, the court may enter an order favorable to the moving party based on the facts set forth in the motion.

(fg) ~~NOTICE OF THE FINAL CURE PAYMENT.~~ TRUSTEE'S END-OF-CASE NOTICE OF PAYMENTS MADE; RESPONSE; COURT DETERMINATION.

(1) ~~*Contents of a Notice*~~ *Timing; Content and Service*. Within ~~30~~ 45 days after the debtor completes all payments due to the trustee under a Chapter 13 plan, the trustee~~—~~if the trustee has made any payments on a claim described in (a)~~—~~ must file a notice stating:

(A) ~~stating that the debtor has paid infull~~ the amount ~~required~~, if any, the trustee paid to the claim holder to cure any default ~~on the claim~~and whether the default has been cured; and

(B) the amount, if any, the trustee paid to the claim holder for contractual payments that came due during the pendency of the case and whether contractual payments are current as of the date of the notice.

~~informing the claim holder of itsobligation to file and serve a response under (g).~~

The notice must also inform the claim holder of its obligation to respond under (g)(2). The notice must be prepared using Official Form [ ] and be served on:

- the claim holder;
- the debtor;
- and debtor's attorney.

~~(2) *Serving the Notice*. The notice mustbe served on:~~

- ~~the claim holder;~~
- ~~the debtor; and~~
- ~~the debtor's attorney.~~

(2) *Response*. The claim holder must file a response to the notice within 28 days after its service. The response must be filed as a supplement to the claim holder's proof of claim and is not subject to Rule 3001(f). The response must be prepared using Official Form [ ] and be served on the individuals listed in (b)(1).

~~(3) *The Debtor's Right to File.* The debtor may file and serve the notice if:~~

~~(A) the trustee fails to do so; and~~

~~the debtor contends that the final cure payment has been made andall plan payments have been completed.~~

Court Determination of Final Cure and Payment. On motion of the debtor or trustee and after notice and hearing, the court must determine whether the debtor has cured any default and paid all required postpetition amounts. The trustee or debtor may seek such a determination within the following time periods:

- within 28 days after service of the response under (g)(2);
- within 45 days after service of the trustee's notice under (g)(1) if no

response is filed by the claim holder under (g)(2); or

- before the chapter 13 case is closed if the trustee does not file the notice under (g)(1).

~~(g) RESPONSE TO A NOTICE OF THE FINAL CUREPAYMENT.~~

~~(1) *Required Statement.* Within 21 days after the notice under (f) is served, theclaim holder must file and serve a statement that:~~

~~(A) indicates whether:~~

~~(i) the claim holder agrees that the debtor has paid in full the amount required to cure any default on the claim; and~~

~~(ii) the debtor is otherwise current on all payments under § 1322(b)(5); and~~

~~(B) itemizes the required cure or~~

~~postpetition amounts, if any, that the claim holder contends remain unpaid as of the statement's date.~~

~~(2) *Persons to be Served.* The holdermust serve the statement on:~~

- ~~the debtor;~~
- ~~the debtor's attorney; and~~
- ~~the trustee.~~

~~(3) *Statement to be a Supplement.* The statement must be filed as a supplement to the proof of claim and is not subject to Rule 3001(f).~~

~~(h) DETERMINING THE FINAL CURE PAYMENT. On the debtor's or trustee's motion filed within 21 days after the statement under (g)is served, the court must, after notice and a hearing, determine whether the debtor has cured the default and made all required postpetition payments.~~

(~~i~~h) CLAIM HOLDER'S FAILURE TO GIVE

NOTICE OR RESPOND. If the claim holder fails to provide any information as required by ~~(b), (c), or (g)~~this rule, the court may, after notice and a hearing, ~~take one or bothof these actions~~do one or more of the following:

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

(2) award other ~~appropriate~~ relief, including reasonable expenses and attorney's fees caused by the failure and, in appropriate circumstances, noncompensatory sanctions; and

(3) take any other action authorized by this rule.

Committee Note

The rule is amended to encourage a greater degree of compliance with its provisions and to allow assessments of a mortgage claim's status while a chapter 13 case is pending in order to give the debtor an opportunity to cure any postpetition defaults that may have occurred. Stylistic changes are made throughout the rule, and its title and subdivision headings have been changed to reflect the amended content.

Subdivision (a), which describes the rule's applicability, is amended to delete the word "installment" in the phrase "contractual installment payment" in order to clarify the rule's applicability to reverse mortgages, which are not paid in installments.

In addition to stylistic changes, subdivision (b) is amended to provide more detailed provisions about notice of payment changes for home-equity lines of credit ("HELOCs") and to add provisions about the effective date of late payment change notices. The treatment of HELOCs presents a special issue under this rule because the amount owed changes frequently, often in small amounts. Requiring a notice for each change can be overly burdensome. Under new subdivision (b)(2), a HELOC claimant may choose to file only annual payment change notices—including a reconciliation figure (net overpayment or underpayment for the past year)—unless the payment change in a single month is for more than $10. This provision also ensures at least 21 days' notice before a payment change takes effect.

As a sanction for noncompliance, subdivision (b)(3) now provides that late notices of a payment increase do not go into effect until the first payment due date after the required notice period (at least 21 days) expires. The claim

holder will not be permitted to collect the increase for the interim period. There is no delay, however, in the effective date of an untimely notice of a payment decrease.

The changes made to subdivisions (c) and (d) are largely stylistic. Stylistic changes are also made to subdivision (e). In addition, the court is given authority, upon motion of a party in interest, to shorten the time for seeking a determination of the fees, expenses, or charges owed. Such a shortening, for example, might be appropriate in the later stages of a chapter 13 case.

Subdivision (f) is new. It provides a procedure for assessing the status of the mortgage at any point while the chapter 13 case is pending. This optional procedure, which should be used only when necessary and appropriate for carrying out the plan, allows the debtor and the trustee to be informed of any deficiencies in payment and to reconcile records with the claim holder in time to become current before the case is closed. The procedure is initiated by motion of the trustee or debtor. An Official Form has been adopted for this purpose. The claim holder then has to respond if it disagrees with facts stated in the motion, again using an Official Form to provide the required information. If the claim holder's response asserts such a disagreement, the court, after notice and a hearing, will determine the status of the mortgage claim. If the claim holder fails to respond, the court may enter an order favorable to the moving party by default.

As under the former rule, the trustee must file a notice at the end of the case if the trustee has made payments to the claim holder on a claim covered by the rule. Under subdivision (g), within 45 days after the last plan payment is made to the trustee, the trustee must file a notice of final cure and payment. An Official Form has been adopted for this

purpose. The notice will state the amount that the trustee has paid to cure any default on the claim and whether the default has been cured. It will also state the amount, if any, that the trustee has paid on contractual obligations that came due during the case and whether those payments are current as of the date of the notice. The claim holder then must respond within 28 days after service of the notice, again using an Official Form to provide the required information.

Either the trustee or the debtor may file a motion for a determination of final cure and payment. The motion must be filed within 28 days after the claim holder responds to the trustee's notice under (g)(1), or if the claim holder fails to respond to the notice, within 45 days after the notice was served. If no notice was filed, the motion may be made at any time before the case is closed. The court will then determine the status of the mortgage. A Director's Form provides guidance on the type of information that should be included in the order.

Subdivision (h) was previously subdivision (*i*). It has been amended to clarify that the listed sanctions are authorized in addition to any other actions that the rule authorizes the court to take if the claim holder fails to provide notice or respond as required by the rule. It also expressly states that noncompensatory sanctions may be awarded in appropriate circumstances. Stylistic changes have also been made to the subdivision.

Comments on Rule 3002.1 Amendments

Lauren Helbling (BK-2021-0002-0003) – I am a chapter 13 trustee, and we rarely find errors or issues when we file a notice of final cure at the end of the case. Rule 3002.1(f)'s requirement of a midcase notice of the status of a mortgage claim will impose additional costs on our office and the mortgage lender's office without providing an equivalent associated benefit. I do not think this rule is needed.

Keith Rodriguez (BK-2021-0002-0004) – (f)(2)(A): Change "shall" to "may" in requiring a claim holder to file a response. Bankruptcy proceedings are based on notice and an "opportunity for hearing." If a claim holder chooses not to respond, then the matter can still be completed without the necessity of a hearing. In that way you also eliminate (2)(B) compelling a response.

Subdivision (g)(2)(A) and (2)(B): Change "shall" to "may" for the same reason.

Subdivision (h)(1): Since this gives an opportunity to obtain an order without a response having been filed, remove the requirement to file a response in either (f) or (g).

Subdivision (h)(4): If there is no objection to a response by a claim holder or if there was a hearing, then an order will be entered. Presumably the claim holder is preparing this order since the trustee cannot know the information called for in (4)(A)(i), (ii), (iii) or (iv).

Keith Lundin (BK-2021-0002-0005) – Overall: (1) The proposed amendments introduce a new "mid-case" mortgage claim status review -- which is a great idea -- but for no obvious good reason, the mid-case and end-of-case procedures are completely different. This will guarantee confusion, mistakes, opposition, and poor absorption of the mid-case review. The overall structure should be rewritten to create a unitary status review process that is available, with minor differences at "mid-case" and "end-of-case." Both reviews should be motion practice using the same Official Form, the same internal deadlines and very similar default consequences.

(2) The introduction of a new "motion for an order compelling a response" is a bad idea that should be abandoned; at the very least, it should be substantially modified to mimic Rule 37(a) of the FRCP, as detailed below. This new step in the procedure for determining the status of a mortgage is a tacit acknowledgment that the mortgage servicing community has failed to teach itself how to manage Rule 3002.1 after a decade of not really trying. Rather than forcing the industry to fix that failure, the proposed compulsion motion imposes a substantial new layer of cost and delay on the innocent victims of servicer misconduct and rewards mortgage servicers for their incompetence by delaying consequences and creating new defenses.

Subdivision (a): Limiting the rule to plans that "require[ ]…contractual payments" is step in right direction but remains unnecessarily ambiguous. Many chapter 13 plans don't require "contractual payments" of home mortgages. They "modify" the contractual payments, they provide nothing (wholly unsecured junior liens; stripped liens), or they surrender the property without payment of secured claims. The rule should apply in all such situations because the debtor remains liable for amounts with respect to which the rule requires notices, motions, and orders. The rule should apply to "*all claims secured by a security interest in the debtor's*

principal residence with respect to which the plan provides for the claim, addresses the claim, or deals with the claim in any manner." This approximates some Supreme Court language and clarifies the broad application of this rule to all home mortgages in chapter 13 cases.

Terminating application of Rule 3002.1 when an order "terminating or annulling the automatic stay" becomes effective is backwards and unnecessarily limited. Stay relief is about forum selection; it tells us nothing about whether a plan will control the debtor's relationship with the mortgage claim holder, and it tells us nothing about when something material will happen with respect to the property, the claim, and/or the debtor's liability. The rule should continue to apply unless the order for stay relief says that it won't (the opposite default position). This would simplify the processing of mortgage claims in chapter 13 cases without requiring debtors to always seek an order keeping Rule 3002.1 in place after stay relief. Also, what happened to orders "*modifying*" the automatic stay? Orders modifying the stay are very common in chapter 13 practice and arguably aren't addressed by this provision as drafted. Stay relief orders with respect to mortgages often "modify" the stay by stating specific conditions on continuation of the stay. Rule 3002.1 should continue to apply after a stay modification order unless the order says otherwise.

Subdivision (b)(1): This is first use of "claim holder," and I suggest either a broader term or a specific definition that clarifies that claim holder includes (throughout this rule) "servicers" and other "agents" that act on behalf of mortgagees in chapter 13 cases. There has been endless, unproductive litigation about standing to file proofs of claim, supplements, and notices. Some of that litigation could be avoided by making it clear that mortgage servicers and other agents are subject to all the provisions of Rule 3002.1 without regard to whether they have proper assignments from the actual mortgagee and that mortgagees are subject to Rule 3002.1 without regard to whether they have correctly assigned, sold, or otherwise transferred servicing rights.

Subdivision (b)(4): The motion in this paragraph should be "file[d] *and served*"—not just "file[d]"—to be consistent with the instructions and counting protocols elsewhere in the rule. Perhaps the service list for this motion should be specified, to be consistent with the treatment of service of notices and motions elsewhere in the rule. Some suggested expansion of the service list is mentioned below: adding the U.S. trustee and all other lien holders on the property.

The reference to "under § 1322(b)(5) of the Code" should be stricken. This is a vestige of a prior version of Rule 3002.1, and this is one of two references to cure and maintain plans under § 1322(b)(5) that should have been removed in an earlier revision but weren't (see (e) below). Payment change notices should not be limited to cure and maintain plans.

What does "immediately" mean here? A more specific date would be helpful. Perhaps "*the effective date determined by subdivision (b).*"

Subdivision (c): This subdivision ambiguously requires both filing and service of the notice of postpetition fees, expenses, and charges, but then counts the 180-day limitation from service without mention of filing. This should be remedied to require the *filing and service* of the notice within the 180-day period after fees, expenses, or charges are incurred or imposed.

Subdivision (d): Consider adding at end of this subdivision: "*The notice is subject to Rule 3006.*" There are big problems with servicers withdrawing their notices when they get caught by a debtor or trustee doing something they shouldn't. Trustees and debtors often need conditions on the withdrawal of a notice, and Rule 3002.1 should state clearly that "supplements" to a proof of claim are subject to the same withdrawal rules as the underlying proof of claim.

Subdivision (e): The phrase, "to cure a default or maintain payments under § 1322(b)(5) of the Code" should be deleted. This is the second vestigial reference to § 1322(b)(5), and it should be eliminated for the same reasons given above.

The one-year requirement in the last sentence is curiously worded and confusing. Counting the year from service of the notice instead of from filing of the notice is guaranteed to create unnecessary litigation. After correcting the wording of (c) discussed above, the one-year limitation should be counted from "filing" or from "filing and service" of the notice. The confusing part is the reference to "the party" in the last sentence. In context, the party seems to refer to the "party in interest" that has filed a motion to determine fees, expenses, or charges. Why would the moving party request a court order to shorten the time within which the motion can be filed? Perhaps "party" should be "*claim holder*" in the last sentence.

Subdivision (f): It makes no sense to have a mid-case "notice" and an end-of-case "motion" as the proposed amended rule now reads. Most of the same review and exchange of information will be needed at both times during the case, and both reviews should end in an order that cements the key data points. Consider rewording the first sentence: "*Between 18 and 24 months after the bankruptcy petition was filed – or at such other time as the court fixes by order or local rule – the trustee shall file a motion to determine the status of a mortgage claim, including whether any prepetition arrearage has been cured. The motion shall be prepared using the appropriate Official Form and be served on . . . .*" With a little work, (f) and (g) could be usefully combined into a single subdivision with the same procedure and form but slightly different content to the resulting orders.

The rest of the comments below apply in large part to both the mid- and end-of-case provisions, as if both are motion practice.

The mid- and end-of-case motions should be served on all other claim holders secured by the same property, and the U.S. trustee should be added to the service list. Junior lien holders are often impacted by the status of payments to a senior lien holder, and vice versa – even if not all lien holders are receiving payments under the plan. The UST has performed monitoring functions with respect to the behavior of mortgage servicers, and including the UST in the 3002.1 process seems wise.

Subdivision (f)(2)(B): The motion to compel is troubling on several levels. The provision should be fully fleshed-out with sanctions provisions that mirror Rule 37(a), including costs, attorney fees, and the like. As written, this motion to compel is toothless and confusing. Is it intended to limit the right to other remedies under the rule? Is it prerequisite to other remedies? Is this compulsion process in addition to the remedies in (i)? Does the filing of a

motion to compel do anything except potentially extend the 21-day deadline for filing a response? This confusion is compounded by the provision in Rule 3002.1(h)(1), discussed below, that authorizes court action with respect to an end-of-case motion when the claim holder fails to comply with an order of compulsion under Rule 3002.1(g)(2)(B). There is no analogue when a claim holder fails to comply with a mid-case compulsion order under Rule 3002.1(f)(2)(B).

Subdivision (f)(2)(C): The provision for objecting to a mid-case response illustrates why (f) and (g) should be rewritten as a single rule. There is no limitation period for an objection to a mid-case response, but there is a 14-day deadline for an objection to the response to an end-of-case motion in Rule 3002.1(g)(2)(C). This kind of incongruence creates nightmares for the bankruptcy community for no good reason.

Subdivision (f)(2)(D): There is also incongruence here. In (g) there is an elaborate provision for what happens if there is no timely response to the end-of-case motion. In (f) there is no guidance with respect to what happens when the claim holder fails to respond to a mid-case notice (other than the inadequate motion to compel discussed above). Subdivision (f)(2)(D) authorizes the court to determine the status of the mortgage only if a response is filed to the mid-case motion, and then only if an objection to that response is filed. The rule should authorize the court to determine the status of the mortgage claim at mid-case in the same manner that (g) authorizes the court to make specific findings when a claim holder fails to timely respond to an end-of-case motion. Again, a single rule would solve this problem.

Subdivision (g): The 45-days within which the trustee must file the end-of-case motion—"after the debtor completes all payments under a chapter 13 plan"—should be changed. Assessing the status of the mortgage after it is too late to modify the plan under § 1329 severely limits the effectiveness of the rule. Reset the end-of-case motion to "*no later than 90 days before the date on which the trustee projects that the debtor will complete all payments under a chapter 13 plan—or such earlier date as the court may direct by order or local rule.*"

Rule 3002.1(g) has the same problems discussed above with respect to the service list and the motion to compel.

Subdivision (h): The phrase "to comply with an order under (g)(2)(B)" should be stricken. As mentioned above, the motion to compel process added to this amended rule creates ambiguity about the availability of remedies when a claim holder fails to respond to a mid-case notice or end-of-case motion and shifts burdens to trustees and debtors to file multiple unnecessary motions to force servicers to do what they are required to do. As written, Rule 3002.1(h)(1) limits court authority to make the listed determinations to circumstances in which (1) no timely response was filed by the claim holder to an end-of-case motion, (2) a motion to compel a response was filed, (3) an order compelling a response was entered, and (4) the claim holder failed to comply with the order compelling a response. This multi-step procedure is an unjustifiable regression from the current rule and serves only to reward mortgage servicers for failing to comply with notices and motions from the trustee. The failure to respond to a trustee's end-of-case motion is itself the transgression that should trigger the consequences in Rule 3002.1(h)(1)(A) and (B).

The reference to "payments that the plan requires to be paid to the claim holder" in Rule 3002.1(h)(1)(A) could be a problem in the 11th Circuit and other jurisdictions in which "direct payments" by the debtor to a mortgage holder are not considered to be "payments under the plan." Perhaps the phrase should be reworded, "*payments required to be paid to the claim holder*" without limitation.

The word, "legal" should be stricken from Rule 3002.1(h)(1)(B). The fees that mortgage claim holders add to their ledgers are not limited to legal fees. All postpetition fees, expenses and charges should be declared "satisfied" without regard to source.

Rule 3002.1(h)(4)(A)(v) should be rewritten to say, "properly noticed under (c) *and not disallowed* that remain unpaid."

Subdivision (i): The ambiguity created by the addition of the motion to compel process should be eliminated by eliminating the proposed motion to compel; but if that is not going to happen, the first sentence of (i) should be rewritten to clarify that the remedies in (i) apply without regard to the motion to compel: "If the claim holder fails to provide any information required by this rule – *including failing to timely give a notice or failing to timely respond to a notice or motion or being compelled to respond by motion or court order* – the court may, ..."

A fix is needed for *In re Gravel*, 6 F.4th 503 (2nd Circuit 2021). Part of the (mistaken) rationale of the majority in *Gravel* was the absence of specific mention in Bankruptcy Rule 3002.1(i) of punitive damages as an available remedy for violation of the rule. Please reword Rule 3002.1(i)(2) by adding after "failure," "*and, in appropriate circumstances, punitive damages;*".

68 Chapter 13 Trustees (BK-2021-0002-0006) – If the Committee proceeds with the proposed amendments, the rule should be revised to permit the party making the postpetition mortgage payments—either the trustee or the debtor—to file the notice or motion that triggers the obligation of the claim holder to respond. The rule's one-size-fits-all approach (for both conduit and nonconduit plans) does not work well. While the procedure is appropriate for a conduit trustee who has records of all payments to cure prepetition arrearages and to maintain the mortgage postpetition, a nonconduit trustee does not have all of the needed information. It is the debtor that has records of postpetition payments. The proposed end-of-case motion form for a nonconduit case requires the trustee to request that the debtor be deemed current, but the trustee has no basis for seeking that determination, and the debtor is not required to document that he or she is current. The debtor in a nonconduit situation therefore should be the one to initiate the process leading to the midcase and end-of-case determinations.

It might also be questioned whether a change in the current procedure under Rule 3002.1 is needed. Currently nothing prevents a trustee or debtor from filing a motion to determine that the mortgage is current. Such a motion is required only when there's a dispute. Under the proposed amendments, a motion will be required in every case, thereby creating more work for the court and the parties. Moreover, debtors have access to mortgage payment information from a number of sources. Chapter 13 trustees send debtors and their attorneys annual reports of

receipts and disbursements; parties in interest can review plan payments and disbursements online; mortgage servicers are now required to send monthly mortgage statements to chapter 13 debtors; and notices of payment changes and postpetition fees, expenses, and charges are docketed. The new requirements may therefore be unnecessary.

Laila Gonzalez (BK-2021-0002-0008) – A midcase audit is not needed. The notices of payment change and the motion to determine final care payment are sufficient. The midcase audit will do nothing but increase the attorney's fees for the debtor.

O. Max Gardner III (BK-2021-0002-0010) – As a consumer bankruptcy attorney for 47 years, the biggest problem I've had to deal with is the difference between the status of the debtor's mortgage obligations as maintained by the debtor, the chapter 13 trustee, and the mortgage servicer. In recent years, this problem has been exacerbated by the constant selling of mortgage servicing rights during a chapter 13 case and the substantial increase in non-bank sub-servicers. We are also dealing with two sets of records of the mortgage servicer or sub-servicer: the system of record, which runs as if no bankruptcy has been filed, and the non-system of record that purports to track mortgage payments under the confirmed chapter 13 plan. As a result, the primary system will never be in sync with the chapter 13 plan. This new rule will add a new obligation on servicers and sub-servicers at least to reconcile their records once before the completion of the case. Such a process should reduce the deemed current violations and enhance the enforcement of Rule 3002.1.

Mary Beth Ausbrooks (BK-2021-0002-0012) – I have been a consumer bankruptcy attorney representing debtors in chapter 13 bankruptcies since 1996. In my district, the trustee has always filed a mid-case audit and a final cure at the end of the case. Motions are better than notices, as an order is generated. The trustee is in the best position to file the motion as he/she is the keeper of the records in conduit jurisdictions. This process has worked seamlessly in my district. The Order Declaring the Mortgage Current is as important as the Discharge Order. The mid-case review gives an opportunity for the servicer "to shore up" their records. The end of the case motion makes it clear that this mortgage obligation is contractually current at the time of the discharge of the case.

Keith Slocum (BK-2021-0002-0013) – Mortgage servicers keep two sets of records to deal with loans that are involved in chapter 13. The normal system fails to accurately account for the chapter 13 payments and plan, which often leads to the discrepancies between the status of the debtor's mortgage obligations as maintained by the debtor, the chapter 13 trustee, and the mortgage servicer. Rule 3002.1 is a critical tool to make sure that the debtor, the chapter 13 trustee, and the mortgage servicer reconcile numbers before the debtor gets a discharge. The entire chapter 13 system will work better and run more smoothly the more often servicers and sub-servicers reconcile the numbers with the trustee and the debtor. The mortgage industry takes advantage of borrowers in chapter 13, which is why Rule 3002.1 is so important.

Jennifer Johnson (BK-2021-0002-0014) – The proposed rule changes are similar to what we require in the Middle District of TN. These rules protect creditor and debtor interests alike, ensuring all the proper documentation/information is provided to back up the accuracy of the status of the mortgage. I fully support these rules nationwide.

Daniel Castagna (BK-2021-0002-0015) – (Consumer bankruptcy attorney.) The most effective rule that has been implemented in the last two decades has been Rule 3002.1, but the rule is not perfect. I support adoption of the amended rule be adopted because it would allow debtors and their attorneys to continue to monitor their payments with respect to their mortgage in a clearer and more forthcoming way. These mid-case audits will work for the benefit of all involved – debtor, trustee, and mortgage creditors. If there are problems with payments, they can be dealt with while there is still time in the plan to remedy them. In addition, the end of case requirements help to ensure that the discharge is backed up by proper accounting and that all parties are in agreement before the debtor leaves the protection of the bankruptcy system.

National Bankruptcy Conference (BK-2021-0002-0016) – As written, HELOCs are literally subject to both (b)(1) and (b)(3). The obvious intent is that HELOCs only need to comply with (b)(3). This ambiguity could be fixed by adding a clause to (b)(1) that states "except as provided in paragraph (3),".

Although part of the substantive changes, there is a stylistic issue with the new last sentence in (e). It allows the court to shorten the time period for challenging a payment change notice, but it uses the definite article "the" to refer to "the party." That would seem to be a reference back to earlier in the subsection about the party bringing the motion. It makes no sense that a party bringing a motion would want to shorten the time period for so doing – such a party could just bring the motion earlier. We suggest that the last sentence should substitute "a party in interest" for "the party," which is consistent also with the comment that it is intended to allow a party in interest to move to shorten the time.

In (f)(2)(A), "debtor's counsel" should be changed to "debtor's attorney" to be consistent with the usage in the rest of the rule.

Subdivisions (f), (g), and (h) refer to a "mortgage claim." That is not a defined term and is also overbroad to the extent a mortgage can be on something other than the debtor's principal residence. Although the intent seems to be to apply these subsections only to "mortgages" covered by the rule, it would be better to use the word "claim" here or make clear these subsections apply to mortgages to which the rule applies, perhaps by a reference back to subsection (a). If the intent was to cover mortgages on real property other than the debtor's residence, then the rule should make that clear, using language that mimics the Bankruptcy Code and that accounts for different usages across state law (e.g., deeds of trust) – "a claim secured by real property".

Kyle Craddock (BK-2021-0002-0017) – Rule 3002.1 is the most helpful rule that has been added since the enactment of BAPCPA, short of the provisions in the CARES act that allowed for modification of a chapter 13 past 60 months. In our district, the conduit system works well. I note that the "extra work" trustees don't want to do is mostly done by computer software. So, in general, I am very much in favor of the proposed new changes to Rule 3002.1.

Specific suggestions: Subdivision (g)(1) sounds like a good idea, and it would work as long as there are no problems. If, however, a response to the trustee's motion is filed saying that

the mortgage is not current at the end of the plan and that turns out to be accurate, there's no mechanism to address the problem. The plan is over and, assuming the plan is at or past 60 months by that point, 11 USC § 1329 will prevent modification. The mid-case audit would help prevent this, but the final audit should be moved to some time prior to the completion of the case.

Henry Hildebrand (BK-2021-0002-0018) – (Chapter 13 trustee; member of ABI Consumer Bankruptcy Commission.) Rule 3002.1 and Rule 3001(c) have been the most beneficial rules for helping debtors emerge from chapter 13 current in mortgage payments. There are, however, some remaining problems with the rules. By waiting until after the last payment under the plan, the existing rule precludes any modification of the plan that might cure the default. By creating a "mid case notice," the proposed rule will work to diminish the current "gotcha" element when the discrepancy is discovered at the end of the case.

Although I feel that a motion as suggested by the NACTT and ABI Commission would bring more people to the table, and the establishment of similar processes in the mid-case true-up and the end of the case reconciliation makes sense, I acknowledge that the notice as proposed will have a reduced cost to the servicers and, in non-conduit jurisdictions, to the debtor.

A mid-case true-up should apply in both conduit and non-conduit jurisdictions. A common procedure is desirable. Also, I recognize a benefit to the process for a "conduit" jurisdiction, but I also see the absolute necessity for the process in a "non-conduit" jurisdiction.

Subdivision (f)(1): The mid-case notice should be filed 18 to 24 months after confirmation, rather than after filing. That timing would be a better gauge of the status of the mortgage, particularly when some cases take an extremely long time to achieve confirmation.

The end-of-case determination will allow debtors to emerge from their bankruptcy secure in the knowledge that their mortgage payments are current, with a federal court order that so finds. It is altogether appropriate that the end-of-case motion be filed both in conduit and in non-conduit jurisdictions. As a conduit trustee, I am using the end-of-case motion to align a servicer's records with my records to assist the debtors as they emerge. In a non-conduit jurisdiction, the reconciliation would obviously assist both the debtor and the servicer to ensure that the debtor and servicer agree about the status of the mortgage as the debtor emerges from bankruptcy.

Subdivision (h): I encourage the Committee to avoid the use of the word "current" as employed in proposed subsection (h). The question is whether the debtor has made all payments required by the plan (which include those paid directly to the servicer by the debtor). After all, the debtor and the creditor may have mutually agreed to make some fees, expenses, or charges after the discharge. In such a case, the debtor may not be current, but he or she has completed payments under the plan.

Many servicers have advised that in non-conduit jurisdictions, there are a significant number of cases where no notice, let alone a motion, is filed by the trustee at the end of the case. Some of my colleagues in those jurisdictions are reluctant to initiate the "true-up" if they lack the records to back them up. I believe that the proposed rule as drafted would work in both

situations – "conduit" and "non-conduit" – by changing the Official Forms language in section 6 (the prayer section) as follows:

> 6. Therefore, I ask the court for an order under Rule 3002.1(h) determining that, as of the date of this motion, the debtor has cured the prepetition arrearage on the mortgage. I also ask the court to determine the status of the long-term mortgage obligation treated in the Plan and whether the payments required by the plan have been made.

Subdivision (i): The Second Circuit has held that the current rules does not authorize the award of punitive damages. I suggest that in this process the Rules Committee bolster the remedies in the rule in a manner similar to F.R. Civ. P. 37.

National Conference of Bankruptcy Judges (BK-2021-0002-0020) – NCBJ does not oppose the proposed subdivision (b)(3). However, NCBJ is concerned that the rule may be vulnerable to challenge because the annual review and reconciliation procedure effects a change in the parties' contractual rights by deferring the claimant's right to collect a portion of a monthly payment when it is due. If a chapter 13 plan does not modify the HELOC claim, or if modification is prohibited by the Code (*see* §1123(b)(5) and §1322(b)(2)), the proposed rule is arguably inconsistent with the Code. To avoid this problem, NCBJ suggests that the Rules Committee redraft the rule to make the proposed changes voluntary, i.e., to permit a HELOC claimant to elect between the monthly notice of payment change procedures in 3002.1(b)(1) or the annual notice of payment changes in 3002.1(b)(3). Perhaps the language in 3002.1(b)(3)(A) -- "within one year after the bankruptcy petition was filed and then at least annually" – was intended to accomplish this result. If so, clarifying language would be helpful.

With respect to the midcase and end-of-case determinations, NCBJ takes no position on whether an amendment to the existing rule to impose new obligations on the parties is necessary. The parties most affected by proposed additional burdens imposed by the proposed rule are debtors, chapter 13 trustees, and residential mortgage lenders. NCBJ suggests that the Rules Committee carefully consider the views of those constituencies in evaluating whether the benefits of proposed Rule 3002.1(f) and (g) outweigh the costs of their new requirements in the aggregate and, if so, how best to allocate the procedural obligations among those constituencies.

Subdivision (g): Although NCBJ takes no position on the general advisability of adopting the proposed amendments, it perceives an inherent flaw in the proposed end-of case procedure to the extent it authorizes the entry of a court order determining the status of a mortgage without a proper factual foundation in "non-conduit/direct pay" cases. The trustee's representation in the end-of-case motion is limited to the terms of the confirmed plan and evinces the trustee's lack of knowledge regarding the debtor's payment of the ongoing postpetition mortgage payments required by the plan. In this respect, Paragraph 5 of the Form is incongruous with Paragraph 6, in which the trustee requests "the court for an order under Rule 3002.1(h) determining that, as of the date of this motion, the debtor has cured the prepetition arrearage on the mortgage and that all postpetition fees, expenses, and charges are satisfied in full." If the

claim holder fails to comply with an order compelling a response, under proposed Rule 3002.1(h)(1), the court may enter an order determining that, as of the date of the motion, the debtor is current on all payments that the plan requires to be paid to the claim holder, including all escrow amounts, postpetition legal fees, expenses, and charges incurred or imposed by the claim holder. In effect, the proposed rule contemplates the entry of an order either as a default or as a sanction. In the absence of a representation by a party with knowledge that all payments required by the plan have been paid, it is inappropriate for the court to issue an order making that finding and determination.

The proposed procedure cannot be analogized to the entry of a default judgment because, in the conventional default judgment scenario, the plaintiff has filed a pleading, subject to Rule 11, in which factual representations have been made which, if proven, purportedly would sustain the grant of the relief requested. Nor does an analogy to a sanction order under Fed. R. Civ. P. 37(b)(2)(A) provide a justification for the proposed procedure because under Rule 37(b)(2)(A), a prior pleading filed subject to Rule 11, supports the requested relief.

NCBJ suggests that the proposed rule be revised to require, at a minimum, that a party with knowledge (presumably, the debtor) make a representation to the court regarding the status of the payments required by the plan to be paid to the claim holder, including all escrow amounts, postpetition legal fees, expenses, and charges incurred or imposed by the claim holder before the court enters an order under proposed Rule 3002.1(h)(1). If the Rules Committee continues to prefer that the trustee—rather than the debtor— initiate the end-of-case determination process, the rule should require that the debtor in a non-conduit/direct pay case file a response to the motion stating whether the direct postpetition payments have been made or stating the amount of any arrearage, as well as addressing the status of the other items (e.g., escrows) that any proposed order would address. If the debtor's statement or a response from the claim holder states an arrearage on the mortgage loan or escrows, the rule should authorize the court to enter an order that establishes the amount and composition of the arrearage, rather than finding (counterfactually) that the debtor is current.

Subdivision (h)(4): NCBJ questions the propriety of the mandated provisions of the end-of-case order. Although a court's determination that fees, expenses, or charges properly noticed under Rule 3002.1(c) were not paid relates directly to the rules of court and the administration of the chapter 13 plan (and in some courts, may affect the debtor's entitlement to a chapter 13 discharge), the other mandated findings may not be in dispute. In the absence of a dispute, there may be no case or controversy to justify a federal court determination. Further, even if certain matters are disputed, the required findings may relate more directly to the post-bankruptcy servicing of the mortgage loan than to the bankruptcy case and the confirmed plan and therefore, may not bear a sufficient nexus to the bankruptcy case to warrant the exercise of bankruptcy jurisdiction. NCBJ suggests the Rules Committee delete the mandatory findings as listed in subdivision (h)(4)(A), so that the bankruptcy court may exercise its discretion in fashioning an appropriately supported end-of-case order.

Christopher Kerney (BK-2021-0002-0021) – I wholeheartedly believe the best practice is for the chapter 13 trustee to be the disbursing agent. Having practiced with implementation of a system in which the trustee files the mid-case audit and Order Declaring Mortgage Current, I

know this is best for my clients, and I can't imagine retreating to a system that would be detrimental to the debtor and the system as a whole.

National Consumer Law Center, Inc. (BK-2021-0002-0022) – We support the amendment that would delete "installment" in subdivision (a) and the committee note that explains that the reason for the change is to clarify that the rule applies to reverse mortgages.

Subdivision (b)(2): Because (b)(2)(A) does not refer to a reconciliation amount as is provided in the change for HELOCs in proposed Rule 3002.1(b)(3), we have assumed that the rule operates effectively as a procedural sanction for the claim holder's noncompliance with Rule 3002.1(b)(1), barring the claim holder from seeking payment from the debtor for the difference between the old and new payment amounts for the period of noncompliance. If that is the effect of an untimely payment change notice, we urge the Committee to include discussion of this in the Committee Note.

Proposed Rule 3002.1(b)(2)(B) should be changed as follows: "when the notice concerns a payment decrease, on the first payment due date that is after the date of the notice." While the Committee likely contemplated that the date stated in the untimely notice would be the first payment due date after the date of the notice, the language in proposed Rule 3002.1(b)(2)(B) does not compel this or provide sufficient direction.

The mortgage holder should not benefit from its noncompliance with Rule 3002.1(b)(1). The committee note regarding (b)(2)(B) should state that the claim holder must take steps to address any overpayment by the debtor in accordance with the terms of the mortgage documents, such as by issuing a credit on payments that come due after the payment change or a refund to the debtor or trustee (if the trustee is disbursing ongoing mortgage payments).

If the Committee does not adopt our suggestion to include language in the committee note on the effect of an untimely payment change notice as to underpayments and overpayments, we urge the Committee to add a new subsection (b)(2)(C) as follows: "Nothing in (A) or (B) limits the power of the court to take any of the actions under (i) for any failure to timely file and serve the payment change notice."

Subdivision (b)(3): Rule 3002.1(b)(3)(A) instructs the holder of a HELOC claim to file and serve the payment change notice "within one year after the bankruptcy petition was filed and then at least annually." The rule should be more precise as to when the annual notice must be sent, such as "… and then at least annually, not more than 21 days after the conclusion of each 1-year period."

Rule 3002.1(b)(3)(C) refers to the "next payment" as the "first payment due after the effective date of the annual notice," and the amount of this next payment is to be disclosed in the annual notice as an amount that "shall be increased or decreased by the reconciliation amount." Rule 3002.1(b)(3)(D) refers to the "new payment amount" as the "first payment due date that is at least 21 days after the annual notice," and it is to be disclosed in the annual notice as an amount that disregards the reconciliation amount. If there is a reconciliation amount, the "next payment" under Rule 3002.1(b)(3)(C) and the "new payment amount" under Rule

3002.1(b)(3)(D) would be two different amounts, and yet they appear to be due at the same time. These provisions should be changed to have "next payment" with the reconciliation amount under Rule 3002.1(b)(3)(C) be the first payment due date that is at least 21 days after the annual notice, and the "new payment amount" without the reconciliation amount under Rule 3002.1(b)(3)(D) be the first payment due date after the next payment under Rule 3002.1(b)(3)(C).

Subdivision (c): The proposed changes are not all stylistic. The words "or imposed" are added in the first sentence, so that the phrase "incurred or imposed" is used. The combination of adding "or imposed" and deleting the "and" completely changes the substance of the provision, so that a claim holder would be required to send a notice of a fee that has been incurred but is not recoverable against the debtor or the debtor's principal residence. Moreover, the phrase "or imposed" is not needed because the imposition of fees is already covered by the language "that the claim holder asserts are recoverable against the debtor or the debtor's principal residence." We urge the Committee to delete "or imposed" from the first sentence and return it to its current formulation.

The addition of "or imposed" in the second sentence in subdivision (c) is also a substantive change because it significantly affects the timing of when the fee notice must be sent. The current rule very intentionally requires that the notice be sent within 180 days after a fee is incurred, which is generally the date when any service related to the fee or expense is performed. By adding "or imposed" to this sentence, a claim holder could incur a fee in the first year of the debtor's chapter 13 plan but then not send the notice until the fifth year of the plan or even after the bankruptcy case closed, contending that it only then decided to impose it. The current rule requires the claim holder to make an affirmative decision within 180 days after a fee is incurred as to whether it will impose it.

Subdivision (f): The midcase review process set out in proposed Rule 3002.1(f) will help identify debtors, particularly in non-conduit districts, who have fallen behind on postpetition mortgage payments and give them an opportunity to cure any postpetition default before the end of the case. We support this general concept but have concerns that the proposed rule will increase costs for all debtors in chapter 13 cases, even those who would not benefit from the rule.

When Rule 3002.1 was initially adopted, it was intended that most, if not all, of the rule's requirements would be performed by non-attorney personnel who work for mortgage servicers. Sadly, however, servicers have recently begun charging excessive fees for compliance with Rules 3001 and 3002.1, claiming that these fees can be passed on to debtors as attorney fees under the fee shifting provision of the mortgage documents. Mortgage servicers will likely contend that the midcase review under proposed Rule 3002.1(f) will require attorney involvement. To avoid all debtors in chapter 13 cure plans being charged excessive and unnecessary fees, we urge the Committee to revise proposed Rule 3002.1(f) in the manner set out below that still preserves its basic purpose.

Rather than have the midcase review initiated by the filing of a notice by the trustee, we propose that the process begin with the submission by the claim holder of an existing periodic mortgage statement that is prepared in the normal course of servicing the mortgage loan. Rule

3002.1(f)(1) should provide that the claim holder must send to the trustee, the debtor, and the debtor's attorney, between 18 and 24 months after the petition was filed, a periodic statement that the claim holder has prepared in accordance with the Truth in Lending Act and Regulation Z, 12 C.F.R. § 1026.41(f). The periodic statement should be current for the month in which it is sent. These statements must disclose the amount due, an explanation of the amount due, a past payment breakdown, recent transaction activity, partial payment information, the total of all prepetition payments received since the last statement, the total of all prepetition payments received since the beginning of the consumer's bankruptcy case, and the current balance of the consumer's prepetition arrearage.

The information contained on the periodic mortgage statement will permit the trustee to assess, based on the servicer's records, whether the servicer believes the debtor is current with prepetition and postpetition payments. If the claim holder fails to timely send a mortgage statement, or if the trustee is unable to determine the status of the mortgage claim after reviewing the statement because the information is insufficient or the trustee believes it is inaccurate, the trustee may file a notice as contemplated by proposed Rule 3002.1(f)(1), using proposed Official Form 410C13-1N. Thus, the claim holder will be required to file a response under proposed Rule 3002.1(f)(2) only in cases in which the case status cannot be adequately determined from the periodic statement. This change, if adopted, will significantly reduce the number of cases in which the midcase review procedure will be invoked, thereby minimizing costs to debtors, trustees, and claim holders.

We urge the Committee to amend proposed Rule 3002.1(f)(2) to state that the claim holder's response is not subject to Rule 3001(f). It is important that the claim holder's response not be given a presumption of validity, particularly if an objection to the claim holder's response is filed under proposed subdivision (f)(2)(C) and the claim holder fails to participate at a hearing on the objection conducted under subdivision (f)(2)(D).

Subdivision (g): The option for the debtor to file a motion to begin the end-of-case procedure under the circumstances set out in the current rule should be restored in Rule 3002.1(g) in case the trustee does not file the motion.

Although the response under proposed Rule 3002.1(g)(2) operates in the same manner as the response to the notice of final cure under current Rule 3002.1(g), proposed Rule 3002.1(g)(2) does not state that the response shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f). The rule should do so.

Subdivision (h): Proposed Rule 3002.1(h) establishes a procedure for the debtor to obtain an order that contains the information specified in subdivision (h)(4). This information is necessary to establish that the debtor is fully current on the mortgage and to avoid disputes between the claim holder and the debtor after the chapter 13 case is concluded. We support these amendments.

While the entry of an order by the court pursuant to proposed Rule 3002.1(h)(1) is appropriate as a sanction for the claim holder's failure to respond after being ordered to do so, we believe that that an order pursuant to proposed Rule 3002.1(h) should be entered only upon

the request of a party in interest. We are concerned that the debtor or trustee may not have information sufficient to determine that the response was inaccurate, or that other grounds to object to the response exist, until after the 14-day objection period has expired. Debtors who fail to object to the claim holder's response due to informational imbalances or a lack of awareness of potential consequences should not be barred from later disputing the status of their mortgage. Thus, we urge the Committee to delete subdivision (h)(2).

Proposed Rule 3002.1(h)(3) authorizes the court to enter an order determining the status of the mortgage claim only if an objection is filed to the claim holder's response. Consistent with our suggestion to delete subdivision (h)(2), we believe subdivision (h)(3) should permit the debtor or trustee to request an order containing the information specified under subdivision (h)(4) without objecting to the claim holder's response. This would be consistent with current Rule 3002.1(h), which permits an order to be entered on motion of the debtor or trustee, after notice and hearing.

Norma Hammes and James Gold (BK-2021-0002-0023) – We believe that changing, expanding, and making more complicated the processes required under FRBP 3002.1, create the dangers of producing unintended consequences, and moving the rule further away from its original intent – assisting Chapter 13 debtors. Both the midcase and end-of-case reviews may be helpful to some debtors. But, more likely, they also will increasingly be used to justify aggressive attempts by trustees to improperly dismiss their cases. Consequently, we strongly suggest that the proposed amendment to FRBP 3002.1 permit a debtor to opt out of the application of FRBP 3002.1, in whole or in part, to their case at any time during the pendency of the case. Those debtors will continue to be able to rely upon non-bankruptcy law for (among other protections) obtaining account histories and bankruptcy law for assuring correct application of plan payments.

We do, however, agree that the proposed rule needs improvement. Therefore, to the extent the comments of the National Association of Consumer Bankruptcy Attorneys and the National Consumer Law Center suggest specific improvements to the amendments under

Corrine Bielejeski (BK-2021-0002-0024) – Adding a midterm audit is a great idea. This allows all parties to compare notes and correct any accounting problems while there is still time to modify the plan. A simple notice procedure, like the one currently used at the end of the case, is enough to make everyone aware it is time to review the payment history. This should have enough teeth in it so that if a creditor fails to respond, it is bound by the determination that the debtor is current.

The end-of-plan notice does not need all of the changes that have been suggested. The change from a notice to a motion creates more work, much of which is not necessary. I would suggest the timing of the end of case notice be moved earlier – six months before the end of a confirmed plan – but otherwise keep the current procedures the same.

Subdivisions (f) and (g) – The motion to compel procedures should be removed from the proposed rule change, returning the default procedures to the ones currently in place. Alternatively, the Rules Committee should clarify within the rule whether a timely response is

with regard to the original notice or to the order compelling response. If it is to the order, the Committee should include a short deadline for responding to the court's order.

If a creditor fails to respond to the midterm audit, (f)(2)(B) authorizes filing of a motion to compel, but there is no provision telling the court what to do after that. If the Rules Committee chooses to require motions to compel, (f)(2)(B) needs to be added to subsection (h). For example, "if the claim holder fails to comply with an order under (f)(2)(B) or (g)(2)(B), the court may enter an order deeming the debtor current."

Subdivision (g): Chapter 13 trustees and creditors are given more time to respond, but debtors are given less time, than under the current rule. Debtors should continue to have at least 21 days to file objections to responses, since these objections have to include declarations and other evidence necessary to refute a creditor's payment history.

I agree that notices under the rule should continue to be sent out by trustees. The burden should not be shifted to debtors.

Pam Bassel (BK-2021-0002-0025) – Subdivision (a): It is unclear what the rule applies to. For example, does it apply to *ad valorem* taxes, reverse mortgages, and full payment of a mortgage under the plan? My suggested revision is to state that the rule applies to "all claims (1) secured by a security interest in the debtor's principal residence and (2) on which the trustee or the debtor will disburse payments during the pendency of the case or which the plan addresses in any way, other than payments to governmental taxing authorities."

Subdivision (b): The term "claim holder" should be defined. I suggest "claim holder is defined as any entity secured by a lien on the debtor's principal place of residence, except governmental taxing authorities, or any servicer or agent of such entity."

In the situation of a payment increase, there should be a consequence for failing to file the notice timely, in addition to delaying the date on which increased payments will begin. The rule should include a forgiveness of the amount of the increase on any payment for which the 21-day notice is not timely given. Otherwise, the debtor may have to pay the difference eventually to bring the loan current.

In (b)(4), the language should be changed from "filed" to "filed and served" on lines 77 and 80.

In (b)(5), the reference to § 1322(b)(5) should be stricken. Otherwise, this provision could be interpreted to mean that the only time a party in interest can object is in a "cure and maintain" plan. You could strike the first sentence (starting on line 75 and ending on line 79) and substitute, "A party in interest may object to the payment change by filing a motion to determine the validity of the payment change." I also suggest rewording the second sentence in this subpart to clarify the deadline for filing the motion to determine. As currently drafted, it is hard to tell whether a motion to determine can or cannot be filed after the change takes effect. I suggest a deadline of either three days before the payment change is to take effect or 14 days after the notice is filed.

Subdivision (c): The provision does not contain negative consequences for failing to file the Notice of Fees, Expenses, and Charges on time. My suggestion is that if the notice is not timely filed, the claim holder be barred from attempting to collect the fees, expenses, and charges from the debtor at any time and by any method. Arguably, subdivision (i) as currently written does not cover this situation. Also, on line 95 change "served" to "filed and served."

Subdivision (e): One year to file a motion to determine is a long time. Please consider reducing this time period to 60 or 90 days. The notices are straightforward, and it should be quickly apparent whether there is a fee, expense, or charge that should be objected to. Also the reference to § 1322(b)(5) should be stricken.

Subdivision (f): The midcase procedure should be conducted by motion rather than a notice. The claim holder's response should be permissive, rather than mandatory. The objection to the response should be permissive and in no way a prerequisite to the court entering an order on the status of the claim. The motion should contain an "as of" date and provide information about every component of the claim. An order should issue on every midcase notice/motion, specifically determining the status of the claim as of the date the midcase notice/motion was filed. The order should be binding on all parties and preclude the claim holder from asserting different cure amounts on the claim in any contested matter or adversary proceeding in the bankruptcy case, or in any other manner, matter, or forum after a discharge is entered in the bankruptcy case.

The reason to conduct a midcase review is to compel the claim holder to true up its records during the case. Even though the trustees send the claim holders detailed vouchers with each disbursement, telling them how much of the disbursement should be applied to what component of the claim, and even though many trustees make their payment records available online and the claim holder could review the trustee's payment records and perform its own audit at any point in the case (which they do not do), they still have incorrect payment records. The problem is exacerbated by servicing transfers. If we do not want debtors to exit their bankruptcy only to have the claim holder assert that it is owned more money, often in an amount that is easier and cheaper for the debtor to pay than to dispute, a reconciliation of the amounts owed on the claim is necessary.

A midcase procedure is a good idea, but I hope the Committee will consider procedures to reduce costs as much as possible and to require the claim holder to justify any charge against the debtor.

As currently drafted, the proposed rule is ambiguous about when an order will be entered. It is arguable that an order would be entered only when (1) the claim holder files a response and (2) a party-in-interest has filed an objection to the claim holder's response [See proposed Rule 3002.1(f)(2)(D)]. It could also be argued that the court can enter orders under other factual scenarios because the language does not preclude that. As currently drafted, the rule is also unclear about what happens if the claim holder does not respond. It would be helpful if the rule was made clear on these points and the process was streamlined.

The claim holder's response should be permissive to reduce potential costs to the debtor. If a claim holder agrees with the midcase notice/motion, there is no need for it to hire an attorney to file a response, incurring legal fees it may attempt to recover from the debtor. If the claim holder fails to respond, a default order should enter, or the rule should provide that the status of the claim is deemed to be as stated in the midcase notice/motion. I am not sure there is a need for a motion to compel at this stage of the case. Under the procedure I am proposing, either the claim holder responds in opposition and the matter is treated as a contested matter, or the claim holder does not answer and a default order is entered. However, if the Committee decides the claim holder's response is mandatory rather than permissive, the rule should clearly state that the claim holder may be responsible for fees and costs incurred by a party who files a motion to compel.

There should be a deadline in (f)(2)(C) for filing the objection. I suggest 21 days from the filing of the response. This will keep the matter moving. In the current draft of the rule, filing an objection is permissive, which is good. Allowing a permissive objection is a way for the debtor to file a relevant pleading if needed and, if necessary, for the trustee to respond to an allegation in the claim holder's response.

Filing an objection to the response should not be a prerequisite to obtaining an order regarding the status of the loan. My suggestion is to provide in (f)(2)(D) that if the claim holder fails to respond, the court shall enter an order deeming the statements in the trustee's notice/motion correct. If the claim holder responds, it should be treated as a contested matter and, after notice and the opportunity to be heard, the court should enter an appropriate order determining the status of the loan as of the date of the filing of the notice/motion.

While I hope the Committee will adopt the suggestion to conduct the midcase review by motion, another way to do this would be to state that the trustee, or other appropriate party, files a notice and any party who wishes to object must file a motion for determination, rather than a response. This is like the procedure for notices regarding payment changes and notices regarding fees, expenses, and charges. There should be a specific deadline by which a motion for determination must be filed. And in all cases, the status of the mortgage loan should be determined, either by deeming the recitation in the notice to be correct or by the entry of an order.

Subdivisions (g) and (h): I support the idea that this be handled as a motion practice, but I think the procedure can be streamlined a bit. My suggestion is that the motion should have a clear response deadline and an "as of" date. Since we must rely on a response from the claim holder to acquire the information required for the order, if the claim holder does not respond, a motion to compel should be filed. If the claim holder then responds, any disagreement with the trustee's motion can be treated as a contested matter without the necessity of a party filing an objection to the claim holder's response. If the claim holder does not respond to the order compelling it to, the court can enter an order finding that the loan is completely current. Any order should be binding on the claim holder once the discharge is entered.

I suggest that the language in (g)(1) be amended to state that the trustee must file this motion within 45 days after the debtor completes the plan payments and the final payment has been made by the trustee to the claim holder. Until the trustee makes that final payment to the claim holder, its records will not show that it has been paid in full, leading to unnecessary responses because the claim holder's records will not match the trustee's motion until that last payment is received and posted.

In (g)(2)(C) 14 days is probably too short a time deadline to file an objection. Please consider setting the deadline at 21 days.

The word "legal" should be struck in (h)(1)(B) so that line 223 reads, "all postpetition fees," etc. Post-petition fees can include fees other than legal fees.

The claim holder's response should not be deemed to be correct if no party objects to the claim holder's response, and filing an objection should not be a prerequisite for obtaining a hearing. The language in (h)(2) is permissive ("the court may enter an order") but is likely to lead to orders being entered even when there are unresolved issues. This is a motion practice. The trustee files the motion, and if the claim holder responds in opposition, it should be treated just like any other contested matter. The matter should be set for hearing after the deadline for filing an objection. But it should not be a possibility that an order issues in favor of the claim holder if a party in interest does not object to its response. Please consider streamlining the process by deleting 3002.1(h)(2) and (3) and simply stating that if the claim holder files a response, the court will enter an order after an opportunity for the parties to be heard, and the order will contain the information currently set out in 3002.1(h)(4)(A).

The provision in (h)(4)(A) should be applicable to all orders issued after a response is filed, and reference to (h)(2) and (h)(3) in lines 237 and 238 should be deleted.

I do not understand the purpose of (h)(4)(B). It refers to an order issued under (h)(1), which requires non-compliance with an order compelling a response. Why would this be singled out as a circumstance under which the court "may address the treatment of any payment that becomes delinquent before the court grants the debtor a discharge"?

Subdivision (i): The title of this section is somewhat misleading. The title includes the claimholder's failure to give a required notice or to respond, but the subpart itself refers only to the failure to provide information required by the Rule. Something like "CLAIM HOLDER'S FAILURE TO PROVIDE REQUIRED INFORMATION" would be more descriptive.

It would be preferable if this section did not address the claim holder's failure to file a required response or give a required notice. It would add clarity if these issues were addressed separately in the provisions regarding the midcase notice/motion and the end-of-case motion or the specific notice provisions. This would put what the claim holder needs to do to comply alongside the consequences for non-compliance.

Beverly Burden (BK-2021-0002-0026) – Rule 3002.1(f) should mirror proposed Rule 3002.1(g) and be a motion process. The rule should also clarify that no hearing is required on the trustee's

midcase or end-of-case motion. The trustee can easily file a motion to determine the status of the mortgage to get the process started. By filing such a motion in accordance with the rule, the trustee does not need to make any statement of fact; the trustee does not need to ask that the debtor be deemed current in their mortgage. To the extent the proposed forms require non-conduit trustees to make these allegations, the forms are flawed.

If a party objects to the creditor's response and a contested matter is triggered, the prevailing party should be responsible for preparing the order determining the status of the mortgage. The more burdensome aspect of the process for non-conduit trustees is if the trustee must prepare an order setting forth the "data points" that are reflected in the creditor's response. This is one part of the process where it might be preferable to have the debtor/debtor's attorney prepare an order setting forth the detailed information contained in the creditor's response.

Rule 3002.1(g)(1) requires the trustee to file a motion to determine the status of the mortgage "within 45 days *after the debtor completes all payments under a chapter 13 plan*." Many courts have held that a debtor who has not made all postpetition mortgage payments has not completed all payments under the plan. The rule should be changed to read "within 45 days after the trustee receives all payments due the trustee under the plan."

Omar Hooper (BK-2021-0002-0028) – I believe the notices of payment change and the motion to determine final cure payment are sufficient. The audit will not help or change anything other than increase the attorneys' fees of all parties involved.

Ronda Winnecour (BK-2021-0002-0029) – The proposed changes to the rule are meritorious and will enhance my ability (and the ability of all of the relevant parties) to administer mortgages with accuracy and detailed record keeping. I have always been completely conduit, paying all of the mortgage payments on behalf of the chapter 13 debtors in my district. Since 3002.1 was originally proposed, I have filed a "Notice of Interim Cure" addressing the payment of the pre-petition arrears record and a Notice of Final Cure telling all of the parties exactly when the post-petition payments have concluded. Converting that notice to a motion will result in a court order affirming the facts that I have asserted and will most likely reduce additional confusion. And my records in this regard are far more accurate than those kept by either the debtors or the mortgage services as they change frequently thought the case. All of this will ensure continued accuracy and transparency and I support the proposed changes.

Neil Jonas (BK-2021-0002-0030) – The proposed amendments to Rule 3002.1(a) alter the scope of applicability of the rule from loans for which the plan requires payment of "contractual installment payments" to just "contractual payments." The Committee Notes indicate that that the purpose of this change is to "clarify the rule's applicability to reverse mortgages, which are not paid in installments." If the reference to "contractual payments" is interpreted to cover any obligation which requires the borrower to maintain taxes and insurance on the subject property, this will make the rule applicable to virtually all secured obligations, regardless of how it is treated in the plan. That is overbroad and a radical change from the current rule.

The revised rule would seem to require chapter 13 trustees to file Motions to Determine Status of Claims for reverse mortgages. If the plan does not provide for payment on a reverse

mortgage (which is common), it's hard to see what the point of filing such a motion would be. Simply to say that nothing was paid? Trustees should be excused from filing Motions for Status for reverse mortgage claims that are not paid through the plan.

James Davis (BK-2021-0002-0031) – Subdivision (b)(4): Because the escrow account is a system for accumulating funds to pay externally determined amounts, and because the payment adjusts each year based on the funds in the account, the proposed language for subdivision (b) delaying the effective date of an increase appears to just shift amounts to the next escrow analysis, rather than relieving the debtor of the obligation to pay. Especially for a large increase, deferring the payment adjustment for a year or more may make the eventual increase harder for the debtor to absorb. Because of these issues, I think it is important to be clear that subdivision (b) does not provide the exclusive remedy for an untimely notice of payment change.

Subdivision (f): In (f)(1) it would be better to specify that the new notice requirement applies to "any mortgage claim of the type specified in subdivision (a)."

The rule should authorize the trustee to serve the notice at the "notice" address last specified by the claimholder—similar to Rule 3007(a)(2)(A).

I would suggest revising proposed Rule 3002.1(f)(2)(D) to make clear that a party in interest may obtain a court determination regardless of whether the claim holder files the response required by the proposed rule. For example: "If a party in interest objects to the response or requests a determination in the absence of a response, the court shall . . . ."

Perhaps the rule should specify that the claim holder's response is a supplement to the claim to help ensure that non-attorneys would be able to file the responses.

Subdivisions (g) and (h): For consistency, it might make sense to use a multiple of seven for the filing deadline under proposed Rule 3002.1(g)(1)—making it either 42 days or 49 days.

There are some potential downsides to Judge Lundin's suggestion that the final determination be made before the last plan payment. Debtors occasionally stop making plan payments or start making mortgage payments directly based on a misinterpretation of the motion or order seeking a mortgage status determination. Obtaining the status order before the completion of the plan may also reduce the likelihood of identifying errors in the transition from bankruptcy to post-bankruptcy accounting. Finally, in conduit cases a determination during the plan means that the trustee will distribute at least one final mortgage payment after the status determination. That makes it likely that a debtor in a post-bankruptcy dispute with the claim holder about the status would need not just the court order but also the trustee's records of the final disbursement(s).

As with the mid-case notice, I would propose that the rule authorize service of the motion under Rule 3002.1(g) at the notice address last specified by the claimholder.

The proposed process for resolving a disagreement about the loan status seems inefficient. If a trustee has filed a motion under subdivision (g)(1) requesting a determination that

the loan is current and a claimholder has filed a response in opposition to that request, the rule should allow the matter to move directly to a court determination. It should not require the trustee (or another party in interest) to file what amounts to a second request that the court determine the status.

Proposed subdivision (h)(1) should be revised to remove the requirement that a party seeking a determination in the absence of a claimholder response must first request an order compelling a response. If the trustee has filed and properly served a motion, the court should have the authority to enter an order in the absence of any opposition.

Strike "legal" from (h)(1)(B).

In proposed subdivision (h)(4), consider making the determinations of account balances discretionary. The principal balance, the escrow account balance, and the suspense/unapplied funds balances are all important, but because many trustees may not have independent records for these balances, a mandatory determination risks blindly validating creditor records without any actual check of their accuracy. It also fits poorly with a "negative notice" process if the order must include figures that the trustee lacks the data to propose.

In proposed subdivision (h)(4)(A)(v), strike "properly noticed under (c)." The order should establish the amount of *any* remaining fee, expense, or charge—not just properly noticed ones. The evidence-exclusion sanction under subdivision (i) may have the effect of excluding amounts not properly noticed, but, for that process to work, the order must establish the amounts due, not just the amounts properly noticed.

As with the mid-case process, perhaps the rule should specify that claim holders may file responses in agreement as supplements to their claims (to facilitate handling my non-attorneys). Attorney involvement may be unavoidable when the creditor is contesting the trustee's requested relief. But when the creditor's records agree with the trustee's records, a ministerial filing by a creditor representative seems preferable to a process that would add new attorney's fees.

Subdivision (i) – I would change the title of the proposed subdivision (i) to: "CLAIM HOLDER'S FAILURE TO COMPLY ~~GIVE NOTICE OR RESPOND~~." And, in the text, I would suggest retaining the word "as" to make clear that courts have authority to grant relief for *any* non-compliance with the rule (including, for example, an untimely provision of information), not just for a failure to provide information: "If the claim holder fails to provide any information as required by this rule, ..."

I would suggest a clearer statement that the authority under subdivision (i) is available even when the rule specifies a self-effectuating remedy. Instead of adding (i)(3), I would propose adding a separate statemen to that effect, such as: "The availability or existence of any other remedy or relief under this rule shall not limit a court's authority under this subdivision (i)."

National Assoc. of Consumer Bankruptcy Attorneys (BK-2021-0002-0032) – Subdivision (a): The committee note should make explicit that the rule does not apply to a plan that does not provide for a secured claim.

The deletion of "installment" clarifies that the rule applies to reverse mortgages and requires notice of postpetition fees under (c).

Subdivision (b): The rule should include a definition of "home-equity line of credit": "an 'open-end credit plan,' pursuant to 15 U.S.C. § 1602(j), that is secured by the debtor's principal residence."

Subdivision (b)(3)(E) should require a notice of payment change "if the monthly payment has increased or decreased by more than $10 a month since the filing of the proof of claim or the last allowed notice of payment change." It should also specify what happens if the increase or decrease is less than $10: "If the monthly payment increases or decreases by less than $10 a month since the filing of the proof of claim or the last allowed notice of payment change, the claim holder shall file and serve (in addition to the annual notice) a notice under (c)." The committee note should state that a HELOC claim holder may file a notice of payment change for changes less than $10 and that the failure to do so may result in the disallowance of late fees with respect to such changes.

Subdivision (f): We oppose the midcase notice as proposed. It will result in attorneys' fees claims by the mortgage holder, and the debtor can obtain this information without cost.

If the provision is retained, the following changes should be made:

- In (f)(1) change the time period to run from confirmation rather than filing.
- Add "unless the court orders otherwise" to (f)(1). This would allow the court to excuse compliance with the provision in conduit districts in which the trustee has reliable records.
- Instead of a trustee requirement, (f)(1) should require the claim holder to send the trustee, debtor, and debtor's attorney a periodic statement prepared in accordance with the Truth in Lending Act and Regulation Z between 18 to 24 months after confirmation. The servicer could do this without incurring attorneys' fees.
- If there's a dispute, the trustee and debtor can obtain a status update and full payment history from a claim holder by sending a request under RESPA. No fees may be charged for responding, a fact that the committee note should point out.

Subdivision (g): The rule should continue to allow the debtor to initiate the end-of-case process if the trustee fails to do so.

Subdivision (h): The court order provided for in this subdivision is the most important part of the proposed revision of the rule. Currently an order is entered only if the claim holder files a response to the trustee's notice and a determination is sought. The order will provide greater clarity to the debtor, non-bankruptcy attorneys, title insurers, and future lenders.

The requirement that the order specify the principal balance owed is a vital improvement. It should, however, be called "total amount owed," so that a mortgage servicer does not later contend that the amount did not include fees, charges, and interest that were not otherwise allowed.

Subdivision (i): Subdivision (i)(3) should explicitly put the claim holder on notice that "the court may take any other action authorized by this Rule, the Bankruptcy Code, or other state or federal law" for noncompliance.

Style usage in Rule 3002.1: There are some inconsistencies in hyphenation. Home-equity and end-of-case are hyphenated, but midcase is not.

Rick Yarnall (BK-2021-0002-0033) – I join in and agree with the comments made by the 68 Chapter 13 Standing Trustees posted on December 7, 2021, and by Hon. Keith Lundin (Ret.) posted on November 4, 2021. I write to highlight my concerns over the undue administrative burden this rule would impose on trustees who are in non-conduit jurisdictions and in cases where debtors pay the mortgage directly. Further, the change in the procedure at the end of a debtor's case may result in a delay in a discharge being entered in cases where there is no dispute with respect to whether the mortgage payment is current. I urge the committee to strongly consider the arguments raised in the various comments and respectfully recommend the rule be revised and republished for further comment.

Nancy Whaley (BK-2021-0002-0034) – I believe that the proposed rule amendments are not the appropriate remedy to ensure that a debtor's mortgage payments are reconciled when they exit a chapter 13 case. While the current rules may need corrective amendments, the use of notices work and are cost effective, and the current rules provide the appropriate remedies if used by all parties. The proposed process is costly and time consuming for debtors, creditors, trustees, and the court without necessarily bringing about a different result of the current rules. [She includes statistics showing that there are very few cases in her district in which there is a motion filed disputing the status of the mortgage at the end of the case.]

Subdivision (f): Creating a midcase review that is initiated by a non-conduit trustee stating the payment on prepetition arrearages does not resolve any known problem and seems to be a solution in search of a problem. While I do not dispute that having a reconciliation of post-petition mortgage payments during the pendency of a case would be beneficial to the debtor and creditor, a rule is not necessary. A debtor, a holder of a claim, or a conduit trustee can do this at any point in a case, and as some conduit trustees have stated, they already do this without the requirement of a rule. If it is determined that a rule would be beneficial, then the rule should be optional, and the rule should be created to resolve the concern of payments on post-petition payments. The most effective way to do this is by requiring the party making the post-petition payment or the holder of the claim to file the midcase notice.

Subdivision (g): The changes in 3002.1(g) are problematic for a non-conduit trustee by requiring a trustee to file a motion, not a notice, at the end of the case. I fully support and incorporate the National Association of Bankruptcy Judges position on the flaws of having a non-conduit trustee file a motion at the end of the case. I, as non-conduit trustee, do not have the factual foundation to file this motion, and I support the notice practice at the end of the case. If a motion is required, having the party that is making the post-petition payments or the holder of the claim file the motion will be more successful in bringing to the table the parties that can resolve the matter.

Current subdivision (f): Some mortgage servicers' representatives and fellow trustees believe that the current rule as written requires trustees to file a Notice of Final Cure Payment (NFCP) under the current Rule 3002.1(f) regardless of whether there is a default to be cured. This is based upon the amendment to the rule in 2016 and the committee note that states that the rule applies "even if there is not prepetition arrearage to be cured." I, along with many trustees, file a NFCP when we have paid a prepetition or post-petition default on the debtor's principal residence, and we believe that we are fully compliant with the rule, but others disagree. I would suggest to this Committee that many trustees interpret the committee note to mean that the Notice of Payment Change and other requirements of 3002.1 apply regardless of a prepetition arrearage, but it does not make logical sense that that subdivision (f) applies, since that section specifically addresses a *notice of final cure payment.* If the intent of the rule is that a trustee is to file something in every case in which a debtor has a principal residence, I believe the current rule needs to be clarified and indicate what the trustee is to file.

TAB 4B