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MORTGAGE BANKERS ASSOCIATION

February 16, 2024

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Brendan Kelleher  
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Mortgage Bankers Association