



09-BK-124

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February 16, 2010

Mr. Peter G. McCabe
Assistant Director, Office of Judges Programs
Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20544

Re: Proposed Federal Rule of Bankruptcy Procedure 3002.1

Dear Mr. McCabe:

As written, proposed Federal Rule of Bankruptcy Procedure 3002.1 will require a mortgage creditor to file notices regarding changes to the post-petition payment obligation on a home mortgage and any response to a notice of final cure payment as supplements to the holder's proof of claim in the Chapter 13 case. I am writing to share results from a recent survey of the bankruptcy clerks.

In January of this year, the Bankruptcy Court Administration Division (BCAD) conducted a survey of the bankruptcy clerks to assess whether their courts had instituted procedures regarding mortgage creditors filing notices of payment change, and if not, if their courts had a preference regarding whether these notices should be filed on the claims register or docket.

We received 58 responses from bankruptcy clerks. Forty-three of the 58 responding courts (74%) prefer that mortgage creditors' notices of payment change be filed on the docket. Out of those 43, seven courts suggested that CM/ECF functionality be used so that the notice is filed on the docket but is spread to the claims register.

Eleven of the 58 responding courts (19%) prefer that the mortgage creditors' notices of payment change be filed on the claims register. Out of those 11, one court has created a separate, post-petition claims register for the filing of these notices. Four courts (7% of responding courts) stated no preference regarding the location of these notices.

The responses are attached with court attribution omitted, and they provide substantive comments that the Committee may wish to consider.

Sincerely,

Glen K. Palman

cc: Noel Augustyn

Court Responses to January 2010 Survey

Court Preference	Comments
<p>claims register (Local rule allows notice to be filed on docket or on claims register—preference is claims register)</p>	<p>I am writing in regard to Glen Palman's January 7, 2010 email requesting information regarding creditor notices of change to post-petition payment obligations on a home mortgage. The Local Rules for the [court] currently address this issue. LBR 3002-1 provides that if mortgage payments are being made directly to the creditor by the debtor, then there is no need to file a claim to announce the payment amount. However, if the mortgage is being maintained through the chapter 13 plan, then the rules require that a claim be filed to provide the contractual payment amount and to amend the claim or file notice with the court if the payment changes during the life of the plan. I have attached a copy of Local Rule 3002-1.</p> <p>While the local rule allows amendments to be filed either by filing a notice on the docket or an amended claim on the claims register, after discussions with the Ch. 13 standing trustee for our district, it was the consensus that the preferred method is to have amendments appear on the claims register in the form of an amended claim.</p>

Court Responses to January 2010 Survey

Court Preference

Comments

docket	<p>The [court] has a procedure (stated below) that allows mortgage creditors to file the notice of payment changes on the docket. This procedure has worked well for us, and our six judges are accustomed to finding this information on the docket report. It is our opinion that the notice of payment changes should continue to be filed on the docket report, NOT on the claims register as suggested by proposed Rule 3002.1. The claims register is not the appropriate place for this type of information. This particular part of CM/ECF is cumbersome already and, we believe, adding this notice there would make the claims register more confusing.</p> <p>[Court] Procedure: Notice of Payment Changes: We have a Limited Filer event for Notice of Payment Changes that mortgage companies can use when the debtor's mortgage payment is being adjusted due to an Adjustable Rate Mortgage. The AO has requested that courts QC these notices when they are filed to insure that they contain a Certificate of Service indicating service on the debtor via U.S. Mail.</p> <p>Case Managers should check the certificate of service on the Notice of Payment Changes to confirm that the debtor has been served. If you find that the debtor has not been served, please bring it to the attention of your division manager/supervisor for further handling. We will contact the mortgage company by phone or email and ask them to add the debtor to their certificate of service.</p> <p>If you have any questions or would like to discuss this matter further, please do not hesitate to contact [our court staff]. Of course, any of our managers/supervisors or our CM/ECF administrator would be happy to speak with you also.</p>
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Court Responses to January 2010 Survey

Court Preference	Comments
no preference (currently uses docket event)	At [our court], we created a docket event called Mortgage Payment Change some time ago. We have no preference about whether or not these notices go in the register or on the docket in the future, but we note that allowing them to be placed in the register will require CM/ECF reprogramming.
docket	Currently, these matters are filed on our docket, not our claims register. We believe that parties would more likely look for these matters on the regular docket. Thus, we believe they should be filed on the regular docket.
docket	After a poll of the Bankruptcy Judges and Division Managers here, we agree . . . that the mortgage creditors should be required to file the notices of payment changes to the case docket (not the claims register).
claims register (even though currently use docket)	<p>For [our court]:</p> <p>1) Procedure Currently in Place?: Even though our preference is for the claims register, our new local rules effective 12/1/09 currently require notice of payment changes to be filed on the docket as that is the only way that ECF allows for them to be properly filed and recognized from our viewpoint.</p> <p>2) Opinion on Filing Location: Our preference would be for these to be placed on the claims register- given the assumption that ECF would be modified to handle them upon approval of the new FRBP.</p>
docket	In response to Glen's memo of 1/07/10, attached is our LR on this issue. It is our court's preference that these notices be entered on the docket as opposed to the claims register. If you have questions please do not hesitate to contact me.

Court Responses to January 2010 Survey

Court Preference	Comments
docket	<p>Would prefer that the notice be docketed in the main case docket. In this court, if the debtor is paying directly to the mortgage holder and not through the Trustee, there may not be a claim for the notice to be linked to on the claims register. Going on the main docket will give the same level of notice to all parties.</p>
docket	<p>Per Glen's request, I am writing to let you know that in our District we already use an event code called "Notice of Payment Change" so that these are filed on the docket rather than the claims register. This was actually instituted prior to my appointment as Clerk of Court but strongly feel this is the appropriate vehicle to advise the Court, trustees and parties of the payment changes. I hope that BCAG will move forward with the recommendation to the Rules Committee. Prior to joining the Clerk's Office I was with a law firm that did national BK work representing mortgage creditors. I have been involved with discussions on this topic for several years and would be happy to talk with you about this at any time.</p>
docket	<p>[Our court] requires the Notice of Payment Change to be filed as a notice on the docket. We endorse any effort . . . to recommend that the Rules Committee amend the proposed Rule 3002.1 to require the notice of payment change to be filed on the docket rather than on the claims register.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
docket	<p>As stated in May, 2008, [our court] does have a local procedure for allowing mortgage creditors' notices of payment changes to be filed on the case docket. We have had a procedure in place since June 2007. This was initially implemented by Standing Order 07-5 and revised by General Order 08-3. This Order covers the filing of the notice by the mortgagee or by the debtor when the mortgagee fails to timely do so. In addition, General Order 08-3 covers objections, as well as modifications to the plan payment to address the change in on-going mortgage payments. We currently have forms available on our website for the parties to utilize when filing such notices or plan payment modifications to address changes in on-going mortgage payments. This procedure was developed in conjunction with the Chapter 13 Trustees and with input from attorneys. We find it interesting that these notices should be placed on the claims register when other items regarding claims are filed on the case docket, e.g. Assignments of Claims, Withdrawal of Claims, etc.</p>
docket	<p>We're about to launch two new ECF events for mortgage creditor notices. (Our model plan has called for these notices since August, but we held off on creating events to see which way the national winds might be blowing.) Both notices will be placed on the case docket - not the claims register. Therefore, we support a comment to the proposed rule that urges placement of the notices on the case docket!</p>
claims register	<p>[Our court] has not instituted a procedure in this area (we were awaiting AO guidance). If offered our preference, we would prefer for the Notice to remain on the Claims Register.</p>
docket	<p>[Our court] prefers that the notice should be filed on the docket rather than the claims register so that all e-filers receive a copy. I might add that this isn't a strong preference but just a better way to notify all parties. The changes in the mortgage rates is a bigger issue in [other districts within the state] where the Ch. 13 Trustee makes all the monthly payments for the debtor, both pre and post petition. In our district, the Chapter 13 Trustee only pays the pre petition debt and the debtor is responsible for maintaining their payments on the post petition debts. Therefore, these changes in the post petition mortgage payments have no impact on our pending bankruptcy cases.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
<p>docket (Suggests that it be filed on docket but spread to claims register)</p>	<p>We have not instituted a district-wide procedure (because the AO recommended that we await guidance). Why can't these notices be filed like Transfer of Claim or Withdrawal of Claim events and appear on both the docket and the claims register?.</p>
<p>docket</p>	<p>We prefer to file them on the docket.</p>
<p>no preference (Currently, one judge has certain lenders file notices on docket)</p>	<p>(1) Our court's present procedure: In CM/ECF, under the Bankruptcy menu, we have an option entitled "Lender Actions" where two events are available, Statement of Post-Petition Accrued Charges and Fees with Certificate of Service and Amended Statement of Post-Petition Accrued Charges and Fees with Certificate of Service. So, in our court the statement goes on the docket sheet. Only one of our two judges has the statements filed in her cases. Even in her court, it is not required for lenders, but only certain lenders to whom she has given specific instructions. (2) I polled our judges and the court managers about whether the statements should be filed on the docket sheet or on the proof of claims register. Our court does not care where the statements are filed, so long as they are filed when due.</p>
<p>docket</p>	<p>[Our court] wants it filed on the docket.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
docket	In [our court] we now allow creditors to file these on the docket. We set up an event specifically for them. Our preference would be to see them filed on the docket.

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Court Preference

Comments

docket

The following local rule was adopted for [our court] on Dec. 1, 2009.

RULE 3002-1 NOTICE RELATING TO CLAIMS SECURED BY SECURITY INTEREST IN THE DEBTOR'S PRINCIPAL RESIDENCE

- (a) Notice of Payment Changes. In a chapter 13 case, if a claim secured by a security interest in the debtor's principal residence is provided for under the debtor's plan pursuant to 1322(b)(5) of the Code, the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment at least 30 days before the first payment in the new amount is due.
- (b) Form and Content. A notice filed and served pursuant to subdivision (a) of this rule shall conform substantially to the form of notice under applicable nonbankruptcy law and the underlying agreement that would be given if the debtor were not a debtor in bankruptcy and be filed in the case as an attachment to a line. The creditor shall delete or redact any personal or confidential identifying information regarding any individual identified in the notice.
- (c) Notice of Fees, Expenses, and Charges. In a chapter 13 case, if a claim secured by a security interest in the debtor's principal residence is provided for under the debtor's plan pursuant to 1322(b)(5) of the Code, the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice that itemizes all fees, expenses, or charges incurred in connection with the claim after the bankruptcy case was filed, and that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be filed as an attachment to a line in the bankruptcy case and served no later than 180 days after the date when the fees, expenses, or charges are incurred. On a motion of the debtor or trustee filed no later than one year after service of the notice, the court shall, after notice and hearing, determine whether payment of the fees, expenses, or charges is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with 1322(b)(5) of the Code.
- (d) Notice of Final Cure Payment. No later than 30 days after making final payment of any cure amount on a claim secured by a security interest in the debtor's principal residence, the trustee in a chapter 13 case shall file and serve upon the holder of the claim, the debtor, and debtor's counsel a notice stating that the amount required to cure the default has been paid in full. If the debtor contends that final cure payment has been made and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve upon the holder of the claim and the trustee a notice stating that

Court Responses to January 2010 Survey

Court Preference

Comments

(1) upon any attorney who has appeared for that claimant in the bankruptcy case and (2) upon the claimant at the address (and in care of the individual) shown on the proof of claim. If the claim has been assigned by an assignment filed with the court, the service under (2) above shall be made upon the assignee at the address designated upon the filed assignment. The notice must clearly state that if no response is filed as provided for under subparagraph (e) of this rule, the court may enter the order provided for in subparagraph (e) without further notice or hearing.

(e) Response to Notice of Final Cure Payment. No later than 30 days after service of the notice under subdivision (d) of this rule, the holder of a claim secured by a security interest in the debtor's principal residence may file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default, and (2) whether, consistent with 1322(b)(5) of the Code, the debtor is otherwise current on all payments. If applicable, the statement shall itemize any required cure or postpetition amounts that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as an attachment to a line in the main case. If the holder of a claim secured by a security interest in the debtor's principal residence fails to file and serve a timely response to the notice of final cure payment, the court shall promptly enter an order declaring that the debtor has cured the default and that no amounts are unpaid as of the date of the Notice of Final Cure Payment.

(f) Motion and Hearing. On motion of the debtor or trustee filed no later than 30 days after service of the statement under subdivision (e) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts in full.

(g) Failure to Notify. If the holder of a claim secured by a security interest in the debtor's principal residence fails to provide any information required by subdivision (a), (c), or (e) of this rule, the holder shall be precluded from presenting the omitted information, in any form, as evidence in any hearing or submission in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless. In addition to or in lieu of this sanction, the court may, after notice and hearing, award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Court Responses to January 2010 Survey

Court Preference	Comments
docket	<p>In [our court], we allow creditors to file notices of change of the mortgage payments on the case docket.</p>
docket	<p>We have a local rule regarding this notice of change of payment. I have attached it here for your convenience. The notice is filed on the docket, not the claims register.</p> <p>Rule 3001-2 Adjustment in a Periodic Payment on a Secured Claim in Chapter 13</p> <p>(a) Creditor's Statement. A creditor with a claim under § 1322(b)(5) or (b)(7) shall file and serve on the debtor a statement of any proposed increase or decrease of periodic payments and file a certificate of service. The deadline to file this statement is 42 days before the effective date of the adjustment of the payment amount. The statement shall fully disclose the calculations on which the adjustment is based.</p> <p>(b) Objection. The deadline to file an objection to the creditor's statement under paragraph (a) is 21 days after the statement is filed. If an objection is filed, the court will schedule a hearing with notice to the debtor, the creditor and the trustee.</p> <p>(c) Trustee's Analysis. Within 14 days after the later of the deadline in paragraph (b) or the date that the court enters an order resolving any objection under paragraph (b), the trustee shall file a notice stating whether the plan will still be adequately funded with the current plan payment amount and if not, stating the necessary increase in plan payments.</p> <p>(d) Debtor's Proposed Plan Modification. Within 21 days after the trustee files the notice under paragraph (c), the debtor shall file a plan modification under Local Rule 3015-2(b), if necessary to assure adequate funding of the plan.</p>
docket	<p>Our court has not instituted a procedure for handling mortgage creditor notices, since no creditor has sought to file one. We would prefer that these notices be filed on the docket. To my knowledge, CM does not currently allow for "supplementation" of a claim, only for amendment. As our system is set up, only court users are able to add a document to an existing claim and doing so does not provide e-mail notification. So unless CM can be modified to overcome these problems, filing the notices to the docket seems a better approach.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
<p>docket</p> <p>(Current process allows the creditor to file the notice either on docket or as amended proof of claim on claims register)</p>	<p>Our response to Glen's email is as follows: We have a Standing Order (copy attached) which allows the creditor to file the notice <u>either</u> on the case docket or as an amended proof of claim on the claims register. (See paragraphs 3 and 4 of the attached Standing Order). For filing on the docket, we created a ECF event entitled <i>Notice of Mortgage Payment Change</i>. Our experience is that most creditors are using the docket event rather than the claims register option. We believe using the docket event is the better practice (and would prefer to see it incorporated into the Federal Rules rather than the Claims Register method) because it automatically provides notice of the proposed payment change to all registered ECF users in the case when the notice is filed. Conversely, ECF does not automatically provide notice to case participants when an amended proof of claim is filed.</p> <p>Our system has worked well. If the debtor does not agree with the proposed payment change when it is filed by the creditor and automatically noticed-out by ECF, the debtor files a response or objection which we then set for hearing</p>
<p>docket</p>	<p>Our court would prefer that such notices be filed on the docket rather than the claims register.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
docket	<p>Our court does not have a specific procedure for a lender to file notices of changes to interest rates, etc. under the terms of the existing mortgage. We have a CM/ECF event where a user can upload a notice of a renegotiated loan's terms, but that is not really what this rule speaks to. The language in the current proposed rule uses the term "supplement to the holder's proof of claim." There really is no such animal in the claim filing system, and it would be much easier to have the notice of changes in payment amounts, etc., simply file the notice on the docket.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
docket	<p>The Local Rules in [our court] require that "Notices of Payment Changes" and "Notices of Fees and Costs Incurred" on chapter 13 mortgages be filed on the case docket. This is contrary to the Proposed Federal Rule of Bankruptcy Procedure 3002.1 which calls for the notices to be filed as supplements to the mortgage-holder's proof of claim. The proposed rule also creates a requirement for the chapter 13 trustee to file a notice of final cure payment and calls for any response/objection to the notice of final cure amount to be filed as a supplement to the holder's claim. Our judges and chapter 13 trustee are unanimously opposed to the part of this proposed rule which directs that notices/responses/objections be filed as part of a claim/amended claim. By long-standing custom and rule, notices, responses, objections, and similar filings are always filed on the case docket. Changing the procedures for filing only certain types of notices, responses, objections will be confusing to the bar and, our judges predict, will lead to numerous errors and filings that are overlooked. Our judges prefer to see all notices, responses, and objections on the case docket where they can also view the Chapter 13 trustee's notice of final cure payment, hearings scheduled, and any orders entered on these issues. They do not want to have to take the time to run a claims register too in order to review a notice or response. The [court] would endorse an amendment to have these pleadings filed on the case docket. Please contact our Bankruptcy Operations Manager [name omitted] if you have follow-up questions. We appreciate the opportunity to provide input even if ours is the minority view.</p>
docket	<p>The [court] feels that this notice would be best served if placed on the case docket instead of the claims register. If you have questions or need additional information, please do not hesitate to call me.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
<p>docket</p> <p>(Recommends using functionality where notice is filed on the docket but spreads to the claims register)</p>	<p>We have discussed this here in [our court], and strongly urge that the proposed rule not be enacted. It is preferable to have these notices filed on the docket. If the notices were filed on the docket, we would create a docket event which has filing of the "supplement to proof of claim" (per proposed rule 3002.1(b), item (2)) made on the case docket with functionality in the event which has it automatically "spread" to the claims register. We have other events that work this way, e.g., Satisfaction of Claim. QC would consist chiefly of ensuring that the item was filed in the right case, that the image matches the case/entry, and that the correct claim number was selected/entered. It would be <u>much</u> easier for us to QC (for us courts who use QC editor) if the supplement were filed on the docket instead of to the claims register. Items filed on the docket side automatically appear in QC editor; things filed on the claims side are tracked via daily report which has to be searched.</p>
<p>docket</p>	<p>Currently, we do not have a procedure in place. We have seen a few letters docketed by the mortgage companies. Our recommendation is to have the mortgage creditor file the notice on the docket and not the claims register. It is easier to identify the notice on the docket.</p>
<p>separate post-petition claims register</p>	<p>In [our court], a General Order (now # 384) has established the mandatory use of a Model Chapter 13 Plan. Section E of that plan requires a postpetition Notice of Contract Change to be filed by the creditor on the claims register and served on the debtor, debtor's counsel and the trustee at least 30 days before the change is to take effect. Please note, however, that any such postpetition notices are not filed on the "normal" claims register but, instead, on a separate (postpetition) claims register that our IT department created for use in a case having such postpetition notices. A new event was created for the filing of these postpetition notices, and there is a report that can be run to identify where the event has been used successfully.</p>
<p>claims register</p>	<p>My vote is for such notices to go on the claims register.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
claims register	We are requiring creditors to file notices on the claims register.
claims register (Currently, asking creditors to send these notices directly to the Chapter 13 trustee)	Per Glen's request in his email of January 7, 2010, we are responding to his question regarding whether the notices referred to in the proposed rule 3002.1 should be filed on the case docket or the claims register. As was just discussed on the information sharing call, the creditor would not be able to file these notices on the claims register properly unless some changes are made to the claims module. CM/ECF would need to be altered to allow an option for filing a supplemental document that could be linked to the claim. If the necessary changes are made to the claims module, we do feel this would be the best place for these types of documents to reside. Under the current configuration of CM/ECF, we believe the document would have to be put on the docket if it was filed with the court because it is really not an amended claim. (Just for informational purposes, at this time in our district, we ask the creditors to send any notices of payment changes directly to the Chapter 13 Trustee and not file them with the court.) However this ends up, the courts will need to be provided with specific events for these notices for consistency in the filing of the required notices by the creditor, trustee and/or debtor. I would suggest that there be consideration given to creating these events in the starter dictionary so that there is consistency across the districts.
docket	I am responding to Glen Palman's e-mail regarding input to the Bankruptcy Clerks Advisory Group on a recommendation that notice of payment change be filed on the docket rather than on the claims register. In (our court), we have a local form: "Notice of Payment and/or Escrow Change; Notice of Cost Advance" that we file in the case docket. We've been performing this procedure since July of 2009. We haven't received many of these, however.
docket	I have not instituted a procedure and if necessary I would prefer the notice be filed on the docket rather than on the claims register. Please let me know if you have any questions.

Court Responses to January 2010 Survey

Court Preference	Comments
docket	<p>I am responding to Glen's question on this proposed new rule. This rule seems to anticipate a significant amount of noticing and room for objections. Navigating the claims register for this information would be unwieldy. Information is not as easily accessible as the regular case docket. The claims register is also not as easily searchable. Report functionality would be one of a number of good reasons to see these activities docketed on the main docket as opposed to the claims register.</p> <p>We have some of our Chapter 13 Trustees actually file a motion at the end of the case stating that the arrearages are cured and the debtor is current on payments. This seems to prevent a secured creditor from filing foreclosure proceedings in the state court, or at least gives the honest debtor some protection from all the paper trails as mortgages are bought and sold and some companies just do a terrible job in maintaining good accurate records.</p>
docket	We would prefer on the docket.
docket	[Our court] prefers that the notices of change to post-petition payment obligation be included on the docket rather than on the claims register.
No preference (Currently filed as "Copy of Correspondence" on main docket)	We hesitated to create a new CM/ECF event as requested and told creditors they could file this as Copy of Correspondence on the main docket. We don't have a particular opinion about where they should be filed. Either the docket or the claims register is fine with us.

Court Responses to January 2010 Survey

Court Preference	Comments
docket	<p>The [court] does not have a formalized policy, however, the current practice of entering post petition mortgage adjustments on the case docket was deemed acceptable by our Board of Judges nearly two years ago. In this district, such post petition activity is "outside the plan" and we rarely get notices of modifications sent to the court. The reason we placed the notice on the docket is that although it will be considered a supplement to the holder's proof of claim, such notices tend to generate further related proceedings (i.e., the filing of responses, certifications, motions, etc. which could potentially warrant further hearings). To us, it seemed more appropriate for all such related activities to be recorded on the case docket. Currently, only proof of claims themselves are entered on the claims register and related proceedings are recorded on the docket. The filing of the notice would indicate a change only in the payment amount and not in the amount of the claim. If I can be of further assistance, please let me know.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
docket	<p>I am responding to Glen Palman's e-mail concerning payment changes for home mortgages. In [our court], notices of change to the post-petition payment obligation on a home mortgage are entered on the main case docket by the filer. I am attaching a copy of the administrative order that explains the filing process in greater detail. Please let me know if you have any questions.</p>
docket (Wants it filed on docket but spread to claims register)	<p>For us it will be better if the notices are filed in the docket. It will be of great help if there is a CM/ECF function allowing cross-reference from the docket to the claims registry.</p>
claims register	<p>We are one of the 2 courts currently receiving these on the claims register by a special event in cm/ecf. It has worked fine for us and we are happy to continue this method.</p> <p>I just sent a response to the original email. The only other thing I would add is that our local rule on this subject requires that any objection by the debtor to these notice changes be made by motion on the docket. This way the creditor can file a response and a hearing can be held. Also, the original notice of change in our court is placed on the claims register by special event (not by an amendment or supplement to the claims register). It is located by a special report in cm/ecf. Then, any subsequent litigation is recorded on the docket, not in the claims register. Reading the proposed rule, I think it will be problematic if portions of the litigation are reflected on the claims register and other portions are recorded on the docket--seems like we are mixing the litigation up (although we do that to a degree with objections to claims as well, but this seems even more so).</p>
claims register (No procedure instituted at this time)	<p>The [court] has not instituted a procedure. The court does not support filing the notices on the docket.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
docket	<p>The [court] casts its vote for "on the docket." Thank you.</p>
claims register	<p>I do not support a BCAD position advocating the proposed rule be modified to permit/mandate putting this information on the docket of the case. I ask that BCAD not take such a stance. Although my court has yet to implement a local rule or procedure, we have worked with Chapter 13 trustee [name omitted] to develop and test claims register ECF events [to] support the rule, even as he proposed its adoption.</p> <p>My reasons against modifying the proposed rule (and a potential official stance by BCAD) are two-fold:</p> <p>(1) The relevant parties to the mortgage modification (payment change) are limited to debtor, debtor's counsel, and trustee, not all parties appearing in the case. By limiting the placing of the notice to the claims register and requiring service to those entities, the precise needs are met. By placing the notice on the docket, you unnecessarily increase notice to every ECF-registered party in the case and, depending on event configuration, add expense by noticing unnecessary parties through the BNC.</p> <p>(2) The notices contemplated in the new rule are not litigation notices or invitations to litigate (although claims' details are certainly are a legitimate source of litigation). Instead, they are notices of relatively minor variations in claim amounts. As such, they will be filed by Claimants, a class generally recognized as CM/ECF Users. CM/ECF Users generally do not have ECF rights allowing them access to the case docket. Instead, they have rights permitting only access to the claims register. It would require quite a shift in paradigm and practice to treat these notices as case pleadings for the docket. In effect, you would either be proscribing non-attorney claims-filers from filing them, or giving docket access to Users which has heretofore been restricted to Filers (generally, attorneys). Either prospect is undesirable.</p> <p>Bottom line: these are just supplements to the proofs of claim. Please thank Glen for putting the call to the courts for feedback. If you or he need elaboration on my opposition to his proposition, please do not hesitate to call on me.</p>

Court Responses to January 2010 Survey

Court Preference	Comments
docket	Current practice is for the creditor to send the notice to the Chapter 13 trustee, and the trustee files it with the court.
docket	We docket changes to post-petition mortgage payments as Certificates of Notice. We would prefer to continue docketing these and would probably create a new event if they need to be tracked.
docket	We docket the notice, if filed, to the BK case. Most of this is accomplished between the debtor and creditor without filing a document with the court. The debtor/creditor will notify the trustee via a notice or letter. We would opt to have the notices filed on the docket. Thanks and let me know if you require additional information.
docket	Our court has adopted a form notice that is to be filed on the docket.
docket	Our court has not instituted a formal procedure in this regard. Our preference would be to recommend, through BCAG, that the Rules Committee amend the rule to require the notice of payment change to be filed on the docket rather than on the claims register.

Court Responses to January 2010 Survey

Court Preference	Comments
<p>docket (Wants it filed on docket but linked to claims register using "ClaimNum" functionality)</p>	<p>I am responding to Mr. Palman's question on behalf of [our court] as per the request of [our] Clerk of Court. When this issue came up before, it was our court's opinion that these notices should not be filed with the court, they should be filed with the trustee. With that said, when we reviewed the proposed rule change, Bankruptcy Rule 3002.1 is noted as implementing Sec 1322(b)(5) which pertains to the contents of the plan. If the mortgage creditor is to file these notices with the court, I think that it might be more appropriate that these notices appear on the case docket report. Realistically, the process for these notices should work similar to that of an objection to claim. The claim is filed by the creditor. The mortgage creditor would file the notice. The docket entry used would have the ClaimNum function which would allow the notice to be linked to the claim on the claims register. Therefore the notice is going to appear both on the docket report and the claims register.</p> <p>In the comments on the new rule 3002.1, one judge made this suggestion -"I recommend that a standard, bankruptcy oriented form be adopted. A proposed form, that we have adopted in this District, is attached as Exhibit "C". Please see my comments above regarding escrow payments. If a non-bankruptcy form is filed, it will not reflect the proper amount of payment adjustment. Instead, it will improperly contain an adjustment for escrow deficiencies." This may be outside the scope of the question being asked by BCAD, but we would like to suggest that consideration be made towards developing a standard form for these notices.</p>
<p>Using docket but going to start using process where notice displays on both docket and claims register. Doesn't feel comment is necessary</p>	<p>We have such an event at the present time under the Claims Action Menu which may be utilized by e-filers with limited docketing privileges (non-attorneys). The event now displays on the docket sheet. We have discussed this issue with our IT department and have been advised that we can build a utility into the event which would provide for the docket entry to display both on the docket sheet and on the claims register. Our systems department is now making this modification so we would be in compliance with the proposed Federal Rule. In making this modification, this Court would see no need for a comment to be submitted.</p>

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Court Preference	Comments
<p>docket (Can use functionality so that it spreads to claims register when docketed in the main case)</p>	<p>[Our court] has instituted a procedure for the Notice of Payment Change. The procedure is contained in the form Chapter 13 plan and was developed with the input of our Chapter 13 trustee. The procedure states as follows:</p> <p>Notification of Payment Changes for Class Two Claims Being Paid through the Trustee</p> <p>In the event of any change in the amount of the monthly mortgage payments pursuant to the terms of the mortgage agreement, the creditor shall file with the Clerk, and serve upon the Debtor and Debtor's counsel, a Notice of Payment Change. Upon the filing of a Notice of Payment Change, the Trustee will change the monthly payment amount. In the event a Notice of Payment Change is filed, the Trustee shall be responsible to submit to the Court an amended wage withholding order and to notify the Debtor and Debtor's counsel in writing of the change in the Plan payment. In the event a payment change affects the rights of any other creditor, a pre-confirmation amended Plan or motion to modify confirmed Plan must be filed.</p> <p>Notices of Payment Change in [our court] are filed in the main case and the filer receives the screen copied below, with the message in red. If the filer answers "No" to the question about whether the notice is being filed without a certificate of service, they can't proceed to complete the filing. I would prefer that the notices be filed in the main case, although the event could be written to spread to the claims register. If a claim has been filed by the mortgage creditor, the notice of payment change could appear as a notation to that claim. I am not sure how the notice could be shown on the claims register if no claim has been filed. Hope this is helpful; please let me know if you need further explanation.</p>
<p>claims register (Currently, allows notices to be filed on docket but prefers claims register)</p>	<p>Although we current allow mortgage creditors to file on our docket, we will soon change our policy so that they have to file on the claims register. So, our preference is the claims register.</p>
<p>docket entry that spreads to claims register</p>	<p>My court prefers a docket entry that spreads to the claims register, just as an objection to claim does.</p>

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Court Preference	Comments
Will defer to general consensus	I have reviewed the proposed rule, and discussed the issue with chambers. From our perspective, we don't have a strong opinion either way, and would defer to the general consensus.