

Consumer Track

Section 524(i) and Beyond: The Use of Non-Standard Chapter 13 Plan Terms

Rudy J. Cerone, Moderator
McGlinchey Stafford, PLLC; New Orleans

Alane A. Becket
Becket & Lee, LLP; Malvern, Pa.

Hon. C. Ray Mullins
U.S. Bankruptcy Court (N.D. Ga.); Atlanta

John Rao
National Consumer Law Center; Boston



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Creativity in Chapter 13 – An Unsecured Creditor’s Dilemma

Alane A. Becket
Becket & Lee LLP
Malvern, PA
abecket@becket-lee.com

In *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (U.S. 2010), a debtor’s confirmed Chapter 13 plan proposed to repay only the principal on the debtor’s student loan debt, stating that the accrued interest would be discharged once the debtor repaid the principal. The Bankruptcy Court confirmed Espinosa's plan, even in the absence of an adversary proceeding and a finding of undue hardship. Years after the plan was confirmed, the student loan creditor sought to collect the remainder of the debt to satisfy the unpaid portion of his student loans. The debtor petitioned the Bankruptcy Court for an order holding the lender in contempt for violating the discharge injunction. The lender cross-moved under Rule 60(b)(4) to void the confirmation order. Although the Court’s ruling focused on whether a confirmation order containing a legal error is void, the Court also addressed the practical effect of its ruling:

United argues that our failure to declare the Bankruptcy Court's order void will encourage unscrupulous debtors to abuse the Chapter 13 process by filing plans proposing to dispense with the undue hardship requirement in the hopes the bankruptcy court will overlook the proposal and the creditor will not object. In the event the objectionable provision is discovered, United claims, the debtor can withdraw the plan and file another without penalty.

We acknowledge the potential for bad-faith litigation tactics. But expanding the availability of relief under Rule 60(b)(4) is not an appropriate prophylaxis. As we stated in *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed. 2d 280 (1992), “[d]ebtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings,” *id.*, at 644, 112 S. Ct. 1644, 118 L. Ed. 2d 280; see Fed. Rule Bkrcty. Proc. 9011. The specter of such penalties should deter bad-faith attempts to discharge student loan debt without the undue hardship finding Congress required. And to the extent existing sanctions prove inadequate to this task, Congress may enact additional provisions to address the difficulties United predicts will follow our decision. 130 S. Ct. 1381-1382.

After *Espinosa*, it could reasonably be expected that debtors would not attempt to use plans as means for achieving goals otherwise prohibited by the Code and rules. If non-standard provisions are used in plans, they would be conspicuous and the creditor given adequate notice. *Espinosa* also seemed to place a higher burden on Courts to refuse to confirm plans with improper provisions, even if no other party objects to confirmation. The practical effect of this directive is that the task falls to the trustees. It might also have been expected that debtors whose plans proposed improper treatment of claims would be sanctioned, which would be not only in accordance with the Supreme Court's warning, but would serve to deter behaviors that burden the system. Finally, *Espinosa* reminded creditors, even those who do not expect their claims to be treated, that they are their own best advocate and that "due process" is not necessarily dependent upon strict compliance with procedural rules.

**“Creative”
“Non Standard”
“Improper”
“Zealous Advocacy”
“Illegal”**

Despite what practitioners might have expected, plans are still being proposed with “creative” provisions. Because many secured claims can be modified in Chapter 13, it is common for secured creditors to obtain and review Chapter 13 plans, and to object to confirmation if there is a dispute over their treatment.

Student lenders likewise commonly review plans because, surprisingly, some debtors appear to have read *Espinosa* to permit a “discharge by declaration” if proper notice is made to the lender. There is, of course, a cost to the lender of reviewing every Chapter 13 case for plans and amended plans, which would be unnecessary if debtors never attempted to obtain a discharge of student loan debt through the plan. General unsecured creditors face the same dilemma. With the advent of electronic noticing, unsecured creditors may receive plans that they have no intention of reviewing. This is because unsecured creditors expect to be treated the same as similarly situated unsecured creditors. If a debtor disagrees with the claim, the creditor would expect the debtor to object to the claim, because generally, a Chapter 13 plan may not properly serve to object to a proof of claim. *Simmons v. Savell (In re Simmons)*, 765 F.2d 547, 553 (5th Cir. 1985) (“The Code and the Rules do not envision the use of a plan as a means for objecting to

proofs of claims.”); *Sun Fin. Co., Inc. v. Howard (In re Howard)*, 972 F.2d 639, 642 (5th Cir. 1992) (opining that a debtor, to challenge a claim, must either assert a counterclaim or offset, or file an objection to the claim to dispute the amount or validity thereof); *Internal Revenue Serv. v. Taylor (In re Taylor)*, 132 F.3d 256, 260-61 (5th Cir. 1998) (applying *Simmons* to a tax penalty). Only a proper objection to claim fulfills the purposes and procedural demands and protections of the proof of claim process. *Id.* at 260. (emphasis added) In reviewing a plan’s effect on the validity of a secured claim, the *Taylor* court opined:

In reaching our conclusion in *Simmons*, this court considered the purpose of the proof-of-claim process and the Bankruptcy Code's treatment of a secured creditor. **An objection to a proof of claim serves to initiate a contested matter and thereby serves the purpose of putting the parties on notice that litigation is required to resolve the objection and to make a final determination on the allowance or disallowance of the claim.**

...
Unlike an objection to a proof of claim, the filing of a plan does not generally initiate a contested matter with respect to a particular claim, and when a plan is filed with a petition (as is the case in Chapter 13), creditors may not have even contemplated filing proofs of claims.

Id. at 260-61 (citations omitted)(emphasis added). See also *In re Barton*, 249 B.R. 561 (Bankr. E.D. Wash. 2000).

Because bankruptcy rules require this process, unsecured creditors expect that their claims will be treated as all others, until they receive specific notice to the contrary. And, while an unsecured creditor with a co-signed claim might reasonably be expected to know that its claim may be treated differently than non-co-signed claims, the Bankruptcy Code contemplates *more* favorable treatment than the debtor’s other general unsecured creditors. Indeed, “courts have uniformly ruled that the authorization to treat codebtor claims differently permits favoring such claims, not disfavoring them.” Stephen L. Sepinuck, *Rethinking Unfair Discrimination in Chapter 13*, 74 Am. Bankr. L.J. 341, 368 (citing cases, n.155: *In re Campbell*, 242 B.R. 547, 549 (Bankr. S.D. Ga. 1999) (dicta); *In re Burnip*, 229 B.R. 904, 906 (Bankr. S.D. Ohio 1999); *In re Markham*, 224 B.R. 599[, 601] (Bankr. W.D. Ky. 1998); *In re Davis*, 101 B.R. 505, 507 (Bankr. S.D. Ohio 1989); *In re Diaz*, 97 B.R. 903, 904-05 (Bankr. S.D. Ohio 1989); *In re Dondero*, 58 B.R. 847, 848 (Bankr. D. Or. 1986); *In re Perkins*, 55 B.R. 422 (Bankr. N.D. Okla. 1985)); see also *In re Vollman*, 383 B.R. 696, 697 (Bankr. S.D. Ohio 2008) (opining that the plan before the court “cannot be confirmed because it proposes to pay nothing to nonpriority unsecured claims

with co-obligors, while paying a 100% dividend to all other nonpriority unsecured claims”). Creditors with co-signed claims, therefore, might also choose not to review Chapter 13 plans, because at the very least, they would be treated in the same manner as other unsecured creditors, if not better.

Despite this, the examples of actual plan provisions that follow demonstrate the unsecured lender’s dilemma: invest the time and resources to review every plan and plan modification that arrives via electronic or paper notice for any unusual treatment, or hope that the Chapter 13 trustee objects to discriminatory or improper provisions, or that the fear of sanctions will be a deterrent. Because of the ability of debtors to write plans containing “non-standard” provisions, and the lack of a bright line between “creativity” and “illegality, the following questions are unanswered:

- What kind of notice is an unsecured creditor entitled to if a plan treats the claim differently? It is reasonable to expect unsecured creditors to read all plans and modifications to determine if there are any provisions adverse to their interest?
- When a plan has a provision that reduces or eliminates payment for an unsecured claim, is confirmation of the plan binding on the unsecured creditor in the absence of an objection to the creditor’s claim?
- If an unacceptable plan provision is discovered after confirmation, what recourse does the unsecured creditor have?
- Why do some plans still propose to discharge all or part of student loans? Is that what *Espinosa* intended?
- Are courts and trustees taking any new steps to “police” Chapter 13 confirmation plans after *Espinosa*?
- Where is the line between “zealous advocacy” and a Rule 9011 violation? What makes a plan provision “illegal” versus merely “non-standard”?
- What kind of “different” treatment does the Code contemplate for co-signed claims in section 1322(b)? Can different be “worse” treatment and if so, what notice should be afforded the creditor and/or the cosigner?

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Name of Creditor	Amount Due	Value	Interest Rate	Collateral	Monthly Payment Amount
[REDACTED]					

(f) After the above are paid, distributions will be made to cure arrearages and other secured debts whose claims are duly proven and allowed as follows:

Name of Creditor	Estimated Amount Due	Value	Interest Rate	Collateral

(g) The following collateral is surrendered to the creditor:

Name of Creditor	Description of Collateral

(h) The following domestic support obligations will be paid over the life of the plan as follows: (These payments will/will not be made simultaneously with payment of the secured debt and will/will not include interest at the rate of _____%. Interest can only be included if the plan is proposing to pay all claims in full.)

Name of Creditor	Payment Amount

- (i) The following unsecured claims are classified to be paid at 100%. These payments will/will not be made simultaneously with payment of the secured debt:
- (j) All other 11 U.S.C. § 507 priority claims, unless already listed under 2(g), will be paid in full over the life of the plan as funds become available in the order specified by law.
- (k) The debtor(s) will be the disbursing agent on the following debts: [REDACTED] two final payments of \$368 to [REDACTED] to complete debt settlement agreement; pay off [REDACTED] which is fully secured by a CD.
- (l) Special Provisions: Pursuant to 11 USC 522 (f) and any other applicable statute all holders of liens other than long term debt, including but not limited to [REDACTED] shall cancel said liens within 15 days following notification of debtor(s) discharge.
- (m) General unsecured creditors whose claims are duly proven and allowed will be paid (1) 100% dividend or a prorata share of \$_____, whichever is greater; or (2) the debtor(s) will make payments for _____ months and anticipates a dividend of _____%. Estimated payout 60 months.

Date: 1/21/11

[REDACTED]
Debtor: _____
[REDACTED]
Debtor: _____

14. **GENERAL UNSECURED CREDITORS:** General unsecured claims will be paid after all other unsecured claims, including administrative and priority claims, from Debtor's projected disposable income in an amount not less than the amount those creditors would receive if the estate of Debtor were liquidated under chapter 7 on the date of confirmation pursuant to 11 U.S.C. § 1325(a)(4), the "best interest of creditors" test.

NON-STANDARD PROVISIONS FOR ¶ 14:

Debtor contends that her only legitimate nonpriority unsecured debts consist of [REDACTED] in the approximate amount of \$14,833.91, and [REDACTED] in the approximate amount of \$101.78, for a total of \$14,935.69. All other debts listed in Schedule F were incurred by [REDACTED] who gained access to the Debtor's personally identifiable information and used it to open credit accounts in the Debtor's name, without her knowledge or consent. The Debtor denies having any personal obligation to pay the debts incurred by [REDACTED]

The Debtor proposes to pay the above-referenced claims of [REDACTED] and [REDACTED] and the undersecured deficiency claims of her secured creditors, in full over the 36 to 60 month term of her Chapter 13 Plan. All other nonpriority unsecured claims will receive no payment.

15. **"BEST INTERESTS OF CREDITORS TEST."** Debtor represents that the property listed below would have the designated liquidation value if it were liquidated in a Chapter 7 case. (List property, explain how the computation of the liquidation value was made, or attach a separate document explaining computation.)

a. **Total liquidation value:** \$78.98

b. **Explanation of Calculation:** The liquidation value is based on the Debtor's cash and bank account balances as of the date of filing. If the Debtor recovers any value from her unliquidated claim against [REDACTED] or recovers any property he purchased using her credit, she will turn over such value or property to the Trustee for distribution under the Plan.

NON-STANDARD PROVISIONS FOR ¶ 15:

N/A

16. **PROPERTY OF THE ESTATE:**

a. In addition to the property specified in 11 U.S.C. § 541, property of this bankruptcy estate includes all property acquired after the filing of the bankruptcy petition, including earnings. Except as otherwise provided, Debtor will remain in possession of all property of the estate.

b. All property of the estate will vest in Debtor at discharge or dismissal of the case.

NON-STANDARD PROVISIONS FOR ¶ 16:

N/A

17. **OTHER GENERAL PLAN PROVISIONS:**

(List any other Plan provision here that is not already noted, does not relate to a provision above, where space is not available, or that deviates from the model plan.)

N/A

18. This Plan contains no provisions deviating from the model plan adopted by the Court and in effect at the time of the filing of this case unless they are

4861

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF

IN RE: [REDACTED]

BK. CASE # [REDACTED]

DEBTOR(S)

CHAPTER 13

CHAPTER 13 PAYMENT PLAN

NOTICE: The following plan contains provisions which may significantly affect your rights. You should read this document carefully and discuss it with your attorney. When confirmed, the plan will bind the debtor and each creditor to its terms. Objections must be filed in writing with the Court and served upon the debtor(s), debtors' counsel, the Trustee and any other entity designated by the Court, at the 341 meeting of creditors or not less than twenty (20) days prior to the scheduled confirmation hearing. For post confirmation Plan Modifications, objections must be filed and notified in the same manner within twenty (20) days from its notification. This plan does not allow claims. Any party entitled to receive disbursements from the Trustee must file a proof of claim. The Trustee will pay the allowed claims, as filed, provided for in the plan, unless disallowed or expressly modified by the Court and / or the terms of the plan. If no claim is filed, the Trustee will not pay a creditor provided for in the plan, unless ordered by the Court. If the Trustee is to make POST-PETITION REGULAR MONTHLY PAYMENTS to any Secured obligation, then a proof of claim must be filed including the following information: account number, address, due date and regular monthly payment. Secured creditor must notify any change in the monthly payment, three (3) months prior to the effective date of new payment. Those post-petition monthly payments will not exceed the life of the plan. See the notice of commencement of case for 341 meeting date and claims bar date, the latter is the date by which a proof of claim must be filed in order to participate of the plan distribution.

- 1. The future earnings of the Debtor(s) are submitted to the supervision and control of the Trustee and the Debtor(s) shall make payments to the Trustee:
[] directly [] by payroll deductions, as hereinafter provided in the PAYMENT PLAN SCHEDULE.
2. The Trustee shall distribute the funds as received as hereinafter provided in the DISBURSEMENT SCHEDULE.
[] 3. The Confirmation Order will not vest property of the Estate on Debtor(s) until the Order discharging Debtor(s) is entered.

PLAN DATED: 7-12-2010
[] AMENDED PLAN DATED:
[] PRE [] POST-CONFIRMATION
FILED BY [] DEBTOR [] TRUSTEE [] UNSECURED CREDITOR

I. PAYMENT PLAN SCHEDULE
Table with columns for amount, frequency, and total. Includes 'Additional Payments' and 'Periodic Payments' sections.

PROPOSED PLAN BASE: \$ 6,000

II. ATTORNEY'S FEES
To be treated as a § 507 Priority, and paid before any other creditor and concurrently with the Trustee's fees, unless otherwise provided:
a. Rule 2016(b) Statement: \$ 1,500
b. Fees Paid (Pre-Petition): (\$ 0)
c. R 2016 Outstanding balance: \$ 1,500
d. Post Petition Additional Fees: \$ 0
e. Total Compensation: \$ 1,500

Signed: [Signature]
DEBTOR
JOINT DEBTOR

ATTORNEY FOR DEBTOR [Signature]

III. DISBURSEMENT SCHEDULE SEQUENCE

A. SECURED CLAIMS: [] Debtor represents that there are no secured claims.
[] Adequate Protection Payments: Cr. \$
[] Trustee will pay secured ARREARS:
Cr. Acct. Cr. Acct. Cr. Acct.
[] Trustee will pay REGULAR MONTHLY PAYMENTS:
(please refer to the above related notice, for important information about this provision)
Cr. Acct. Cr. Acct. Cr. Acct.
Monthly Pymt. \$ Monthly Pymt. \$ Monthly Pymt. \$
[] Trustee will pay IN FULL Secured Claims:
Cr. Cr. Cr.
\$ \$ \$
[] Trustee will pay VALUE OF COLLATERAL:
Cr. Cr. Cr.
\$ \$ \$
[] Secured Creditor's interest will be insured. INSURANCE POLICY will be paid through plan:
Cr. Ins. Co. Premium: \$
(Please indicate in "Other Provisions" the insurance coverage period)
[] Debtor SURRENDERS COLLATERAL TO Lien Holder.
[] Debtor will maintain REGULAR PAYMENTS DIRECTLY to:

B. PRIORITIES. The Trustee will pay §507 priorities in accordance with the law [§1322 (a)(2)].
C. UNSECURED PREFERRED: Plan [] Classifies [] Does not Classify Claims.
[] Class A: [] Co-debtor Claims: [] Pay 100% / [] "Pay Ahead":
[] Class B: [] Other Class:
[] Cr. [] Cr. [] Cr.
\$ \$ \$

D. GENERAL UNSECURED NOT PREFERRED: (Case Liquidation Value = \$)
[] Will be paid 100% plus % Legal Interest. [] Will be paid Pro-Rata from any remaining funds

OTHER PROVISIONS:
Tax refunds if any will fund the plan during the life of the plan. The student loans with Sallie Mae and/or US Dpt. of Education and/or AES will be deemed and will be discharge after the notice of the Trustee report, no opposition filed and the Order of Discharge is granted by the Bankruptcy Court.

Phone: [REDACTED]

CREDITOR (COLLATERAL)	ADDRESS OF COLLATERAL	INTEREST RATE	MONTHLY PAYMENT
[REDACTED] (2005 DODGE TRUCK)	[REDACTED]	0%	\$250

CLASS SIX – STUDENT LOANS

Repayment of student loans constitute an undue hardship due to the fact that Debtor(s) current income and expenses would not allow for a minimal standard of income for themselves and their dependants if they repays their student loans. Debtor(s) therefore seek discharge of student loans pursuant to § 523(a)(8)(B)(1) and *Brunner v. New York State Higher Educ. Servs. Corp.*, 831 F. 2d 395 (2d Cir. 1987).

PLEASE NOTE: All Creditors within Class Six will be provided additional notice regarding the debtors' Schedule I & Schedule J income and expenses along with a copy of this plan by Certified Mail, Return Receipt Requested to the Highest Ranking Officer and/or Designated Officer within 5 business days from Plan Filing Date. *If a creditor disputes the undue hardship, then that creditor must timely object to the confirmation of this plan, and the value and/or interest rate dispute will be litigated and decided as part of the confirmation hearing.* Failure to timely object to the confirmation of this Plan shall be deemed to be an acceptance of this Plan's statement of undue hardship.

CLASS SEVEN – GENERAL UNSECURED CLAIMS

Allowed General Unsecured Claims shall be paid pro rata through the plan. The total amount of claims and funds available is unknown at this time. The debtor(s) plan shall terminate in the event that claims of this class are paid in full.

EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES [11 U.S.C. §1322(b)(7) and 11 U.S.C. §365]

Continuing, Post-Petition Obligations:

CREDITOR (COLLATERAL)	ASSUME/REJECT	REGULAR PAYMENT	CONTRACT EXPIRATION DATE
[REDACTED]	ASSUME	NA	NA
[REDACTED]	REJECT	NA	
[REDACTED]	REJECT	NA	
[REDACTED]	ASSUME	\$190	

Those executory contracts and/or unexpired leases not listed herein are rejected. The automatic stay shall be lifted upon confirmation of the Plan with respect to any executory contract or unexpired lease assumed, that is to be paid directly by the Debtor.

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Panel:

Alane A. Becket
Becket & Lee, LLP
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John Rao
National Consumer Law Center
Boston, MA

Hon. C. Ray Mullins
United States Bankruptcy Court
Northern District of Georgia
Atlanta, Georgia

Moderator:

Rudy J. Cerone
McGlinchey Stafford, PLLC
New Orleans, Louisiana

Materials by:

John Rao
National Consumer Law Center
Boston, MA

Rudy J. Cerone
McGlinchey Stafford, PLLC
New Orleans, LA

This presentation summarizes certain cases and developments and is for educational purposes only. It is not, and should not be attributed as, the views of the authors, their firms or clients, or of the panel members.

A Fresh Look at Curing Mortgage Defaults in Chapter 13

Written by:

John Rao

National Consumer Law Center¹

As more homeowners in foreclosure seek relief in bankruptcy, the time has come to fix the systemic problems in chapter 13 related to curing mortgage defaults. Although cure plans have been part of chapter 13 practice since the Code's enactment, mortgage creditors continue to struggle with the application of payments in a manner which the law requires. This article looks at ways in which interested parties in the bankruptcy system may take steps to encourage compliance with the Code's cure provisions, primarily through plan provisions implementing the new remedy found in § 524(i) created by BAPCPA.²

Problems with Curing Defaults on Home Loans

The effect of a cure in a chapter 13 case is to nullify all consequences of the prebankruptcy default.³ Once the debtor's chapter 13 plan is confirmed in a case involving a long-term mortgage, the debtor's ongoing regular mortgage payments should be applied from the petition date based on the mortgage contract terms and original loan amortization as if no default exists.⁴ As recognized by the Supreme Court in *Rake v. Wade*,⁵ all prebankruptcy arrearages are paid separately under the plan as a part of the mortgage servicer's allowed claim.

¹ This article was originally published in the American Bankruptcy Institute Journal at: 27 American Bankr. Inst. Journal 14 (Feb. 2008), and is reprinted with the permission of the ABI. It has been updated to include discussion of more recent court opinions and the adoption of Bankruptcy Rule 3002.1 in December, 2011.

² There have been recent encouraging signs of progress. In addition to court approval of plan provisions implementing § 524(i), the NACTT and representatives from several major servicers have developed a set of best practices. See Henry E. Hildebrand III, *Won't You Come Home, George Bailey? Best Practices for a Troubled Mortgage Service Industry*, 27 Am. Bankr. Inst. J. 10, 51 (May, 2008)

³ The House Report to the Bankruptcy Reform Act of 1994 reaffirms that this is the intent of Congress. See H.R. Rep. No. 835, 103d Cong., 2d Sess. 55 (1994) reprinted in 1994 U.S.C.C.A.N. 3340 ("It is the Committee's intention that a cure pursuant to a plan should operate to put the debtor in the same position as if the default had never occurred.")

⁴ See *In re Wines*, 239 B.R. 703 (Bankr. D.N.J. 1999); *In re Rathe*, 114 B.R. 253 (Bankr. D. Idaho 1990).

⁵ 508 U.S. 464, 473 (1993)(noting that as authorized by § 1322(b)(5), mortgage creditor's claim is effectively "split ... into two separate claims - the underlying debt and the arrearages").

The problem is that mortgage creditors continue to treat timely payments received after the bankruptcy is filed as if they were late. This occurs because of the industry practice outside of bankruptcy of crediting payments received to the oldest outstanding installment due. While servicers attempt to manually override their automated systems, it is unrealistic to expect that this can be done regularly without error every month for the three to five years of the plan.

What this means for consumer debtors is additional costs in the form of unauthorized fees. As payments are deemed late or insufficient, the automated systems treat payments as unapplied and divert them to suspense accounts, impose late fees and additional interest charges, and order property inspections and other default related services.⁶ Legal fees are imposed on debtors for groundless stay relief motions, typically without disclosure to the debtor or court approval.

This breakdown of the servicing system also results in debtors often not being notified of interest rate adjustments on adjustable rate mortgages or payment changes on escrow accounts. It is not uncommon for debtors who successfully complete their chapter 13 plans to receive a bill for thousands of dollars of previously undisclosed improper fees once they emerge from bankruptcy. For example, in *In re Dominique*,⁷ the servicer failed to send escrow account statements during the chapter 13 plan and just before plan completion, provided debtors with an escrow account review showing that a \$6,397 escrow deficiency was owed.⁸

⁶ In *In re Nosek*, 363 B.R. 643 (Bankr. D.Mass. 2007), the bankruptcy court awarded under § 105(a) \$250,000 in actual damages to the debtor for her emotional distress and \$500,000 in punitive damages based on the servicer's violation of § 1322 by diverting plan payments to a suspense account. In reversing this judgment, the First Circuit held that sanctions could not be imposed on the servicer for misapplication of plan and mortgage payments because the debtor's plan failed to specify how payments were to be applied. See *In re Nosek*, 544 F.3d 34 (1st Cir. 2008).

⁷ 368 B.R. 913 (Bankr.S.D.Fla. 2007).

⁸ See also *PNC Bank v. Black*, 2010 WL 5418898 (S.D. Ind. Dec 23, 2010)(affirming bankruptcy court order deeming mortgage current and prohibiting mortgage creditor from collecting \$23,232.63 in undisclosed postpetition escrow advances); *In re Ellzey*, 2010 WL 3924011 (E.D. La. Sep 29, 2010)(mortgage creditor willfully violated stay and discharge order by reinstating foreclosure proceeding after chapter 13 discharge entered and attempting to collect prepetition arrearage amounts); *In re Foreman*, 2010 WL 2696630 (M.D. N.C. July 7, 2010)(creditor waived its right to collect post-petition arrears because it did not comply with plan that required notice of change in monthly payment and instead permitted a \$12,000 arrearage to accrue); *In re Jones*, 366 B.R. 584 (Bankr. E.D. La. 2007) (mortgage creditor collected additional \$24,450 in unlawful postpetition fees and interest charges at closing on court-approved refinancing).

Making Use of Section 524(i)

A new and specific cause of action to remedy plan payment application problems was created by BAPCPA. Under § 524(i), a creditor's willful failure to properly credit payments received under a confirmed plan constitutes a violation of the injunction under § 524(a).⁹ This provision is enforceable only after the debtor obtains a discharge.¹⁰ Unlike other discharge injunction enforcement proceedings, a § 524(i) enforcement proceeding will in most instances involve actions taken by a creditor before the discharge is entered.

To make use of § 524(i), the debtor's chapter 13 plan must contain precise language directing how payments are to be applied. In other words, § 524(i) is not self-executing and can only be invoked if the debtor proves that the creditor failed to "credit payments in the manner required by the plan." A recent First Circuit opinion involving pre-BAPCPA law provides compelling justification for adoption of § 524(i) plan provisions as discussed in this article. In *In re Nosek*,¹¹ the First Circuit held that sanctions could not be imposed on the servicer for misapplication of plan and mortgage payments because the debtor's plan failed to specify how payments were to be applied. The First Circuit noted that Congress added § 524(i) in 2005 precisely to address the payment application problems raised in the case, noting that plan provisions dealing with payment application are necessary:

Notwithstanding these legal conclusions, we are not unsympathetic to Nosek's predicament as a debtor seeking to satisfy the terms of her Chapter 13 Plan and stave off foreclosure of her home. Her circumstances are all too common today. Given their prevalence, it is troubling that Ameriquest had not established a more efficient and accurate way of handling the accounting issues revealed by this case at the time of trial. We fully understand the bankruptcy court's concerns about the practices that it described.

Nevertheless, the bankruptcy court's legitimate concerns did not justify the remedy that it invoked. Nosek did not demonstrate here that Ameriquest's accounting practices caused her any economic harm or threatened her right to cure her pre-petition default. Moreover, even if such a threat had been demonstrated by those practices, there was no language in Nosek's Plan, as it was confirmed, or in § 1322(b), that

⁹ Section 524(i) provides a response to decisions which had questioned whether bankruptcy court authority exists to remedy a creditor's failure to credit postpetition payments properly. For example, it provides a remedy found missing in *Telfair v. First Union Mortgage Corp.*, 216 F.3d 1333 (11th Cir. 2000).

¹⁰ *In re Mattox*, 2011 WL 3626762 (Bankr.E.D.Ky. Aug 17, 2011)(section 524(i) provides a clear remedy for misapplication of plan payments once a discharge injunction is entered).

¹¹ 544 F.3d 34 (1st Cir. 2008).

addressed how Ameriquest was to apply the payments it received from Nosek or from the trustee. Under such circumstances, the Plan would have to be amended to prescribe the accounting practices necessary to protect Nosek's right to cure before Ameriquest could be sanctioned for a violation of an order of the bankruptcy court. In the absence of such specificity, there was no violation of § 1322(b) or the Plan and therefore no basis upon which to award Nosek damages under § 105(a).¹²

Courts may wish to take a fresh look at model plans, local rules, and plans proposed by debtors to ensure that the intent of Congress in enacting § 524(i) is implemented. While there are many different ways to approach these issues, and several courts have already taken on this task,¹³ several sample plan provisions are discussed below.¹⁴

¹² *In re Nosek*, 544 F.3d 34, 49-50 (1st Cir. 2008)(footnotes omitted).

¹³ *See, e.g.*, Standing Order 08-1, as adopted by the United States Bankruptcy Court for the District of Kansas, which provides:

Confirmation of the plan shall impose an affirmative duty and legal obligation on the Real Property Creditor to do all of the following:

1. Apply the payments received from the Trustee for payment on the Arrearage, if any, only to such Arrearage pursuant to the plan. The arrearage shall be deemed paid in full upon the entry of the Discharge Order in this case, unless otherwise ordered by the Court.
2. Deem the pre-petition Arrearage (and post-petition Arrearage, if any) contractually current upon confirmation of the plan so as to preclude the imposition of late payment charges or other default related fees and services based solely on any pre-petition default or the payments referred to in paragraph V(B), above. This obligation will have no force and effect if the case is dismissed or converted.
3. Apply the post-petition monthly mortgage payments paid by the Trustee or by Debtor to the month in which they were designated to be made under the plan. Even if such payments are placed into a suspense, forbearance or similar account, they will be deemed to have been applied to the note pursuant to this subsection.
4. If an escrow account is required by the terms of the mortgage, Real Estate Creditor shall, either with its Proof of Claim or within 30 days of the date of the petition, prepare and provide to Debtor, Debtor's attorney and Trustee an escrow analysis for the current computation year, as defined by Regulation X § 6-1423.14 or for the next computation year if that computation year is scheduled to occur within 30 days of the date of the petition to reflect the property post-petition mortgage payment escrow. This should not include any sums or fees that were or should have been included in the pre-petition Arrearage claim.

¹⁴ The National Consumer Law Center has created a website that collects model chapter 13 plans and local rules addressing payment application issues in

Section 524(i) Chapter 13 Plan Provisions

Effect of Cure

This first provision specifies how ongoing postpetition payments received by the mortgage creditor are to be applied under the terms of the plan:

- **Postpetition Mortgage Payments. Payments received by holders and/or servicers of mortgage claims for ongoing postpetition installment payments shall be applied and credited to the debtors' mortgage account as if the account were current and no prepetition default existed on the petition date in the order of priority specified in the note and security agreement and applicable nonbankruptcy law. Postpetition installment payments made in a timely manner under the terms of the note shall be applied and credited without penalty.**

Consistent with caselaw interpreting § 1322(b)(5), this provision requires the creditor to override its regular payment application regime of applying payments to the first installment due.¹⁵ It also requires the creditor to apply payments in the customary order of priority under the terms of the mortgage,¹⁶ and recognizes that late fees may be charged only if postpetition payments are not made timely.¹⁷ A similar plan provision approved in *In re Collins*,¹⁸ requires the mortgage creditor to “apply the post-petition monthly mortgage payments paid by the trustee or by the Debtors to the month in which each payment was designated to be made under the plan or directly by the Debtors....”¹⁹

chapter 13 cases. The website may be accessed at:

www.bankruptcymortgageproject.org.

¹⁵ See *In re Jones*, 366 B.R. 584 (Bankr.E.D.La. 2007) (confirmation of plan providing for cure “recalibrates” amounts due as of petition date).

¹⁶ For post-January 2001 Fannie Mae/Freddie Mac uniform instruments, the order of application of payments is 1) interest; 2) principal; 3) escrow; 4) late fees, and 5) any other charges due under the security instrument.

¹⁷ See *In re Perez*, 339 B.R. 385 (Bankr.S.D.Tex. 2006)(finding that Home Mortgage Payment Procedures and Uniform Plan approved in district which limit assessment of postpetition late fees was not impermissible modification of mortgage holder’s rights).

¹⁸ 2007 WL 2116416 (Bankr. E.D.Tenn. July 19, 2007).

¹⁹ See also *In re Hudak*, 2008 WL 4850196, * 5 (Bankr. D. Colo. Oct 24, 2008)(approving plan provisions requiring creditor “to apply the direct mortgage payments paid [to the Creditor] by Debtor to the month in which they were made under the plan whether they are immediately applied to the loan or are placed into suspense.”).

Another approach approved by the court in *In re Jones*,²⁰ focuses on the bifurcation required by a cure plan and specifies that the debtor's mortgage account shall be "divided into two new, internal administrative accounts." The first account consists of the amounts to be disbursed under the plan for the prepetition arrearage. The second account is the principal amount due on the petition date, and includes postpetition interest accrual and escrow expenses.²¹ The plan would then provide that the "debtor's regular monthly note payments will be posted to this [second] account, reducing post-petition interest accrual, post-petition property and tax expenditures, and principal."²²

Escrow and ARM Issues

The next provision attempts to avoid the problem of debtors being surprised by large, catch-up bills after emerging from bankruptcy for amounts the creditor was entitled to based on escrow and interest rate changes but which were never disclosed:

- **Postpetition Payment Changes. Holders and/or servicers of mortgage claims shall make adjustments to the ongoing installment payment amount as required by the note and security agreement and applicable nonbankruptcy law, including changes based on an escrow analysis for amounts required to be deposited in any escrow account or based on an interest rate provision in an adjustable rate mortgage. Holders and/or servicers shall timely notify the debtors, debtors' attorney and trustee of such payment adjustments and any shortage, deficiency or surplus of funds in any escrow account.**

This provision simply requires mortgage creditors to service the loan in the customary manner as they would for homeowners outside of bankruptcy. Based on the Real Estate Settlement Procedures Act, this would mean performing an annual escrow analysis and notifying borrowers of any changes in escrow deposits and balances at least once per year within 30 days of the analysis.²³ The creditor must

²⁰ 2007 WL 2480494 (Bankr. E.D.La. Aug 29, 2007) *affirmed in part and reversed in part*, 391 B.R. 577 (E.D. La. 2008).

²¹ To avoid double payment, the principal amount should be based on the original amortization as if the account were current on the petition date since the arrearage amount typically includes the entire past due installment payments which provide for payment of principal. A similar analysis of the postpetition escrow payments must be done to avoid double payment of prepetition escrow charges. *See In re McCormack*, 203 B.R. 521 (Bankr. D.N.H. 1996)(noting that escrow account must be "zeroed out" post-confirmation to exclude any pre-confirmation amounts being paid under the plan).

²² *Jones, supra*, 2007 WL 2480494 at *5.

²³ 12 U.S.C. § 2609. *See In re Herrera*, 422 B.R. 698 (B.A.P. 9th Cir. 2010) (proposed plans incorporating provisions approved by the district's bankruptcy judges that

also inform the debtor if there are insufficient funds in the escrow account.²⁴ For adjustable rate mortgages based on the Truth in Lending Act, it would require notification of payment amount changes at least 21 days before the due date for the new payment amount.²⁵ A similar plan provision was approved by the court in *Collins*,²⁶ requiring notice not less than 60 days in advance of the effective date of any payment change. Other courts have similarly approved such provisions, noting that the imposition of procedural notice requirements does not violate § 1322(b)(2).²⁷

Compliance with RESPA and TILA during a chapter 13 case promotes successful plan completion and is consistent with § 1322(e), which states that the amount necessary to cure a default in a chapter 13 plan shall be determined in accordance with the “underlying agreement and applicable nonbankruptcy law.” Applicable nonbankruptcy law includes federal non-Code statutes such as TILA and RESPA, and a determination of the cure amount includes consideration of ongoing postpetition payments based on § 1322(b)(5) and its reference to the “maintenance of payments while the case is pending.”

Amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2011, are consistent with this plan provision. Rule 3001(c)(2)(C) requires a creditor whose claim is secured by the debtor’s principal residence to attach to its proof of claim a new Official Form, the Mortgage Proof of Claim Attachment form.²⁸ The form instructs the creditor to disclose and itemize the components of the prepetition mortgage arrearage. If the mortgage account includes an escrow account, the mortgage creditor must also attach to the proof of claim an escrow account statement prepared as of the petition date “in a form consistent with applicable nonbankruptcy law.” The Real Estate Settlement Procedures Act (RESPA) is the applicable nonbankruptcy law for purposes of an escrow statement.

imposed reporting and other requirements on mortgage creditors do not conflict with the Real Estate Settlement Procedures Act or violate section 1322(b)(2)), *aff’d In re Monroy*, 650 F.3d 1300 (9th Cir. 2011).

²⁴ Several courts have held that a servicer’s failure to notify debtors during the plan of escrow account shortages and deficiencies as required by RESPA amounts to a waiver of the servicer’s right to collect those amounts. *See Chase Manhattan Mortg. Corp. v. Padgett*, 268 B.R. 309 (S.D. Fla. 2001); *In re Dominique*, 368 B.R. 913 (Bankr.S.D.Fla. 2007).

²⁵ 12 C.F. R. § 226.20(c).

²⁶ 2007 WL 2116416, *supra* at *18,

²⁷ *In re Ramsey*, 421 B.R. 431 (Bankr. M.D. Tenn. 2009); *In re Segura*, 2009 WL 416847 (Bankr. D. Colo. Jan. 9, 2009); *In re Watson*, 384 B.R. 697 (Bankr. D. Del. 2008); *In re Hudak*, 2008 WL 4850196 (Bankr. D. Colo. Oct 24, 2008); *In re Anderson*, 382 B.R. 496 (Bankr. D. Or. 2008); *In re Patton*, 2008 WL 5130096 (Bankr. E.D. Wis. Nov. 19, 2008); *In re Aldrich*, 2008 WL 4185989 (Bankr. N.D. Iowa Sept. 4, 2008). *But see In re Madera*, 445 B.R. 509 (Bankr. D. S.C. 2011); *In re Booth*, 399 B.R. 316 (Bankr. E.D. Ark. 2009).

²⁸ Fed. R. Bankr. P. 3001(c)(2)(C).

Additionally, Rule 3002.1(b) requires the mortgage creditor to file and serve “a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.”²⁹ The notice must be given on Official Form 10 (Supplement 1), the Notice of Mortgage Payment Change.³⁰ The new Supplement 1 form requires the mortgage creditor to state the basis for the changed payment amount, the current and new payment amounts, and the date when the change will take effect.

Separate Treatment of Arrearages

The next provision deals with the payment of the prepetition arrearages and compels the mortgage creditor to separately treat these payments:

- **Prepetition Arrearages. Payments disbursed by the trustee to holders and/or servicers of mortgage claims shall be applied and credited only to the prepetition arrearages necessary to cure the default, which shall consist of amounts listed on the allowed proof of claim and authorized by the note and security agreement and applicable nonbankruptcy law. Holders and/or servicers of mortgage claims shall deem the prepetition arrearages (and postpetition arrearages, if any) as contractually current upon confirmation of the plan.**

A mortgage account being cured in a chapter 13 is not fully reinstated until the prepetition arrearage has been paid.³¹ To effectuate a cure plan and avoid the imposition of late fees and other charges, however, it is critical that the mortgage creditor segregate payments being made on the prepetition arrearage and treat the arrearage amounts as if they are not in default.³² Several courts have approved similar provisions.³³ In rejecting an argument that such a plan provision was an impermissible modification under § 1322(b)(2), the court in *Collins*,³⁴ stated:

²⁹ Fed. R. Bankr. P. 3002.1(b)

³⁰ Fed. R. Bankr. P. 3002.1(d).

³¹ *In re Wilson*, 321 B.R. 222 (Bankr.N.D. Ill.2005).

³² *Newcomer v. Litton Loan Servicing, L.P.*, 438 B.R. 527 (Bankr. D. Md. 2010)(ordering servicer to recalculate money due on mortgage including removal of post-petition obligation used to pay pre-petition escrow deficiencies).

³³ *In re Ramsey*, 421 B.R. 431 (Bankr. M.D. Tenn. 2009); *In re Booth*, 399 B.R. 316 (Bankr. E.D. Ark. 2009); *In re Emery*, 387 B.R. 721 (Bankr. E.D. Ky. 2008); *In re Patton*, 2008 WL 5130096 (Bankr. E.D. Wis. Nov. 19, 2008); *In re Andrews*, 2007 WL 2793401 (Bankr. D. Kan. Sep 26, 2007).

³⁴ 2007 WL 2116416, *supra* at *14.

[A] provision requiring [creditor] to ‘deem’ the prepetition arrearage amounts contractually ‘current’ as of confirmation is merely procedural and requires only that [creditor] update its accounting procedures to ensure that the Debtors' account is not subject to any additional charges associated with any prepetition default.

This provision does not take a position on whether certain fees may be properly included in the arrearage amount, such as postpetition, pre-confirmation bankruptcy fees. Some courts have held that the inclusion in a proof of claim of attorney fees incurred in connection with a bankruptcy case which are to be paid from estate property is improper unless the fees have been sought and approved under Federal Rule of Bankruptcy Procedure 2016.³⁵ The more widely accepted position as to postpetition, pre-confirmation fees, however, is that a creditor may include such fees in a proof of claim without filing a Rule 2016 application if the claim is sufficiently detailed and provides adequate notice to the debtor.³⁶

Several courts have expressed concern about the “deemed” current language.³⁷ Although the court in *In re Hudak* refused to confirm a plan provision that used the term “deem,” it nevertheless indicated that “alternative language, such as ‘deeming’ the loan contractually current on confirmation--but ‘subject to and contingent on successful completion of mortgage cure payments and regular monthly mortgage payments under the plan’” was acceptable and would not modify the creditor’s lien rights.³⁸

The *Hudak* court also noted that the language adopted by the Bankruptcy Court for the District of Kansas in its Standing Order 08-1 was acceptable, which orders mortgage creditors to:

Deem the pre-petition Arrearage (and post-petition Arrearage, if any) contractually current upon confirmation of the plan so as to preclude the imposition of late payment charges or other default related fees and services based solely on any pre-petition default or the payments referred to in paragraph V(B), above. This

³⁵ *E.g.*, *In re Tate*, 253 B.R. 653 (Bankr. W.D.N.C. 2000).

³⁶ *In re Atwood*, 293 B.R. 227 (B.A.P. 9th Cir. 2003) (proof of claim lacking specific detail fails to meet creditor’s evidentiary burden on reasonableness of fees); *In re Madison*, 337 B.R. 99 (Bankr. N.D. Miss. 2006); *In re Powe*, 281 B.R. 336 (Bankr. S.D. Ala. 2001).

³⁷ *In re Segura*, 2009 WL 416847 (Bankr. D. Colo. 2009); *In re Anderson*, 382 B.R. 496 (Bankr. D. Or. 2008).

³⁸ *In re Hudak*, 2008 WL 4850196, * 5 (Bankr. D. Colo. Oct 24, 2008). *See also In re Nelson*, 408 B.R. 394 (Bankr. D. Colo. 2009); *In re Winston*, 2009 WL 2883158 (Bankr. N.D.N.Y. May 7, 2009).

obligation will have no force and effect if the case is dismissed or converted.³⁹

Post-Confirmation Fees

The more significant concern has been with the lack of disclosure of post-confirmation fees.⁴⁰ The final provision sets up a procedure which mandates disclosure of such fees and provides interested parties with an opportunity to seek a court determination on the allowance of such fees. The following plan provision was suggested when this article was first published:

- Mortgage Current upon Discharge. The holder and/or servicer of a mortgage claim shall provide to the debtors, debtors' attorney and trustee a notice of any fees, expenses, or charges which have accrued during the bankruptcy case on the mortgage account and which the holder and/or servicer contends are 1) allowed by the note and security agreement and applicable nonbankruptcy law, and 2) recoverable against the debtors or the debtors' account. The notice shall be sent annually, beginning within 30 days of the date one year after entry of the initial plan confirmation order, and each year thereafter during the pendency of the case, with a final notice sent within 30 days of the filing of the trustee's final account under Bankruptcy Rule 5009. The failure of a holder and/or servicer to give such notice for any given year of the case's administration shall be deemed a waiver for all purposes of any claim for fees, expenses or charges accrued during that year, and the holder and/or servicer shall be prohibited from collecting or assessing such fees, expenses or charges for that year against the debtors or the debtors' account during the case or after entry of the order granting a discharge. Unless the Court orders otherwise, an order granting a discharge in this case shall be a determination that all prepetition and postpetition defaults with respect to the debtors' mortgage have been cured, and that the debtors' mortgage account is deemed current and reinstated on the original payment schedule under the note and security agreement as if no default had ever occurred.**

³⁹ *Id.* at * 5.

⁴⁰ *In re Sanchez*, 372 B.R. 289, 297 (Bankr.S.D. Tex. 2007) (“in order for the bankruptcy system to function—every entity involved in a bankruptcy proceeding must fully disclose all relevant facts”); *In re Jones*, 366 B.R. 584, 602-03 (Bankr.E.D.La.2007) (“Bankruptcy courts can not function if secured lenders are allowed to assess postpetition fees without disclosure and then divert estate funds to their satisfaction without court approval”).

However, this provision has been largely supplanted by Bankruptcy Rule 3002.1(c). This rule requires the mortgage creditor to give notice of any postpetition fees or charges assessed against the debtor's account within 180 days of when they are incurred. The notice must be given on Official Form 10 (Supplement 2), the Notice of Postpetition Mortgage Fees, Expenses and Charges.⁴¹ Debtors who wish to invoke § 524(i) with respect to fee disclosure problems may simply incorporate by reference Rule 3002.1(c) as a plan provision.

Before adoption of Rule 3002.1(c), some mortgage creditors had argued that a fee disclosure provision amounts to an impermissible modification in violation of § 1322(b)(2). They primarily argued that the provision violated the clause in the uniform security agreement permitting the creditor to "do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument."⁴² However, consistent with the opinion in *Mann v. Chase Manhattan Mortgage Corp.*,⁴³ such a provision does not prohibit the creditor from tracking in its internal bookkeeping fees it believes may be assessed to the debtor's account. Fee disclosure provisions which simply require the creditor to notify the debtor and interested parties if it intends to charge the debtor for such fees have generally been approved and have been held not to violate § 1322(b)(2).⁴⁴

The recent bankruptcy rule amendments also establish a procedure for resolving fee disputes. If the debtor or trustee disputes that postpetition fees are owed, they may file and serve a motion within one year after service by the mortgage creditor of the fee notice (Form 10 - Supplement 2) seeking a determination of the propriety of the fee.⁴⁵ If a motion is filed, the court shall determine, after notice and hearing, whether any claimed fee, expense or charge is required by the mortgage agreement and applicable nonbankruptcy law to cure a default or maintain payments under Code section 1322(b)(5). This clearly defined procedure should be helpful to debtors in certain jurisdictions in which courts have previously refused to address disputes involving postpetition fees, particularly in cases in which the debtor is the disbursing agent for ongoing mortgage payments.

The rule amendments also provide a procedure for the debtor to obtain a ruling that the mortgage has been completely cured upon plan completion. Rule 3002.1(f) provides that "[w]ithin 30 days after the debtor completes all

⁴¹ Fed. R. Bankr. P. 3002.1(d).

⁴² See, e.g., Fannie Mae/Freddie Mac Uniform Instruments, First Lien Security Instruments, at <http://www.freddiemac.com/uniform/unifsecurity.html>.

⁴³ 316 F.3d 1 (1st Cir. 2003).

⁴⁴ *In re Segura*, 2009 WL 416847 (Bankr. D. Colo. Jan. 9, 2009); *In re Watson*, 384 B.R. 697 (Bankr. D. Del. 2008); *In re Patton*, 2008 WL 5130096 (Bankr. E.D. Wis. Nov. 19, 2008); *In re Aldrich*, 2008 WL 4185989 (Bankr. N.D. Iowa Sept. 4, 2008) (finding plan term requiring annual notice and notice ninety days before final payment be "presumptively acceptable" to the court).

⁴⁵ Fed. R. Bankr. P. 3002.1(e).

payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim."⁴⁶ The notice must also inform the creditor of its obligation to file a response to the notice. If for some reason the trustee does not file the notice within the 30-day period following plan completion, it may be filed and served by the debtor.

The mortgage creditor is then given 21 days to respond to the notice by filing a statement indicating (1) whether it agrees that the debtor has fully cured the default on the claim, and (2) whether the debtor is current on all postpetition payments consistent with the "maintenance of payments" requirement in section 1322(b)(5). If the creditor states that postpetition amounts are owed, it must itemize any amounts it claims are due and unpaid as of the date of the statement.⁴⁷ The debtor or the trustee may, within twenty-one days after service of the creditor's statement, file and serve a motion requesting the court to determine whether the claimed amounts are owed and seeking an order declaring that the debtor has cured the default and paid all required postpetition amounts.⁴⁸ It is advisable for the debtor to file this motion even if the mortgage holder has failed to respond to the Notice of Final Mortgage Cure Payment in order to obtain an order that the mortgage has been fully cured and current.

Conclusion

In conclusion, there are certainly different and better ways to address these issues than the sample plan provisions provided here. Importantly, though, a process should begin, if not started already, to formulate plans which avoid the problems that have plagued cure plans for the past thirty years. Courts which have approved model chapter 13 plans should convene local rules committees or working groups to consider modifications which will make cure plans work the way they were intended and carry out the intent of Congress in implementing § 524(i).

⁴⁶ Fed. R. Bankr. P. 3002.1(f).

⁴⁷ Fed. R. Bankr. P. 3002.1(g).

⁴⁸ Fed.R.Bankr.P. 3002.1(h). See sample Motion for Determination of Final Cure and Payment of All Postpetition Payments, Form 146, Appx. G.12, NCLC's Consumer Bankruptcy Law and Practice (2011 Supp.).