ADVISORY COMMITTEE
ON
BANKRUPTCY RULES

St. Michaels, MD
March 27-28, 2008

ADVISORY COMMITTEE ON BANKRUPTCY RULES
Meeting of March 27-28, 2008
St. Michaels, Maryland

Agenda
(3/7/08)

Introductory Items

1. Approval of minutes of Jackson Hole meeting of September 6-7, 2007 (Judge Swain)

   - Draft minutes.

2. Oral reports on meetings of other Committees:

   (A) January 2008 meeting of the Committee on Rules of Practice and Procedure. (Judge Swain and Professor Morris)

   - Draft minutes of the Standing Committee will be distributed separately.

   (B) November 2007 meeting of the Advisory Committee on Appellate Rules Committee. (Judge Swain)

   (C) January 2008 meeting of the Committee on the Administration of the Bankruptcy System. (Judge Swain and Judge Conti)

   (D) November 2007 meeting of Advisory Committee on Civil Rules. (Judge Wedoff)

   (E) November 2007 meeting of Advisory Committee on Evidence. (Judge Meyers)

   (F) Bankruptcy CM/ECF Working Group. (Judge Perris)

   (G) Sealing Subcommittee. (Professor Gibson)

   (H) Time Computation Project. (Judge Wedoff)

3. Request that each subcommittee classify any recommended changes in the rules and forms as either for immediate action or to hold until a package of amendments is ready. (Judge Swain)

Subcommittee Reports and Other Action Items

4. Report by the Subcommittee on Consumer Issues. (Judge Wedoff and Professor Morris)

(A) Comments on published rules and forms amendments, including Rules 4008 and 1017.1 and Exhibit D to Official Form 1, and recommended actions. **(Action item.)**

- Memo of March 2 by Professor Morris.
- Proposed revision of exhibit D to Form 1

(B) Rule 2016 issues relating to the delivery and filing of petition preparer declarations pursuant to 11 U.S.C. §110(h)(2). **(Action item.)**

- Memo of March 3 by Professor Morris.

(C) Proposed new Rule 5009(b). (The proposed amendment was approved at the September 2007 Jackson Hole meeting and held pending finalization of the chapter 15 package, which includes an additional amendment to Rule 5009.) **(Action item.)**

- Memo of March 3 by Professor Morris.

(D) Status of consideration of possible amendment of the rules to establish a procedure to govern "automatic dismissals" under § 521(i) of the Code. This was prompted by a Comment 06-BK-011 by Bankruptcy Judge Marvin Isgur of the Southern District of Texas and Comment 06-BK-020 by the National Association of Consumer Bankruptcy Attorneys. (Information item.)

- Memo of March 3 by Professor Morris.
- Comments 06-BK-011 and 06-BK-020.

5. Report by the Subcommittee on Technology and Cross Border Insolvency. (Judge Coar and Professor Morris)

(A) (1) Possible amendment of Rule 1018 and new Rule 1018.1 to clarify the scope of provisions and applicability of Rule 7065 to actions for injunctive relief under §§ 1519(e) and 1521(e). **(Action item referred back to subcommittee at September 2007 Jackson Hole meeting.)**

(2) Possible amendments of Rules 1014 and 1015 to resolve a potential problem that can arise when two such cases are pending simultaneously

- Memo of March 3 by Professor Morris.

(B) Approval of transmission of the chapter 15-related amendments package (amendments to Rules 5009 and 9001 and new Rules 1004.2 and 5012) to the Standing Committee with a request that they be published for comment. **(Action item.)**

- Memo of March 4 by Professor Morris.

6. Report of Subcommittee on Privacy, Public Access, and Appeals. (Judge Pauley and Professor Gibson)

(A) (1) Comments on the published separate document amendments to Rules 7052, 7058, and 9021 and recommended actions. **(Action item.)**

- Memo of March 1 by Professor Morris.

(2) Comments on the published time computation amendments to Rules 8002, et al., and recommended actions. **(Action item.)**

- Memo of March 1 by Professor Morris.

(3) Comments on the published time computation amendments to Rule 9006 and recommended actions. **(Action item.)**

- Memo of March 3 by Professor Morris

(4) Possible amendments to Rules 7052, 9015, and 9023 to "decouple" the time provisions set by the three Bankruptcy Rules from Civil Rules 50, 52, and 59 in connection with proposed amendments to the Civil Rules extending 10-day periods after entry of judgment to 30 days. (**Action item, tabled at September 2007 at Jackson Hole meeting pending solicitation of public comment on length of appeal period.**)

- Memo of March 4 by Professor Morris

(B) Recommendation in response to request from the Standing Committee's Time Computation Subcommittee for the Advisory Committee's view on which, if any, bankruptcy-related short statutory deadlines should be amended to offset the change in time computation under Rule 9006(a), i.e., the inclusion of weekends and holidays in the computation of periods of less than 8 days. **(Action item.)**

- Memo of March 3 by Professor Morris.
- List of bankruptcy-related statutory deadlines.

(C) Recommendation in response to suggestion by the bankruptcy clerk of court in

the Southern District of New York that Rule 9006(a)(1) be amended to exclude weekends and holidays in computing the 5-day period set by section 704(b)(1)(B) of the Code for the clerk's provision to creditors of a copy of the United States trustee's statement concerning presumption of abuse. **(Action item.)**

- Memo of March 3 by Professor Morris.

(D) Recommended response to John Shaffer's suggestion to amend Rule 8006 to address the consequence of premature filing of an appellant's designation of items to be included in the record and its statement of issues. **(Action item.)**

- Memo of March 1 by Professor Gibson.

(E) Recommendations in response to (1) erroneous cross-reference in proposed amendment to Rule 9006(a) and (2) suggestion by the bankruptcy clerk of court in the Middle District of North Carolina that the cross-reference to Civil Rule 5(b)(2)(C) and (D) in Rule 9006(f) be updated in light of the restyling and renumbering of the Civil Rule, in order to preserve 3-day grace period for both service by mail and by electronic means. **(Action item.)**

- Memo of March 3 by Professor Morris.
- Email of February 29 by Mr. Wannamaker.

7. Report of Subcommittee on Forms. (Judge Meyers, Professor Morris, Mr. Myers)

(A) Comments on published forms amendments, including Official Forms 8 and 27, and recommended action. **(Action item.)**

- Memo of March 3 by Professor Morris.
- Proposed revision of Form 8 by Judge Perris.
- Proposed revision of Form 27.

(B) Recommendation in response to suggestion by Bankruptcy Judge Joyce Bihary of the Northern District of Georgia for the issuance of forms for § 522(q) and/or Domestic Support Obligation certification before chapter 13 discharge. **(Action item.)**

- Memo of March 2 by Professor Gibson.
- Proposed new Director's Form 283.

(C) Recommendation regarding possible amendment to Official Form 10 or Rule 3001 to restrict disclosure of sensitive information contained in the debtor's medical records by advising creditors holding health care claims to submit only the minimally necessary information. The proposal was part of Comment 06-BK-

016 submitted by Bankruptcy Judge Colleen Brown of the District of Vermont. **(Action item, referred to subcommittee at September 2007 Jackson Hole meeting.)**

- Memo of March 4 Professor Morris.
- Comment 06-BK-016 by Judge Brown
- Proposed revision of Official Form 10.

(D) Recommended changes to definitions on back of Official Form 10: proposed new definition of "creditor" (approved at September 2007 Jackson Hole meeting); proposed revision of definition of "claim" to conform to the change in the definition of "creditor." **(Action item.)**

- Memo of February 28 by Mr. Myers.
- Proposed revision of Official Form 10.

(E) Recommended response to suggestion by the chief deputy clerk of the bankruptcy court in the District of New Mexico that the debtor's phone number be deleted from Official Form 9F, the meeting of creditors notice for chapter 11 corporate/partnership debtors. **(Action item.)**

- Memo of November 23 by Professor Morris.
- Proposed revision of Official Form 9F.

(F) Recommendation regarding possible revision of the statement on filing deadlines at the bottom of Official Form 23 in light of comment from the bankruptcy court in the Southern District of New York on the application of the debtor education requirement to certain individual debtors in chapter 11 cases. **(Action item.)**

- Memo of February 28 by Mr. Myers.
- Proposed revision of Official Form 23.

(G) Judicial Conference approval of amendments to Official Forms 1, 22A, 22B, and 22C. (Information item.)

- Memo of March 3 by Mr. Myers.

(H) Amendments to Director's Procedural Forms 200, 254, 255, and 256. (Information item.)

- Memo of March 5 by Mr. Wannamaker.

Discussion Items

8. Status of the Bankruptcy Forms Modernization Project and its organizational meeting on January 31, 2007. (Judge Perris.)

9. Planning for the future of the CM/ECF system. (Judge Perris.)

10. Suggestion by Bankruptcy Judge Laurel M. Isicoff of the Southern District of Florida to create a new Official Form to be used as a petition in chapter 15 cases. (Professor Morris)

    - Memo of February 29 by Professor Morris.
    - Judge Isicoff's letter of November 26.

11. Suggestion by Mr. Brunstad that Part VIII of the bankruptcy rules be rewritten to more closely follow the Federal Rules of Appellate Procedure. (Mr. Brunstad.)

12. Rules implications, if any, of memorandum by the Director of the Administrative Office pursuant to Rule 5003(c) authorizing clerks to keep their files and indices of judgments and orders in electronic form, using any automated means that the court determines will meet the needs of the users of those records and that the clerk's office can support. (Mr. Wannamaker.)

    - Memorandum of January 16 by AO Director James C. Duff.

13. Proposed regulations by the Executive Office for United States Trustees for final reports in chapter 7, chapter 12, and chapter 13 cases and approval of credit counseling agencies. (Professor Gibson.)

    - Memorandum of March 2 by Professor Gibson.
    - Copies of the notices of proposed rulemaking published in the Federal Register.

14. Suggestion by the Loan Syndication and Trading Association and the Securities Industry and Financial Markets Association to repeal Rule 2019. (Professor Gibson.)

    - Memorandum by Professor Gibson to be distributed separately.
    - Letter of November 30 and memorandum in support of the suggestion.

Information Items

15. Comment circulated to Congress in February 2008 regarding the deadline set out in H.R. 3609 – mortgage foreclosure legislation – for filing a notice of fees charged pursuant to a chapter 13 debtor's home mortgage.

- Analysis of the problem with the wording of the deadline in the bill and a suggested substitution.

16. Rules Docket.

    - The Rules Docket will be distributed separately.

17. New posting of list of suggested rules amendments on the Internet. (Mr. Ishida.)

18. *Bull Pen*: All of the proposed rules amendments currently in the *Bull Pen* are addressed above.

19. Future meetings:

    October 2-3, 2008, at the Hotel Teatro in Denver www.hotelteatro.com
    Possible locations for the spring 2009 meeting

20. New business:

    Use of the term "family size" rather than "household size" in determining the National Standard deduction for food, clothing and other items on Line 19A of Official Form 22A.

    - Memo of March 6 by Judge Wedoff.

21. Adjourn

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ADVISORY COMMITTEE ON BANKRUPTCY RULES

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Subcommittee on Attorney Conduct and Healthcare Judge Richard A. Schell, Chair Judge William H. Pauley, III Judge David H. Coar John Rao, Esq. J. Michael Lamberth, Esq.	**Subcommittee on Privacy, Public Access and Appeals** Judge William H. Pauley, III, Chair Judge Elizabeth L. Perris Judge Richard A. Schell G. Eric Brunstad, Jr., Esq.
Subcommittee on Business Issues Judge Laura Taylor Swain, Chair Judge Eugene R. Wedoff Judge Jeffery P. Hopkins Judge David H. Coar J. Christopher Kohn, Esq. J. Michael Lamberth, Esq. James J. Waldron, *ex officio*	**Subcommittee on Style** Dean Lawrence Ponoroff, Chair Judge Irene M. Keeley Judge Elizabeth L. Perris Judge Kenneth J. Meyers J. Michael Lamberth, Esq.
Subcommittee on Consumer Issues Judge Eugene R. Wedoff, Chair Judge R. Guy Cole Judge William H. Pauley III Judge Jeffery P. Hopkins John Rao, Esq. G. Eric Brunstad, Esq. James J. Waldron, *ex officio*	**Subcommittee on Technology and Cross Border Insolvency** Judge David H. Coar, Chair Judge R. Guy Cole, Jr. Judge Irene M. Keeley Judge Richard A. Schell Dean Lawrence Ponoroff G. Eric Brunstad, Esq.
Subcommittee on Forms Judge Kenneth J. Meyers, Chair Judge Elizabeth L. Perris J. Christopher Kohn, Esq. John Rao, Esq. James J. Waldron, *ex officio* Patricia S. Ketchum, Esq., Consultant	**Subcommittee on E-Government** Judge Laura Taylor Swain Judge David H. Coar Professor Jeffrey Morris

SUBCOMMITTEE/LIAISON ASSIGNMENTS 2007-2008 - Cont.

Forms Modernization Project Judge Elizabeth L. Perris, Chair Judge Kenneth J. Meyers Judge Jeffery P. Hopkins J. Christopher Kohn, Esq. John Rao, Esq. J. Michael Lamberth, Esq. James J. Waldron, *ex officio* Patricia S. Ketchum, Esq., Consultant	**CM/ECF Working Group** Judge Elizabeth L. Perris ---------- **Civil Rules Liaison:** Judge Eugene R. Wedoff ---------- **Evidence Committee Liaison:** Judge Kenneth J. Meyers ---------- **Sealing Committee Liaison:** Judge Jeffery P. Hopkins ---------- **Time Computation Project Liaison:** Judge Eugene R. Wedoff

ADVISORY COMMITTEE ON BANKRUPTCY RULES

Meeting of September 6-7, 2007
Jackson Hole, Wyoming

Draft Minutes

The following members attended the meeting:

District Judge Thomas S. Zilly, Chair
Circuit Judge R. Guy Cole, Jr.
District Judge Irene M. Keeley
District Judge William H. Pauley, III
District Judge Richard A. Schell
District Judge Laura Taylor Swain
Bankruptcy Judge Christopher M. Klein
Bankruptcy Judge Mark B. McFeeley
Bankruptcy Judge Kenneth J. Meyers
Bankruptcy Judge Eugene R. Wedoff
Dean Lawrence Ponoroff
J. Michael Lamberth, Esquire
G. Eric Brunstad, Jr., Esquire
J. Christopher Kohn, Esquire
John Rao, Esquire

The following persons also attended the meeting:

Professor Jeffrey W. Morris, Reporter
District Judge James A. Teilborg, liaison from the Committee on Rules of Practice and Procedure (Standing Committee)
Bankruptcy Judge Jacqueline P. Cox, liaison from the Committee on the Administration of the Bankruptcy System (Bankruptcy Administration Committee)
District Judge David H. Coar, member elect
Bankruptcy Judge Elizabeth L. Perris, member elect
District Judge Lee H. Rosenthal, chair of the Standing Committee
Peter G. McCabe, secretary of the Standing Committee
Patricia S. Ketchum, advisor to the Committee
Donald F. Walton, Acting Principal Deputy Director, Executive Office for U.S. Trustees (EOUST)
Lisa Tracy, Counsel to the Director, EOUST
James J. Waldron, Clerk, U.S. Bankruptcy Court for the District of New Jersey
John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the U.S. Courts (Administrative Office)
James Ishida, Rules Committee Support Office, Administrative Office
James H. Wannamaker, Bankruptcy Judges Division, Administrative Office
Stephen "Scott" Myers, Bankruptcy Judges Division, Administrative Office

Robert J. Niemic, Federal Judicial Center
Phillip S. Corwin, Butera & Andrews

The following summary of matters discussed at the meeting should be read in conjunction with the memoranda and other written materials referred to, all of which are on file in the office of the Secretary of the Standing Committee. Votes and other action taken by the Committee and assignments by the Chair appear in **bold**.

INTRODUCTORY MATTERS

The Chair welcomed the members, members elect, advisers, staff, and guests to the meeting. He introduced Judges Coar and Perris and said that they would begin their terms as members in October. He said that, due to the short notice, the third new member, Judge Jeffery P. Hopkins, was unable to attend. The Chair said that the three new members would replace him, Judge Klein and Judge McFeeley. The Chair also announced that Judge Swain would succeed him as chair starting in October.

1. Approval of minutes of Marco Island meeting of March 29-30, 2007.

The Chair asked for a motion to approve the minutes of the Marco Island meeting held March 29-30, 2007. **A motion to approve the minutes passed without opposition.**

2. Oral reports on meetings of other Rules Committees.

(A) June 2007 meeting of the Committee on Rules of Practice and Procedure.

The Chair said that the Standing Committee approved the rules amendments published in August 2006 as revised by the Advisory Committee at its March meeting. He noted that, after the March meeting, AO staff discovered several minor errors that were changed before the recommended rules and forms changes were presented to the Standing Committee as follows: (i) the introductory sentence in Form 22A was revised to conform to a change in Rule 1007 to read: "In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor, whether or not filing jointly. Joint debtors may complete one statement only"; (ii) line 29 on Form 22A was changed to read "total average monthly amount" to be consistent with same statement on line 34 of Form 22C; (iii) the title of new Rule 7058 was changed to "Entering Judgment in an Adversary Proceeding" to distinguish it from Rule 9021; and (iv) on recommendation of the Chief of the Rules Committee Support Office at the AO, the recommended changes to Exhibit D (which are tied to new proposed Rule 1017.1) were deferred until next fall, so that the rule and form could be considered by the Standing Committee at the same time. The Chair said that he approved the above changes as technical amendments after consulting with the Chief of the Rules Committee Support office at the AO.

(B) April 2007 meeting of the Advisory Committee on Appellate Rules.

The Chair said that the Appellate Rules Committee was recommending a new Appellate Rule 12.1 (Indicative Rulings) for publication that might have bankruptcy implications. He explained that the proposed rule would formalize a procedure currently in place in some courts to deal with motions filed in the originating court while an appeal is pending. After an appeal has been docketed and while it remains pending, the originating court cannot grant relief under a motion such as Civil Rule 60(b) without a remand. The court can, however, entertain the motion and deny it, defer consideration, or state that it would grant the motion if the action is remanded or that the motion raises a substantive issue. The new rule provides a procedure for notifying the appellate court of the originating court's action, and for remanding in appropriate circumstances.

(C) June 2007 meeting of the Committee on the Administration of the Bankruptcy System.

Judge Cox said that the Bankruptcy Administration Committee was continuing its review of the EOUST's request for mandatory use of smart forms. She said the Committee was concerned about the level of detail involved in the EOUST request, and explained that it encompassed over 400 discrete data elements from each filing. She further reported that B.A. Committee members would soon attend an EOUST demonstration of how smart forms would work.

(D) April 2007 meeting of the Advisory Committee on Civil Rules.

Judge Wedoff said that the Civil Rules Committee thoroughly discussed rewriting Rule 56 at its last meeting. The purpose of the proposed changes would be to establish a deadline for filing a motion for summary judgment, and to require the movant to identify all material uncontested facts. He said that there was also an extensive discussion regarding sanctions under the proposed rule. Judge Wedoff said he was concerned that the proposed changes would not work well in bankruptcy, and that this Committee might have to consider an approach other than simply adopting the rule by reference, as is done now. Judge Rosenthal, however, said that since the meeting, the Civil Rules Committee had decided to defer consideration of the proposal for a year, and that there would be a mini-conference on the changes before the next civil rules meeting. She anticipated that further changes would be made to the rule prior to proposing it for publication.

(E) April 2007 meeting of the Advisory Committee on Evidence.

Judge Klein reported on the April 2007 meeting of the Advisory Committee on Evidence and referred the Committee to proposed Rule 502 (published in the fall of 2006). He said the rule is designed to provide a uniform set of standards under which parties can determine the consequences of disclosing information covered by attorney-client privilege or work product protection. He also said that the rule would have to be enacted legislatively.

(F) Bankruptcy CM/ECF Working Group.

Judge McFeeley said that the CM/ECF Working Group met several times since the Committee's last meeting and reported their request that the Committee give them a "heads up" of upcoming changes to forms because the changes affect CM/ECF workflow considerably. He also reminded the Committee that he was ending his term at this meeting, and recommended that his successor liaison also be a member of the Forms Subcommittee.

(G) New items.

The Chair said there would be three oral reports that were not on the agenda: (1), a proposal to honor Judge Duplantier; (2), an announcement about the new reporter; and (3), a report concerning changes to the IRS Internal Revenue Manual and Forms 22A-C.

(1). The Chair asked the Committee to review the proposed memorial resolution honoring Judge Duplantier. He said that the AO would mount the resolution on a plaque and would give it to Judge Duplantier's wife, Sally. A number of members reflected on the many contributions made by Judge Duplantier over the years. A motion was made and passed unanimously to approve the resolution.

(2). The Chair said that Jeff Morris will have served nearly 10 years as Reporter by October 2008 and that he would like to step down soon. He expressed optimism that the Chief Justice would soon select Professor Elizabeth Gibson of the University of North Carolina as the Reporter's eventual replacement. He anticipated that Professor Gibson will act as assistant reporter for the next year and will then replace Professor Morris as Reporter.

Members of the Committee thanked the Reporter for the great job he has done over his tenure, especially in light of the many changes to the Bankruptcy Code due to BAPCPA. The Reporter said that the job has been great, and he thanked the members for how much time that they had committed over the years.

(3). The Chair announced that within the past few days he had learned that the IRS intended to make changes to the Financial Analysis Handbook (§ 5.15.1) portion of the Internal Revenue Manual, (the IRS Manual) that would greatly affect the means test forms. He asked Judge Wedoff to expound.

Judge Wedoff said that one aspect of the IRS proposal would be to create a new category of expenses called "health care," and remove such expenses from the National Standards category. He explained that this could be a problem in bankruptcy because § 707(b) refers only to National and Local standards and does not recognize a "health care" standard in any calculations. (At present, the debtor's actual "health care" costs are included as "other necessary expenses.") In addition, the IRS proposal would end the current practice of correlating national expense standards to both income and family size, and would instead correlate such standard expenses to family size only.

Judge Wedoff said that although he was concerned that the IRS did not consider the bankruptcy implications of its proposal, the real problem was that the proposed changes were scheduled to go into effect in just a few weeks, on October 1, 2007. He said that it would not be possible to make changes to the means-test forms in such a short time frame, and that the forms would be inconsistent with the changes unless the effective date was delayed.

Judge Wedoff said that he had not seen specific changes to the IRS Manual yet, but only an outline of the proposals. But he thought that one possible solution would be if the IRS issued different standards for use in bankruptcy cases.

Christopher Kohn said that he had participated in a conference call with the IRS that morning in which he and Mark Redmiles tried to explain the bankruptcy implications of the proposed changes. He said that the call participants were not initially aware of the impact of the changes on bankruptcy law, but that they now appreciated the problem and were looking for solutions that would lessen the impact. He said one proposal discussed was to delay the effective date of the changes for bankruptcy purposes. And he anticipated being asked in a follow-up call tomorrow morning, how much of a delay would be needed to implement any changes for bankruptcy.

Don Walton said that he had listened in on the telephone conference with Christopher Kohn. He thought the tenor of the conversation was a good and he thought that the IRS seems to recognize the problem of breaking "health care" expenses out of the National Standards.

After the telephone conference the following morning, Christopher Kohn reported that the IRS had agreed to defer making the changes effective for bankruptcy purposes for three months, until January 1, 2008. He added that the new "health care" standard would be modified to be incorporated as a National Standard. Judge Wedoff said that the solution would enable the Committee to come up with revised versions of Form 22 by the end of the year.

The Committee discussed possible procedural mechanisms for approving the IRS-related forms changes. **After discussing several alternatives, the Committee approved a motion recommending withdrawal from the Judicial Conference consent calendar the changes to Forms 22A-C scheduled to go into effect December 1, 2007. It also approved a motion to give the Chair and the Chair's successor the authority to work with the Judicial Conference to develop a mechanism to approve IRS-related changes to Forms 22A-C with a tentative effective date of January 1, 2008.**

Finally, the Chair asked that the minutes reflect the Committee's appreciation of the work done by Judge Wedoff, Don Walton, Mark Redmiles, and Chris Kohn in negotiating with the IRS in this matter.

Action Items

3. *Report by the Subcommittee on Attorney Conduct and Health Care.*

Judge Schell said the Subcommittee met by teleconference to discuss Comment 06-BK-011 submitted by Bankruptcy Judge Marvin Isgur. In his comment, Judge Isgur suggested amending Rule 2007.2 to require a health care business debtor in a voluntary case to file a motion at the start of the case to seek a determination of whether a patient care ombudsman needs to be appointed.

Judge Schell said that the Subcommittee discussed the proposal and recommends that no action be taken. He noted that the petition already contains a checkbox that the debtor uses to describe itself as a healthcare business. He said that before making its decision, the subcommittee's members had canvassed bankruptcy judges they knew and asked those judges whether they thought a change is needed. Most of the bankruptcy judges did not think it was a problem. In addition, Don Walton told the subcommittee members that the United States trustee was already making motions in appropriate cases. **A motion was made and carried to approve the Subcommittee's recommendation that no action be taken.**

4. *Report by the Subcommittee on Consumer Issues.*

(A) Proposed amendments to Rules 4004(a) and 7001 with respect to objections to discharge under §§ 727(a)(8) and (9) and 1328(f) based on insufficient lapse of time between a debtor's bankruptcy cases.

The Reporter said the proposed amendments, described at pages 1-3 of the July 25, 2007, memo at Agenda Item 4, are in response to an informal comment from Bankruptcy Judge Neil Olack. He said that the premise behind the proposed changes was the thought that an objection to the debtor's discharge based on information supplied by the debtor in the bankruptcy petition (i.e. the date of a prior bankruptcy case) did not require all the procedural protections of a full-blown adversary proceeding.

Judge Wedoff said that some change to the rules, such as that proposed by the Subcommittee, would be necessary to create uniformity of practice around the country. In some courts, he said, the clerk's office will withhold the discharge based on the dates of previous cases reported by the debtor in the petition even if no motion or adversary proceeding is filed at all. Other courts require that a motion be filed, and still others require a full-blown adversary proceeding.

The Reporter reviewed the proposed changes as set out at pages 3-5 of the memo. Members made a number of suggestions. One member suggested that there should be no deadline for filing a motion objecting to discharge, as opposed to the 60-day deadline

proposed in the amendment to Rule 4004. Another member suggested that a deadline might not be appropriate in chapter 13 cases because § 1328(f) provides that "the court *shall not* grant a discharge … if the debtor has received a discharge [in a specified time preceding the current case]." Thus, the Court should not grant a discharge, no matter when it learns of a discharge in a prior case. However, other members pointed out that the rules already set deadlines notwithstanding similar language in § 727. After additional discussion, **the Committee approved Rule 7001 and Rule 4004(a) and (c)(1), as set out in the materials at pages 3-5, with the following changes:**

In the committee note to Rule 7001, delete "as is the case for other objections to discharge" at the end of the second sentence, and change "904(c)" at the end of the note to "9014(c);" and in

Rule 4004(a), line 3, add a comma after "complaint" and add ", under Rule 7001(b)" after "or motion;" and in

Rule 4004(c)(1), line 17, add ", or motion under Rule 7001(b)" after "complaint" and at line 21 add a comma after "complaint" and "under Rule 7001(b)" after "or motion."

(B) Proposed amendments to Rules 1007, 4004 and 5009 to provide additional notice to the debtor that the case may be closed without the entry of a discharge if the debtor fails to file the statement of completion of a personal financial management course. The proposal is in response to comments submitted by the National Bankruptcy Conference (Comment 06-BK-018) and the National Association of Consumer Bankruptcy Attorneys (Comment 06-BK-020).

The Reporter said that the Subcommittee recommended changes to Rules 1007, 4004 and 5009 designed to give the debtor additional notice that failing to complete a post-petition educational course and file the required form would result in the case being closed without entry of the discharge. **The Committee approved the proposed changes to the three rules as set forth in the July 25 memo at Agenda Item 4, pages 7 - 11, with the following edits:**

Rule 4004(c)(4), line 51 (page 7), delete the rest of the sentence after "Rule 1007(b)(7)" through line 52;

Rule 5009(b), line 11 (page 10), delete "the" and "a" and add the following after "discharge": "unless the statement is filed within the applicable time limit under Rule 1007(c)."

(C) Proposed amendment to Rule 1019 to allow objections to exemptions for a short time period after conversion of a case to chapter 7. The proposal is in response to comments filed by Bankruptcy Judges Dennis Montali (Comment 06-BK-054) and Paul Mannes to resolve a split in the case law.

The Reporter said that Judges Montali and Mannes suggested rules amendments to address what they see as an unfair opportunity for debtors to obtain the benefit of excessive exemptions. They believe that some debtors played game of "gotcha" by claiming a large exemption while also proposing a substantial repayment to creditors in a chapter 11, 12, or 13 case. After the time to object to exemptions has passed, the debtor

will convert to chapter 7. The judges believe this opportunity for abuse can be foreclosed by creating a new exemptions-objection deadline when a case is converted to another chapter.

The Subcommittee discussed four alternative fixes: alternative 1 -- a new time to object to exemptions is established if the debtor converts a case to chapter 7 within one year of the confirmation of an initial plan; alternative 2 -- a new time period is established to object to exemptions when the debtor converts a case to chapter 7; alternative 3 -- no new time period; and alternative 4 -- parties in interest can object to exemptions in the converted case only upon a showing of cause to allow the objection. Although there were advocates for each approach, the Subcommittee recommended the first alternative as the best balance between preventing possible abuse on the one hand, and providing finality of the objection period on the other hand. The Reporter distributed a handout showing revisions to Rule 1019, which included a new subpart "b" that he said was meant to accomplish alternative 1.

One committee member agreed that there should be a new exemption objection period if a case is converted shortly after filing, but argued that a new period should arise only if conversion occurred within six months of the initial filing, rather than one year. Another member thought there should always be a new time objection period after a conversion, regardless of how long it had been since the initial filing. A third member argued that no new time period was necessary because creditors already have an opportunity to object when the case is initially filed. Finally, Judge Perris suggested if the change to Rule 1019 is adopted, that the proposed language at lines19 and 20 of the handout could be improved to more clearly indicate when the time period would start.

After further discussion, **the Committee recommended (with one vote against) the changes to Rule 1019 in the handout distributed at the meeting with the following change: delete "confirmation of" at line 20, and replace with "entry of an initial order."**

(D) Possible amendment of the rules to establish a procedure to govern "automatic dismissals" under § 521(i) of the Code. This suggestion was prompted by Comment 06-BK-011, submitted by Bankruptcy Judge Marvin Isgur, and Comment 06-BK-020, submitted by the National Association of Consumer Bankruptcy Attorneys.

The Reporter recapped the issue. Section 521(i) of the Bankruptcy Code requires "automatic dismissal" of the case the 46th day after the petition date if an individual debtor fails to file certain information. Among other things, the debtor must file "copies of all payment advices or other evidence of payment received within 60 days before the date of filing of the petition, by the debtor from any employer." 11 U.S.C. § 521(a)(1). The Reporter said that the courts have issued a number of decisions addressing the automatic dismissal cases in which the debtor either did not file any payment advices or filed fewer than all of the payment advices for the 60-day period prior to the filing of the petition. The cases are not uniform.

One group of opinions holds that the language of the statute is unambiguous and must be strictly applied. Under this line of decisions, if the debtor fails to file any of the required materials within the 45-day period, the case is automatically dismissed. Some courts have observed, however, that overly strict interpretation could frustrate the intent of Congress. For example, a debtor could use the 45-day automatic dismissal period offensively get a case dismissed in order to prevent the case trustee from selling some of the estate's assets. In re Parker, 351 B.R. 790 (Bankr. N.D. Ga. 2006). Other courts have concluded that, if the debtor files the most recent payment advice, and that payment advice sets out the year-to-date figures for the debtor's income, dismissal is not appropriate, even if the debtor has not "technically" complied with the statute.

Because the case law appears to be in flux regarding interpretation of 11 U.S.C. §521(i), the Subcommittee recommends no change to the rules at this time. **After discussion, the Committee approved the Subcommittee's recommendation that no change to the rules be made at this time with respect to automatic dismissals under 11 U.S.C. § 521(i). The Subcommittee and the Reporter will continue to monitor case law developments in this area.**

5. *Report by the Subcommittee on Business Issues.*

(A) Proposed amendment to Rule 1007(a)(2) to set an earlier deadline for filing the list of creditors in involuntary cases to facilitate timely noticing of the § 341 meeting of creditors in such cases. The proposal is in response to Comment 06-BK-057 submitted by Chief Deputy Clerk Margaret Grammar Gay of the Bankruptcy Court for the District of New Mexico.

The Reporter said that Ms. Gay suggested amending Rule 2003 to set a different deadline for holding the § 341 meetings in an involuntary case. As currently written, Rule 2003(a) requires that the § 341 meeting be held no fewer than 20 and no more than 40 days after the order for relief. Rule 2002 requires the clerk give at least 20 days notice of the § 341 meeting. Ms. Gay asserts that the delay in receiving the list of creditors in involuntary case makes it difficult to provide timely notice the § 341 meeting.

The Reporter said that the Subcommittee considered the suggestion and decided that a better solution would be to amend Rule 1007(a)(2) to shorten from 15 to seven days the time that the involuntary debtor has to file the required list of creditors.

One member thought that the suggested time period was too short because an involuntary debtor's books and records are usually in severe disarray. Other members, however, commented that the same problem exists under the current time period. **After additional discussion, the Committee approved the Subcommittee's recommendation to amend Rule 1007(a)(2) as set forth at Agenda Item 5 with the following change: insert a comma after "final" in line 6 and change "7" to "seven."**

(B) Report on further consideration of possible amendment to Rule 3015(f) to permit post-confirmation objections by taxing authorities to chapter 13 plans. The report reflects consideration of Comment 06-BK-015 submitted by the IRS and the Sense of Congress provision set out in § 716(e)(1) of BAPCPA.

The Reporter explained that, at the Marco Island meeting, the Committee tasked the Subcommittee with determining whether there is a way in which the rules could be amended to further protect the interests of governmental units with respect to post-confirmation tax return issues. He said the Subcommittee discussed the issue extensively, but recommends no change to Rule 3015 because current law and administrative practice provide sufficient protection for governmental units before and after plan confirmation, and because allowing objections to confirmation of a plan that was previously confirmed would introduce substantial uncertainty into the process. **A motion to approve the Subcommittee's recommendation to make no change to Rule 3015 carried without opposition.**

6. *Report by the Subcommittee on Technology and Cross Border Insolvency.*

(A) Proposed amendments to Rules 5009 and 9001 and new Rules 1004.2 and 5012, which were approved at the Seattle meeting and then were withdrawn with a direction to the Subcommittee to consider whether a more extensive set of rules should be adopted for chapter 15 cases.

The Reporter said that the Subcommittee met by teleconference on June 13, 2007. He said it continued its recommendation that there be no comprehensive set of chapter 15 rules at this time. Instead, the Subcommittee was resubmitting the above rules with a few minor changes. He said that Rule 9001 had not been changed since approved in Seattle. With respect to Rules 5009 and 5012, he said that the Subcommittee recommended deleting the "special notice" reference. Finally, he said the Subcommittee recommended a slight change to the version of Rule 1004.2 that was approved in Seattle, and directed the Committee's attention to the version described as "Option one" at the bottom of page 3 of the memo at Agenda Item 6. Instead of asking the filer whether the pending foreign preceding is a "foreign main preceding" or a "foreign non-main preceding" the rule would instead require the filer to simply name the country in which the debtor has the center of its main interests and to list each country in which a foreign proceeding is pending.

After discussion, the Committee voted to approve Rules 5009 and 9001 and new Rules 1004.2 and 5012 as recommended by the Subcommittee with the following changes: in the committee note to Rule 5009 on page 8 of the memo, substitute "court" for "case" in the 6th line. However, the Committee voted to hold the changes in the "bullpen" until the Subcommittee reconsidered proposed changes, described below, to Rule 1018.

(B) Possible amendments to Rule 1018 or Rule 7001(7) regarding whether any action brought seeking injunctive relief under §§ 1519(e) and 1521(e) is governed by

Rule 7065. The proposal is in response to Comment 05-BR-037 submitted by the Insolvency Law Committee of the Business Law Section of the State Bar of California.

The Reporter said that the Subcommittee recommended revising Rule 1018 as set forth on pages 13 and 14 of the memo at Agenda Item 6. The purpose of the proposed changes was to make Rule 7065 applicable to actions for injunctive relief brought under §§1519(e) and 1521(e). **After discussing the matter, the Committee sent the proposed Rule 1018 revisions back to the Subcommittee to revise the committee note, and to clarify terminology problems outside the Chapter 15 context.**

7. *Report of Subcommittee on Privacy, Public Access, and Appeals.*

(A) Possible amendment to either Rule 8003 or Rule 8005 to better coordinate the process governing appeals of interlocutory orders when the appellant also wishes to obtain a stay of the order pending resolution of the appeal. The proposal was submitted by Bankruptcy Judge Colleen Brown as Comment 06-BK-016.

Judge Pauley described Judge Brown's comment. He said that, when a party seeks leave to appeal an interlocutory order and also seeks a stay of the order pending the resolution of the appeal, the motions are presented to different courts. The bankruptcy court will address the stay issue, and the district court or the BAP will consider the motion for leave to appeal. Judge Brown suggested that amending the rules to consolidate such motions would facilitate the process. If consolidated, both motions could be considered in the first instance by the bankruptcy court, which is more familiar with the case. Judge Brown did not think this change in procedure would diminish the BAP or district court's authority because, even if the bankruptcy court denied the consolidated motion, an appeal of that decision would be available. The Subcommittee recommended against such consolidation because, under 28 U.S.C. § 158(a), the motion for leave to appeal an interlocutory order can only granted by the appellate court. **After discussion, the Committee agreed with the Subcommittee and recommended no change to the rules.**

(B) Proposed amendment to either Rule 9023 or Rule 8002 to respond to a pending amendment to Civil Rule 59 that would extend the time to file motions to amend judgment beyond the appeal deadline in bankruptcy cases.

Judge Pauley explained that in light of a proposed change to Civil Rule 59 that would extend the deadline to file a motion to amend judgment to 30 days, there would be a need to amend either Bankruptcy Rule 9023 (which incorporates Civil Rule 59), or Bankruptcy Rule 8002 (the appeal deadline), so the deadline in the two bankruptcy rules would work together. Currently, both rules have 10-day deadlines (scheduled to go to 14 days as a result of the time amendments). Judge Pauley said that in light of the Committee's decision last meeting in considering the time amendments to keep the appeal deadline in bankruptcy cases short (14 days), that the Subcommittee recommended applying the same 14-day deadline to motions to alter or amend. He said

that Subcommittee's recommendation for amending Rule 9023 was set forth as Option 1 on pages 4 and 5 of the memo at Agenda Item 7.

Some committee members argued in favor of the alternative option of expanding the deadlines for both types of motions to 30 days so that they would be consistent with the Civil Rules, and would thereby remove a trap for attorneys that practice in both courts. These members also argued that a short deadline for appeals in bankruptcy cases doesn't really move the appeal along faster, but just gets the appeal *filed* more quickly. And Judge Rosenthal explained that part of the Civil Rules Committee's reasoning in changing Rule 59 to 30 days was that the current 10-day deadline cannot be expanded under the civil rules.

Other committee members said that the shorter period for appeals in bankruptcy cases was appropriate because it moves discrete issues along in the process and, at least with respect to issues that are not appealed, promotes finality.

The Reporter reminded members that the Committee's decision at the last meeting in favor of keeping the shorter appeal period in bankruptcy cases was due in part to historical reasons. Like criminal cases, the appeal period in bankruptcy has always been short, and he thought that there would be considerable resistance from the bar to an expansion of the appeal period to 30 days. He suggested that, at a minimum, the issue should wait until the Committee had the benefit of comments to the time amendments, currently out for comment, which changed both periods from 10 to 14 days.

Several members agreed that waiting until the time amendment comments came in made sense, but suggested that because the changes to Rules 9023 and 8002 in those amendments were buried among changes to all the rules with time periods, that they might not be noticed. Judge Swain suggested that comments would be more likely if the Committee flagged the issue in a letter sent to major bankruptcy groups, and said that she would undertake such an effort as incoming Chair. **After further discussion, a motion to table the matter until the next meeting carried 12-1, so that any comments to the time amendments or a special solicitation could be considered.**

(C) Possible amendment to Official Form 10 or Rule 3001 to restrict disclosure of highly personal information contained in the debtor's medical records by advising creditors holding health care claims to submit only the minimally necessary information. The proposal was in response to part of Comment 06-BK-016 submitted by Judge Colleen Brown.

Judge Pauley said that the Subcommittee also considered Judge Brown's suggestion to amend the rules to admonish creditors not to include information of a "highly personal nature" in the attachments submitted in support their claims. He said that the Subcommittee ultimately rejected Judge Brown's suggestion because it was unable to craft language in a rule with enough specificity that the creditor would know what not to do. Also, the Subcommittee thought that at least with respect to medical records, HIPAA regulations might sufficiently cover the matter. The Subcommittee did

recommend, however, that the matter be referred to the Forms Subcommittee to consider the possibility of amending either Form 10, or the instructions to that form, to remind creditors of the existence of HIPAA regulations. **After discussion, the Committee referred the matter to the Forms Subcommittee.**

8. *Report of Subcommittee on Forms.*

(A) Revision of proposed Form 27 prior to publication.

The Chair reported that after the Marco Island meeting, the Forms Subcommittee met by teleconference to discuss whether newly proposed Form 27, which was scheduled to be published for comment in August 2007, could be modified before publication to accommodate the requirement of Rule 4008 that the *debtor* explain the difference between total income and expenses on schedules I and J, and the income and expenses reported at the time of reaffirmation. He said that the Subcommittee concluded that by adding a signature line for the debtor on the proposed form, the debtor could comply with the rule without filing an additional, and duplicative, statement. After discussing the matter with the head of the Rules Committee Support Office, the Chair said he had approved publishing Form 27 for comment with the amendments shown at Agenda Item 8 so that the bench, bar, and public would have the benefit of all contemplated changes during the comment period.

(B) Possible refinement of the definition of "creditor" on the back of Official Form 10, the Proof of Claim.

The Chair said that the Subcommittee recommended revising the definition of "creditor" on the back of Form 10 to more closely match the statutory definition found at 11 U.S.C. § 506(a). He said that the proposed revision was shown at in the agenda materials. **The Committee approved revision of the definition of "creditor" as follows:** "The creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. § 101(10)." **Upon the recommendation of a member, the Chair referred the proposal back to the Subcommittee and asked the Subcommittee to suggest a similar revision to the definition of "claim" on the same form.**

(C) Proposed revision of Form 16A (Caption Full) to require the filer to provide the debtor's "Employer Identification Number" (if one exists) rather than the "Employer's Identification Number."

The Chair reported that the Subcommittee also recommended correcting a typographical error on Form 16A so that rather than requiring the debtor to report its "Employer's Identification Number," that it instead report its own "Employer Identification Number" (if one exists). The Chair said that after discussing the matter with the head of the Rules Committee Support Office and determining that the change was merely technical and did not require publication, he had approved transmitting the

revised form to the Judicial Conference with a recommended effective date of December 1, 2007.

(D) Oral report on the status of the long-range review of the Bankruptcy Forms, including Judge Isgur's proposal (Comment 06-BK-011) to renumber the forms filed at the beginning of consumer cases.

The Chair referred the Committee to the "Forms Modernization Report" in the materials and explained that the Forms Subcommittee met by teleconference on June 18, 2007, and endorsed the idea first presented by Judge Walker that there should be a formal undertaking to review and modernize the bankruptcy forms. During the teleconference, the Subcommittee determined that the project would be long-term, and, because of policy considerations, would likely require input from the AO and other Judicial Conference committees. Accordingly, the Subcommittee recommended that the Committee explore the possibility of setting up a working group that would report back to the Committee.

Peter McCabe endorsed the working group concept because of the policy implications inherent in the project. He said that on one level, the project simply required a review of existing forms with an eye toward simplification, improving clarity, and removing redundant information. And that part of the project clearly came within the purview of this Committee.

Mr. McCabe anticipated, however, that no matter how the forms are reorganized, that much of the information filled in by debtors could, and in the future likely would, be submitted electronically. As a result, he envisioned that the courts would soon become the repository of vast amounts of personal, highly-searchable, detailed information about bankruptcy filers. He said that a policy addressing what the AO and the courts would do with such information, and for distributing such information outside the court family, was currently under consideration by other Judicial Conference committees in connection with the EOUST's request that Judicial Conference require the mandatory use of so-called "smart" or "data-enabled" forms (i.e., PDF forms with tagged field data). **After additional discussion, the Committee voted to authorize the Chair to take the necessary steps to form the working group with this Committee acting as the lead committee in the project.**

9. *Possible technical amendment to Rule 2016(c) to conform the rule to the amendments to section 110(h) of the Code by BAPCPA.*

The Reporter explained that there was a need for a technical amendment to Bankruptcy Rule 2016(c). He said that as a result of the 2005 amendments to § 110 of the Bankruptcy Code, a bankruptcy petition preparer must now file a declaration of compensation together with the petition, rather than within 10 days after filing the petition. He said that the changes made the 10-day filing deadline for the declaration in Rule 2016, and the rule's cross-referenced to § 110(h)(1), incorrect. And he moved that the Committee approve the changes proposed at Agenda item 9 to be forwarded without publication at the appropriate time to the Standing Committee for approval and

submission to the Judicial Conference and the Supreme Court. **The Committee approved the recommendation.**

(After the meeting, the Style Subcommittee expressed concern Rule 2016 may require an additional amendment. As a result, the Chair deferred the transmission of the proposed amendment and referred it to the Consumer Subcommittee for further consideration.)

Discussion Items

10. Possible amendment to Rule 1017(e) to address issues identified in Bankruptcy Judge Wesley Steen's opinion in In re Cadwallder, 2007 WL 1864154 (Bankr. S.D. Tex. 2007).

The Reporter said the Cadwallder case pointed out a statutory ambiguity with §704(b), which gives the United States Trustee "not later than10 days after the date of the first meeting of creditors" to file the presumption of abuse statement, and 30 more days to file a motion to dismiss in the case. The Report said that the statute was ambiguous because it does not provide any guidance as to whether the initial 10 days begins to run on the first day the § 314 meeting is held, or when the meeting is concluded.

In Cadwallder, Judge Steen ultimately concluded that § 704(b) does not set a deadline for the U.S. Trustee at all, but merely sets forth a duty. He suggested to the Committee, however, that as currently drafted, Rule 1017(e) could be read to assume that there is a § 704(b) deadline and that such deadline is always earlier than the 60-day deadline established by Rule 1017(e). He thought that clarity could better be achieved by removing any reference to § 704(b) from the rule.

The Reporter said that he did not think a change to the rule was appropriate at this time. He said that the reason Rule 1017(e) explicitly sets deadlines "except as otherwise provided in § 704(b)(2)," is to avoid the appearance of a conflict between the rule and the statute. Further, although the Cadwallder court concluded § 704(b) did not establish a deadline for the U.S. Trustee, other courts have found the opposite. Accordingly, the Reporter recommended that the rule remain unchanged unless a consensus develops in the case law in support of the Cadwallder holding. **After discussion, the Committee approved the Reporter's recommendation to make no change to Rule 1017(e) at this time.**

Information Items

The Committee was reminded that the next meeting was scheduled for March 27-28, 2008, at The Inn at Perry Cabin in St. Michaels, MD.

Before closing the meeting, the Chair made several comments. He thanked the Committee on behalf of himself and Judges Klein and McFeeley, all who were rotating off. He said it has been a fascinating and rewarding eight years. He asked that the minutes reflect his

gratitude to the Administrative Office staff, including, among others, Jim Wannamaker, Scott Myers, James Ishida, and John Rabiej.

The Chair also reminded the members that, in spite of the rash of rules and forms changes in response to BAPCPA, the rules-making process is normally a deliberative process and that the Committee should take its time to consider changes. He added that rules and forms should be changed only infrequently and that, even when improvements might seem warranted, there should be a bias toward giving existing formulations precedential value.

Finally, Judge Rosenthal, as Chair of the Standing Committee, asked that the minutes reflect the appreciation of the Standing Committee for all of the work performed by this Committee in response to the enactment of BAPCPA, and of Judge Zilly's leadership in particular.

Respectfully submitted,

Stephen "Scott" Myers

Item 2 will be an oral report.

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Draft minutes of the January 2008 meeting of the Standing Committee will be distributed separately.
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Item 3 will be an oral report.

4A

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: CONSUMER SUBCOMMITTEE

RE: PROPOSED RULES 1017.1 AND 4008; EXHIBIT D TO OFFICIAL FORM 1

DATE: MARCH 2, 2008

In August, proposed new Rule 1017.1 was published along with a proposed amendment to Rule 4008. Under Rule 1017.1, a debtor's certification of exigent circumstances warranting a postponement of the obligation to obtain a credit counseling briefing would be deemed satisfactory to the court in the absence of action taken either by the court or a party in interest within 14 days after the commencement of the case. The amendment to Rule 4008 simply adds language to the rule that would require the use of proposed Official Form 27, the reaffirmation cover sheet.

The Consumer Subcommittee considered the comments submitted on each of these rules and recommends that proposed Rule 1017.1 be withdrawn. In concluding that withdrawal of the rule was appropriate, the Subcommittee also decided that Exhibit D to the voluntary petition should be amended slightly to better implement the requirements of § 109(h)(3), which governs the exigent circumstances exception. **The Subcommittee thus suggests that the Advisory Committee approve the proposed amendment to Exhibit D that is attached to this memorandum. The Consumer Subcommittee also recommends that the amendment to Rule 4008 be approved and sent on to the Standing Committee.** The issues relating to Rule 4008 are much simpler than those relating to proposed Rule 1017.1, so the memo addresses the recommendation regarding Rule 4008 first.

Rule 4008

The Committee received only two comments that addressed Rule 4008, and each of those comments made only passing references to the rule. The first comment was **Comment 07-BK-016** submitted by **Mr. Steve Bartlett (CEO and President, Financial Services Roundtable)**, and the second was **Comment 07-BK-020** submitted by the **American Bankers Association, et. al.** Each of these comments indicated general support for the reaffirmation agreement cover sheet, but they also urged the Committee to consider adopting an Official Form Reaffirmation Agreement in addition to the cover sheet. The Subcommittee considered the suggestion and concluded, as it has in the past, that the Director's Form of reaffirmation agreement is sufficient, and that an Official Form for the reaffirmation agreement itself would not be prudent. The Subcommittee reached this conclusion because § 524 already includes substantial language that reaffirmation agreements must include, so an attempt to draft an Official Form would, in large part, simply repeat the statute. Moreover, even though the Code requires the use of this language, the Code also recognizes that the order of the provisions can be changed. Additionally, reaffirmation agreements can contain an almost unlimited number of other provisions relevant to the particular agreement. Consequently, the Subcommittee concluded that the Advisory Committee's previous decision was correct that an Official Form reaffirmation agreement should not be promulgated. **The Subcommittee, however, recommends that the proposed amendment to Rule 4008 be approved as published and forwarded to the Standing Committee.**

Rule 1017.1

The Committee received five comments proposed new Rule 1017.1. Proposed Rule 1017.1 implements § 109(h)(3) of the Code regarding the postponement of an individual debtor's obligation to complete prepetition bankruptcy credit counseling. The rule creates a default procedure that requires the court or any party in interest to challenge a debtor's certification that exigent circumstances warrant the allowance of a postponement of the credit counseling obligation. Unless the court or a party in interest (most likely the United States trustee) moves within 14 days after the filing of the debtor's § 109(h)(3) certification, the certification is deemed to be satisfactory to the court. If a motion is filed and the court concludes that the certification is not sufficient, the court must enter an appropriate order that effect no later than 21 days after the filing of the certificate. Moreover, the court's order must specify why the certificate is not satisfactory. The following summarizes the comments on the proposed rule.

Comment 07-BK-006 Bankruptcy Judge Marvin Isgur (S.D. Tex.) Judge Isgur raised an important point about the proposed rule that the Subcommittee must consider at the outset. That is, is the rule needed? He notes that he has not had a single case in the past year (with over 2,000 cases during that time) in which the issue has arisen. He suggests that the availability of credit counseling makes this exception almost unnecessary. Thus, the question arises whether there is a need for the rule.

Beyond this question, however, Judge Isgur offers several other comments on the proposal. First, he expresses concern about the timing of the matter, particularly because § 109 has an outside limit for the extension of time for a debtor to complete the counseling. Under § 109(h)(3)(B), the debtor must obtain the credit counseling at the very latest no later than 45

days after the commencement of the case. Part of Judge Isgur's problem with the timing of actions under the proposed rule is, however, not as significant as he suggests. I believe that his comment confuses the timing of the filing of the debtor's certification of exigency with the timing of the filing of the motion under proposed Rule 1017.1. The certification is due with the petition under Rule 1007(b)(3) and (c) which will become effective on December 1, 2008, assuming that the rules process proceeds as normally it does. If the certification is filed with the petition, the court and parties in interest have two weeks to move to deny the debtor's request, and the court will have at least a week to determine if a postponement of the obligation is warranted. While these are hardly generous time frames, the Subcommittee considered that issue and concluded that they were sufficient and would fit within the overall time frame established by § 109(h)(3)(B). I do not believe that this part of Judge Isgur's comment warrants a change in the proposed rule.

Judge Isgur raises another fundamental question about the proposed rule. Specifically, he notes that the rule is structured to create a default application of § 109(h)(3)(A)(iii), but it does not address whether the debtor has met the requirements of subparagraphs (i) and (ii). He states that the postponement of the obligation requires the presence of all three components of § 109(h)(3)(A) and not just compliance with subparagraph (iii). He then poses a hypothetical which he believes demonstrates that the rule as proposed is ambiguous. I would amend his hypothetical slightly to highlight the point just a bit more. Assume that a debtor files a certification with her petition that describes the exigent circumstances that she asserts warrant a postponement. The certification, however, also states that the debtor sought counseling only one day prior to filing the petition and was informed that counseling would be available on the very next day. Under

the proposed rule, in the absence of a motion objecting to the postponement, the certification would be deemed satisfactory to the court. On its face, however, it would still not meet the requirement of § 109(h)(3)(A)(ii). The debtor arguably would not be eligible for relief, and would be vulnerable to a motion to dismiss the case. Judge Isgur submitted a proposed rule to substitute for the published version. His draft in Part 1 establishes what compliance with the section requires. I think this is unnecessary because it essentially just restates the statute. Part 2 of his proposal somewhat mirrors the published version of the proposed rule with a couple of exceptions. First, it continues the notion that the debtor can file the certification up to 7 days after the commencement of the case. Second, it does not include any requirement of notice to the debtor of a motion objecting to the certification. Judge Isgur's version, however, is framed in terms of compliance with § 109(h)(3)(A) rather than simply in terms of the court's satisfaction as in the published rule.

Comment 07-BK-016 Mr. Steve Bartlett (CEO and President, Financial Services Roundtable) Mr. Bartlett opposes the adoption of the rule as creating an exception to the prebankruptcy credit counseling requirement without any authority under the Bankruptcy Code. He states that the rule would allow certifications to be effective even if they were obviously invalid or fraudulent unless a party in interest objected. He also suggests that the rules provide that a valid certificate from a credit counseling agency be subject to renewal for an additional 180 days (making the certificates "valid" for a year) so that consumers who try but fail in a non-bankruptcy repayment plan can be eligible for bankruptcy relief without the need for another counseling session. I do not believe that we could propose such a rule. It would seem to contradict the terms of § 109(h).

Comment 07-BK-020 American Bankers Association, et. al. This comment is quite similar to that submitted by the Financial Services Roundtable. It opposes the rule and states that it believes that the rule disregards the statute and improperly shifts the burden of demonstrating exigency away from the debtor and onto other interested parties. The group asserts that the proposed rule would read § 109(h)(3)(A)(iii) "out of the Code." They suggest that unscrupulous debtors or their attorneys would have an incentive to file certifications that do not justify the allowance of a postponement in the hope that they will slip by the court and parties in interest. The comment states that Congress considered it very important that debtors receive pre-bankruptcy counseling, and the rule as proposed would frustrate that purpose by permitting debtors to circumvent the obligation solely by filing the certification. In the absence of action, the exception is allowed. The comment also questions whether there is any need for the rule given the lack of problems that have arisen. It also notes that there is no provision in the rule for service of the debtor's certification on creditors (the comment notes that there is no proposed amendment to Official Form 9 that would include such a notice), so that they would not have a realistic opportunity to object. Furthermore, the comment continues, even if notice is received, they question whether the 14 day time period is sufficient for creditors to act.

Comment 07-BK-021 Bankruptcy Judge Robert Grant (N.D. Ind.) Judge Grant supports the idea of a rule that would bring "closure" on the issue, but he argues that the deadlines in the proposed rule are too short, particularly for creditors and perhaps for the debtor. He notes that they may also be too short for the court, and he states that in many instances discrepancies or insufficiencies in the certification can be remedied if the debtor has another opportunity to submit additional information to the court. Judge Grant is also concerned that the time for the

court to act is too brief, and he closes by suggesting that the deadlines for the motion and actions could be tied to the timing for the § 341 meeting of creditors. I think his suggestions might not fit with the outside limit on the completion of the credit counseling under § 109(h)(3)(B) which establishes 45 days after the commencement of the case as the final deadline for the completion of the counseling. Nonetheless, his concerns regarding the brief time limits echo those that were suggested in other comments.

07-BK-023 Chief Deputy Clerk of the Bankruptcy Court, Margaret Grammar Gay (D.N.M) Ms. Grammar Gay and her staff urge that this rule be withdrawn. She supports Judge Isgur's position that there is no need for the rule at this time. They have a process that works well whenever the situation arises. She also suggests that the procedure set out in the proposed rule would put the court under a very difficult time restriction. If a motion is made on the 14th day after the commencement of the case, and the court must issue a ruling by the 21st day, the court has only a week to schedule, notice, hear, decide, and write its order on the issue. Ms. Grammar Gay also notes that under the current forms, it would be very difficult to track the cases in which certification matters must be heard, whereas if the process were commenced by the filing of a motion seeking the relief, that would be entered on the docket separately and could be tracked in CM/ECF.

Subcommittee Consideration and Recommendation

Given the prevalence of comments on whether there exists a need for proposed Rule 1017.1, the Subcommittee began its consideration of the rule with that question. There was a consensus that the experience of the Subcommittee members was the same as that described in

the comments. That is, the number of persons seeking relief under § 109(h)(3) is exceedingly small. The widespread availability of consumer credit counseling briefings makes it very unlikely that a debtor could not obtain the briefing in the five day period required under the Code. The consensus as well was that if such situations arose, they could be handled by the courts without much difficulty. As a result, the Subcommittee concluded and recommends to the Advisory Committee that proposed Rule 1017.1 be withdrawn as unnecessary.

That conclusion, however, did not end the Subcommittee's discussion of the matter. The proposed rule would have operated in tandem with a proposed amendment to Exhibit D to Official Form 1, the voluntary petition. In its currently effective form, Exhibit D requires the debtor to file a separate motion that would restate the exigent circumstances that would also be set out on Exhibit D. The proposed rule rejected the idea that the debtor needs to file such a motion because the certification would already contain all or nearly all of the necessary information and allegations for the court to rule. This concept remains true, so the Subcommittee concluded that current Exhibit D should be revised (as was already approved by the Advisory Committee) to delete any reference to the need for the debtor to file a motion with the court to grant the postponement of the credit counseling briefing obligation. That approved form, however, also included statements regarding the timing of motions by the court and parties in interest and the deadline for the court to act on the request for the postponement. These references are no longer appropriate in the absence of Rule 1017.1, so the Subcommittee recommends that Exhibit D be adopted in the form attached to this memo. **The Subcommittee also recommends that this change be recommended to the Standing Committee for its approval and the subsequent approval by the Judicial Conference with the form to become**

effective on December 1, 2008. The version of Exhibit D that was previously approved for use in conjunction with proposed new Rule 1017.1 was recommended for adoption with an effective date of December 1, 2009, the same effective date as would have applied to the proposed new rule. There is no longer any reason to delay the effective date of the proposed amendment to Exhibit D of Official Form 1, so the Subcommittee recommends the earlier effective date.

UNITED STATES BANKRUPTCY COURT

_____ District of _____

In re_____ Case No._____
Debtor (if known)

EXHIBIT D - INDIVIDUAL DEBTOR□S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT

Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors□ collection activities.

Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.

□ 1. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

□ 2. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 15 days after your bankruptcy case is filed.*

☐ 3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the five days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now.
[Summarize exigent circumstances here.] _____

_____

_____

If your certification is satisfactory to the court, you must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling, together with a copy of any debt management plan developed through the agency. Failure to fulfill these requirements may result in dismissal of your case. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. If the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing, your case may be dismissed.

☐ 4. I am not required to receive a credit counseling briefing because of: *[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]*

☐ Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

☐ Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.);

☐ Active military duty in a military combat zone.

☐ 5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district.

I certify under penalty of perjury that the information provided above is true and correct.

Signature of Debtor: _____

Date: _____

COMMITTEE NOTE

Paragraph 3 of Exhibit D is amended to delete any reference to a requirement that a debtor file a motion with the court to obtain an order approving a request for the postponement of the debtor's obligation to obtain a credit counseling briefing prior to the commencement of the case. The paragraph immediately following numbered paragraph 3 is also amended to reflect the deletion of the need for a separate motion beyond the completion of the certification itself. That paragraph continues warn the debtor that the case may be dismissed if the court does not find that a postponement is warranted. It also advises the debtor that, even if the court concludes that postponement of the obligation is appropriate, the debtor still must complete the briefing within the time allowed under the Code.

4B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: CONSUMER SUBCOMMITTEE

RE: RULE 2016 AND PETITION PREPARERS

DATE: MARCH 3, 2008

The 2005 amendments to the Bankruptcy Code included a change to § 110(h) that renumbered former subsection (h)(1) as subsection (h)(2). This caused the cross reference in Bankruptcy Rule 2016(c) to be incorrect. Initially, the Advisory Committee approved a technical amendment to the rule at the September 2007, but further concerns about the operation of the rule as currently written were raised when the Style Subcommittee considered the proposed amendment.

Specifically, the rule as it is currently written requires a petition preparer to file a declaration under § 110(h)(1) of the Code and transmit that document to the United States trustee within 10 days after the filing of the petition. In general, the declaration must disclose all fees that the petition preparer received from or on behalf of the debtor in the 12 months prior to the filing of the petition in the case. In 2005, BAPCPA amended that Code section and redesignated the operative provision as § 110(h)(2). Therefore, a technical amendment to Rule 2016(c) was proposed that would have changed the statutory reference in the rule from § 110(h)(1) to § 110(h)(2). That change, along with changing the time to file a supplemental schedule from 10 to 14 days as a part of the time computation rule changes, seemed to address the problem. However, upon further review, it became apparent that the fix to the rule was not so simple.

The Code was amended not only by redesignating the subsection, but also by changing

the time within which the document must be filed. Under former § 110(h)(1), the petition preparer was required to file the declaration "within 10 days after the filing of a petition." The amended provision requires that the declaration be filed "together with the petition." The problem is that the petition preparer does not file the petition. Therefore, simply requiring the petition preparer to file the declaration with the petition as provided under the Code may not work. Usually, the debtor files the petition at some time after the preparer has provided the assistance to the debtor. The preparer may not know when or even if the petition is being filed. Moreover, the filing of the petition alone might be considered the unauthorized practice of law, and § 110(k) specifically provides that the section does not authorize a petition preparer to engage in any activity that would constitute the unauthorized practice of law. Therefore, the rule could not be amended in the manner proposed at the September 2007 meeting.

The Consumer Subcommittee reconsidered the matter and now proposes an amendment to Rule 2016(c) that both corrects the cross reference and problem created by the new time of filing requirement set out in the statute. The rule provides that the petition preparer must deliver the declaration required under § 110(h)(2) to the debtor "before the petition is filed." The rule further provides that the declaration "shall be filed with the petition." The rule places the burden of filing the declaration on the person who files the petition thereby avoiding the problem of requiring the petition preparer to engage in actions that might be construed as the practice of law. The rule also provides that the petition preparer has the duty to file any supplemental declaration under the rule.

The Subcommittee recommends this amendment for approval by the Advisory Committee as a technical amendment that should not require publication. It could be

recommended to the Standing Committee for adoption by the Judicial Conference and the Supreme Court without the need for publication.

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses

1 * * * * * *

2 (c) Disclosure of Compensation Paid or Promised to Bankruptcy
3 Petition Preparer. Every bankruptcy petition preparer for a debtor
4 shall ~~file~~ deliver to the debtor, before the petition is filed, ~~a~~ the
5 declaration under penalty of perjury ~~and transmit the declaration to~~
6 ~~the United States trustee within 10 days after the date of the filing~~
7 ~~of the petition, or at another time as the court may direct, as~~
8 required by § 110(h)~~(1)~~ (2). The declaration must disclose any fee,
9 and the source of any fee, received from or on behalf of the debtor
10 within 12 months of the filing of the case and all unpaid fees
11 charged to the debtor. The declaration must describe the services
12 performed and documents prepared or caused to be prepared by the
13 bankruptcy petition preparer. The declaration shall be filed with
14 the petition. The petition preparer shall file a ~~A~~ supplemental
15 statement ~~shall be filed~~ within ~~10~~ 14 days after any payment or
16 agreement not previously disclosed.

COMMITTEE NOTE

Subdivision (c) is amended to conform to a 2005 amendment to § 110(h)(1) of the Bankruptcy Code which now requires that the declaration be filed with the petition. The amendment to the rule corrects the cross reference to § 110(h)(1) of the Code which was redesignated as subparagraph (h)(2) of the section by the 2005 amendment. In addition, the 10-day period for filing a supplemental statement is extended to 14 days to conform to the proposed time computation amendments and the adjustment of most periods of less than 30 days to multiples of seven days.

4C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: PREVIOUSLY APPROVED AMENDMENTS TO RULE 5009

DATE: MARCH 3, 2008

At the Jackson Hole meeting in September, the Advisory Committee approved an amendment to Rule 5009 requiring that the clerk give the debtor notice that the case will be closed without entry of a discharge unless the debtor files the statement required by Rule 1007(b)(7) within the applicable time limit under Rule 1007(c). Because another proposed amendment to Rule 5009 is part of the package of chapter 15 amendments, the Committee directed that both amendments to Rule 5009 be held in the "bullpen" pending the resolution of unrelated issues with proposed amendments to Rule 1018.

Amendments to resolve the Rule 1018 questions are again before the Committee at this meeting, and this memorandum sets out the text of the amendments to Rule 5009 for their inclusion with other rules for consideration by the Standing Committee at its June 2008 meeting. (For clarity, both amendments to Rule 5009 are set out here.) The revisions reflect the decisions of the Advisory Committee at the Jackson Hole meeting and the work of the Style Subcommittee.

RULE 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, ~~and~~ Chapter 13 Individual's Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases

1 (a) CASES UNDER CHAPTERS 7, 12, AND 13. If in

2 a chapter 7, chapter 12, or chapter 13 case the trustee has filed a
3 final report and final account and has certified that the estate has
4 been fully administered, and if within 30 days no objection has
5 been filed by the United States trustee or a party in interest, there
6 shall be a presumption that the estate has been fully administered.
7 (b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7)
8 STATEMENT. If an individual debtor in a chapter 7 or 13 case
9 has not filed the statement required by Rule 1007(b)(7) within 45
10 days after the first date set for the meeting of creditors under §
11 341(a) of the Code, the clerk shall promptly give the debtor notice
12 that the case will be closed without entry of a discharge unless the
13 statement is filed within the applicable time limit under Rule
14 1007(c).
15 (c) CASES UNDER CHAPTER 15. A foreign
16 representative who has been recognized under § 1517 of the Code
17 shall file a final report when the purpose of the representative's
18 appearance in the court is completed. The report shall describe
19 the nature and results of the representative's activities in the
20 United States court. The foreign representative shall transmit the
21 report to the United States trustee, and serve it on the debtor, all
22 persons or bodies authorized to administer foreign proceedings of
23 the debtor, all parties to litigation pending in the United States in

24 which the debtor is a party at the time of the filing of the petition,

25 and such other entities as the court may direct. If within 30 days

26 no objection has been filed by the United States trustee or a party

27 in interest, there shall be a presumption that the case has been fully

28 administered.

COMMITTEE NOTE

The rule is amended to redesignate the former rule as subdivision (a) and adding a new subdivisions (b) and (c) to the rule. Subdivision (b) requires the clerk to provide notice to an individual debtor in a chapter 7 and 13 case that the case may be closed without the entry of a discharge due to the failure of the debtor to file a timely statement of completion of a personal financial management course. The purpose of the notice is to provide the debtor with an opportunity to complete the course and file the appropriate document prior to the filing deadline. Timely filing of the document avoids the need for a motion to extend the time retroactively and avoids the potential for closing the case without discharge, with the potential for reopening with an additional filing fee. Timely filing also benefits the clerk's office by reducing the number of instances in which cases must be reopened.

Subdivision (c) requires a foreign representative in a chapter 15 case to file a final report setting out the foreign representative's actions and results obtained in the United States court. It also requires the foreign representative to serve the report, and provides interested parties with 30 days to object to the report. In the absence of a timely objection, a presumption arises that the case is fully administered, and the case may be closed under § 350.

4D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: AUTOMATIC DISMISSALS UNDER § 521(i)(1)

DATE: MARCH 3, 2008

The Advisory Committee considered whether to propose any amendments to the Bankruptcy Rules or Official Forms to implement the "automatic dismissal" language of § 521(i)(1) of the Code at the meeting at Marco Island, and then again briefly at Jackson Hole. Given the state of the law at the time, the Committee concluded that no action should be taken until there appears to be a consensus in the courts about the proper way in which to implement the statute. Attached to this memo is a reprint of the memorandum that was included in the Jackson Hole materials at Tab 4.D. That memorandum concluded that the case law had not sufficiently developed to present a consensus solution to the problem of debtors who fail to file all of the required documentation. Some courts have taken a very literal approach to the issue and concluded that the plain meaning of the statute requires the dismissal of the case if any of the required documentation is missing. Other courts have held that the statute should be construed to prevent a debtor from acting in bad faith to manipulate the process by forcing a dismissal of a case that the debtor no longer wants to pursue, even if dismissal is contrary to the interests of creditors. These conflicting positions are held by a number of courts, and in the decisions issued since the Jackson Hole meeting, there does not seem to be anything closer to a consensus arising.

Two recent decisions offer an example of these contrasting positions. In In re Hall, 368 B.R. 595, 602 (Bankr. W.D. Tex. 2007), the debtor was a repeat filer of bankruptcy petitions.

He had acted in what the court certainly considered bad faith in an earlier case, and in the subsequent case again failed to comply with the Code and rules. For example, he regularly answered questions posed on the schedules with "TBA" meaning "to be added", and he almost universally responded to questions at the § 341 meeting with an invocation of his 5th amendment privilege against self-incrimination. After a series of procedural maneuvers, the debtor moved to dismiss the case because he had failed to file all of the required documentation in the case. The court granted the dismissal over the objection of the trustee in the case who urged the court to continue the case and to enjoin the debtor from controlling any of the property of the estate. The court did, however, "condition" the automatic dismissal of the case on a prohibition against the debtor filing another bankruptcy case for two years from the date of the order. In the course of the opinion, the court stated:

> This case is the poster child for a bad faith debtor. Relying upon the decision of the Supreme Court in Marrama, this Court concludes that when a debtor seeks an order confirming the dismissal of his case under § 521(i)(2) by reason of his own defalcation under § 521(a)(1), it is legitimate for the Court to inquire into the motivation and/or good faith (or lack thereof) of the debtor in seeking such order; and, in the event the debtor is acting in bad faith, to properly condition such dismissal so that the debtor is not rewarded by his own malfeasance.

368 B.R. at 602.

In partial contrast to Hall, the court in Warren v. Wirum, 378 B.R. 640 (N.D. Cal. 2007), did not address the impact of the Supreme Court's Marrama decision on the ability of the court to protect against bad faith actions by a debtor who is seeking dismissal of a case under § 521(i)(2). Instead, the court concluded that

> When Congress drafted § 521, its intent to create a rigid, unyielding bar to proceeding as a debtor in bankruptcy proceedings could not have been more clear. Under the plain terms of § 521(i), if the debtor fails to file all of the information required by subdivision (a)(1) within 45 days after filing the petition, the case "shall be"- i.e., must be- automatically dismissed on the 46th day. If "any party in interest," including the debtor, requests the court to enter an order dismissing the case-as Warren [the debtor] did-the court "shall enter" an order of dismissal not later than five days after the request. 11 U.S.C. § 521(i)(2). In this case, Warren filed a request for an order dismissing the case on April 4, 2007. By the time the bankruptcy court denied Warren's motions on April 9, there was no live case, as it had already been automatically dismissed pursuant to § 521(i)(1), even without the bankruptcy court's entry of an order. See In re Ott, 343 B.R. 264, 267 (Bkrtcy.D.Colo.2006) ("Section 521(i)(1) does not contemplate any independent action by the Court or any other party-the case is merely dismissed by operation of the statute itself. There is no ambiguity."). The court could not, therefore, retroactively resuscitate Warren's case by waiving his obligation to file payment advices.
>
> The trustee argues that the majority interpretation of § 521 is harsh and results in prejudice to creditors. But that is the inevitable result of Congress' decision to draft an automatic dismissal provision that is "self-executing, inflexible, and unforgiving." In re Hall, 368 B.R. 595, 598 (Bkrtcy.W.D.Tex.2007). Congress' express goal in enacting BAPCPA was to reduce the number of bankruptcy filings, not to provide greater protections for creditors. H.R. Rep. 109-31 at 4, reprinted in, 2005 U.S.C.C.A.N. 88, 89 (2005). Interpreting § 521 as a rigid bar-whether equitable as a political or policy matter-forwards Congress' intent.
>
> This Court is sympathetic to the fact that because Congress did not provide an exception for debtors who seek to manipulate the bankruptcy process by intentionally withholding documents required under § 521, petitioners like Warren are provided with an undeserved opportunity to "test the waters" of bankruptcy and thereby minimize their exposure to creditors. Unfortunately, this is a problem that can only be resolved by Congress, and not the courts. Perhaps the Executive Office for United States Trustees will convey the legitimate arguments made before this Court to the rightful body.

378 B.R. at 647. The court's description of the problem of debtors acting badly and the lack of a court's ability to reign in those actions has lead other courts to different results. To date, I have not seen any decision by a court of appeals on the application of § 521(i). Additionally, there

has been no consensus among the courts on matters such as the proper response by the court when the debtor fails to file all payment advices but has filed other documents that could be used to calculate the relevant income information.

In short, there has not been much change since the meeting in Jackson Hole with respect to the proper application of § 521(i) of the Bankruptcy Code. Therefore, I recommend that the matter remain under review with the expectation that the Consumer Subcommittee consider whether the matter should be taken up by the Advisory Committee.

06 - BK- 011

Marvin Isgur/TXSB/05/USCOURTS
12/15/2006 05:05 PM

To Rules_Comments@ao.uscourts.gov
cc
bcc
Subject Please see comments on attached letter.

Attached is a letter containing comments on the proposed rules. My thanks to the Committee for the extremely diligent work. I hope that my comments are helpful.
A hard copy follows.

Sincerely,

Marvin Isgur
United States Bankruptcy Judge
Southern District of Texas

Comments on rules.pdf

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION
515 RUSK AVENUE
HOUSTON, TEXAS 77002

December 15, 2006

CHAMBERS OF
MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

Mr. Peter G. McCabe
Secretary of the Committee on Rules of Practice and Procedures
Administrative Office of the United States Courts
Washington, D.C. 20544

Dear Mr. McCabe and Members of the Committee:

I am a United States Bankruptcy Judge in the Southern District of Texas. Let me thank the Committee for the outstanding work that has been done in preparation of the proposed rules and forms. Given the complexity of the new statute, the breadth of intelligence reflected in the proposed rules and forms is remarkable.

Although I have a few detailed comments that I set forth at the end of this letter, I principally wish to address a single issue that affects a number of rules and official forms. That issue concerns automatic dismissal of cases under § 521(i).

In the Southern District of Texas, the clerk independently reviews each case to determine whether a § 521(a)(1) deficiency exists. If the clerk reports a deficiency, the Court issues an order advising the debtor that the case may be automatically dismissed. If the issue is not timely corrected, the Court issues a dismissal order. The review by the clerk is a difficult process that I believe could be made more workable by the changes suggested in this letter.

Automatic Dismissals

Section 521(i) mandates that if "an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under [§ 521(a)(1)] within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition."

Although one may debate the meaning of the term "automatically dismissed," the rules should accommodate courts that apply a common sense definition to the statute. One common sense way to view the statute is that the court should establish an automated procedure for the review and dismissal of non-compliant cases. This view appears to be shared by most courts that have considered the issue. *In re Ott*, 343 B.R. 264, 266 (Bankr. D. Colo. 2006); *In re Fawson*, 338 B.R. 505, 510-11 (Bankr. D. Utah 2006); *In re Cloud,* 2006 WL 3438600 (Bankr. N.D. Okl.

Nov. 29, 2006). *But see In re Jackson,* 348 B.R. 487 (Bankr. S.D. Iowa 2006). Unless the rules allow for an automated review of compliance with § 521(a)(1), the courts will fall short of Congress' mandate. The changes that are proposed in this letter do not impose the majority view. Courts (like the *Jackson* Court) that have found that a motion is required to trigger a § 521(i) dismissal may still do so. However, the proposed rules assist the Courts that follow the majority view to implement a more accurate automated system.

Moreover, the Rules and Official Forms should be drafted to allow easy compliance with § 521(a)(1) by pro se debtors and by counsel not familiar with bankruptcy procedures. Our rules and forms have been developed over the years with a sequential numbering system (thus, a debtor must fill out a Form B22 as well as an Official Form 6 and Form 7, but need not worry about intervening forms). Additionally, they have been developed, when possible, to allow the same rule to apply to consumer and business cases (e.g., Rule 1007).

I am suggesting a reorganization of some of the rules and forms to:

1. Establish a set of prescribed forms that must be filed in every chapter 7 and chapter 13 case filed by an individual.
2. Sequentially number the prescribed forms.
3. Prescribe forms flexible enough to fit all situations that have yet been reported.

Create a New Rule 1007(b) that Applies Only to Individual Chapter 7 and Chapter 13 Cases.

I propose that Interim Rule 1007(b) be amended to read as follows and that the Interim Rule 1007(b) become Rule 1007(c), with the balance of Interim Rule 1007 appropriately renumbered:

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

(1) An individual debtor in a case under chapter 7 or chapter 13, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms. In addition to the following documents, the debtor must file a list of creditors with the petition. The list of creditors shall be in the form of Official Form 6L[1]. These documents, when filed in accordance with these rules, meet the requirements of § 521(a)(1) of the Code:

(A) Official Form 6A: Schedule of Real Property;
(B) Official Form 6B: Schedule of Personal Property;
(C) Official Form 6C: Schedule of Property Claimed as Exempt;
(D) Official Form 6D: Schedule of Creditors Holding Secured Claims;
(E) Official Form 6E: Schedule of Creditors Holding Unsecured Priority Claims;

[1] Proposed form attached as Exhibit "1".

(F)	*Official Form 6F:*	*Schedule of Creditors Holding Unsecured Nonpriority Claims;*
(G)	*Official Form 6G:*	*Schedule of Executory Contracts and Leases;*
(H)	*Official Form 6H:*	*Schedule of Codebtors;*
(I)	*Official Form 6I:*	*Schedule of Current Income of Individual Debtor(s);*
(J)	*Official Form 6J:*	*Schedule of Current Expenditures of Individual Debtor(s);*
(K)	*Official Form 6K:*	*Declaration Concerning Debtor's Schedules;*
(L)	*Official Form 7A:*	*Statement of Financial Affairs;*
(M)	*Official Form 7B*[2]*:*	*Statement of Payment Advices; and*
(N)	*Official Form 7C:*	*Statement of Monthly Net Income, which shall be filed in the form of Official Form 7C(i) for a case under chapter 7, and Official Form 7C(iii) for a case under chapter 13.*

(2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement.

(3) An individual debtor in a chapter 7 or chapter 13 case shall file a statement regarding completion of a course in personal financial management, prepared as prescribed by the appropriate Official Form.

(4) If an individual debtor in a chapter 11, 12, or 13 case has claimed an exemption under § 522(b)(3)(A) in an amount in excess of the amount set out in § 522(q)(1) in property of the kind described in § 522(p)(1), the debtor shall file a statement as to whether there is pending a proceeding in which the debtor may be found guilty of a felony of a kind described in § 522(q)(1)(A) or found liable for a debt of the kind described in § 522(q)(1)(B).

(5) The debtor shall file a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code.

Proposed additions and deletions to Rule 1007(b).

1. I have added a creditor matrix requirement to the introduction to Rule 1007(b). Although this repeats a requirement set forth in Rule 1007(a)(1), I suggest that all of § 521(a)(1)'s requirements should be contained in one place.

2. I have expanded the generic references to schedules to specifically list the Official Forms. For example, if a debtor has no real property, and therefore files no Schedule "A", the clerk will be unable to determine whether § 521(a)(1)'s filing requirements have been satisfied. The current Official Form for Schedule "A" includes an option to write "none" in the schedule. However, it is imperative that a Schedule "A" be filed to allow for automaticity.

---

[2] Proposed form attached as Exhibit "2".

3. I have deleted the description of payment advices from the rule. The description is proposed for the newly proposed Official Form. The interim rule does not address what should be filed by a debtor without any payment advices. The proposed form and rule require all debtors to file a new Statement of Payment Advices. As set forth in the proposed form, the statement may be that the debtor received no applicable payment advices.

4. I have included a new Statement of Monthly Net Income. This contemplates moving the current Forms B22 into new Statements within Official Form 7. The purpose of this change is to consolidate all requirements under § 521(a)(1) into both Rule 1007(b)(1) and into Official Forms 6 and 7. A debtor that completes all Official Forms 6 and 7 would satisfy § 521(a)(1) and avoid automatic dismissal.

5. I have moved the current Interim Rule 1007(b)(1)(F) to Rule 1007(b)(5). This document is not a requirement of § 521(a)(1).

6. I have deleted the credit counseling requirement. This requirement has been satisfied by the new Exhibit D to the Official Form Petition.

7. I have moved Interim Rule 1007(b)(4) to Rule 1007(b)(1)(N). Interim Rule 1007(b)(4) eliminates the requirement for some debtors to file the form at all. This creates true automaticity problems. As set forth in more detail below, I have merely added a box to the current Form B22A to allow a debtor with debts that are not primarily consumer debts to check a box on the Form B22A. Also, the instructions contained within the Interim Rule 1007(b)(4) are repeated on the Official Form. The Rule will be easier to follow if it merely mandates the use of the Official Form.

8. I have deleted Interim Rule 1007(b)(5). If this suggestion is adopted, it will be in Rule 1007(c) and does not belong in a rule limited to chapter 7 and chapter 13 debtors.

9. I have moved Interim Rule 1007(b)(6) to Rule 1007(b)(1)(N). See comment in paragraph 7 above.

10. I have left Interim Rule 1007(b)(8) and made a separate comment with respect to this matter below under other comments.

Rule 1007(c)

The new Rule 1007(c) (i.e., the old Rule 1007(b)), would be adopted as proposed, but subsection (1) would read as follows:

Except in a chapter 9 municipality case, a debtor that is not an individual in a chapter 7 or a chapter 13 case, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms, if any:

Currently proposed Rule 1007(c) should be amended to eliminate items covered by the draft Rule 1007(b) set forth above. I am happy to submit a draft on this issue, but the changes would be ministerial and I suggest that the overall concept of automaticity first be considered.

New Forms Required and Changes to Current Forms

To implement the changes in individual cases, the following changes and additions would be required to the official forms:

1. A new Official Form 6L should be added. A proposed form is attached as exhibit "1".

2. The Declaration Concerning Debtor's Schedules should be amended by titling it "Schedule L".

3. The Statement of Financial Affairs should additionally be titled "Statement A".

4. A new form 7B should be added in the form set forth as attached to this letter as exhibit "2". This new form is intended to address the most frequent issue faced by my Court on automatic dismissals. By requiring that every debtor complete a Form 7B, the court will be able to discern which cases do not require payment advices to be filed.

5. New form 7C's should be added in the form of the present Forms B22. The purpose of the renumbering is to eliminate confusion over what must be filed. I suggest a single change to the proposed forms, and that is a change to proposed Form 22A by adding a subsection 1(b). The currently proposed rule requires Form 22A (now proposed by me as Form 7C(i)) to be filed only by debtors with primarily consumer debts. This creates a great difficulty with the automaticity of dismissals. Moreover, the plain language of § 521(a)(i) requires that the amount of monthly net income (i.e., the means test) be filed by all debtors. I suggest that Part I be modified to read as follows:

Part I. EXCLUSION FOR DISABLED VETERANS AND FOR INDIVIDUALS WITH DEBTS THAT ARE NOT PRIMARILY CONSUMER DEBTS	
1	(a) If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The Presumption does not arise" at the top of this statement, and (3) complete the verification in Part VII. Do not complete any of the remaining parts of this statement. ☐ **Veteran's Declaration.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 374(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)). (b) If your debts consist primarily of debts other than consumer debts, (1) check one of the two following boxes, (2) check the box for "The Presumption does not arise" at the top of this statement, and (3) complete the verification in Part VII. Do not complete any of the remaining parts of this statement. ☐ **Debtor's Declaration.** My debts are not composed primarily of consumer debts. The schedules I and J filed in this case accurately represent my monthly net income. ☐ **Debtor's Declaration.** My debts are not composed primarily of consumer debts. Attached to this Statement of Monthly Net Income is an accurate statement of my monthly net income, itemized to reflect my sources of income and my monthly expenses.

I believe that the adoption of the foregoing changes will allow the court's clerk to establish computerized procedures to determine whether debtors have filed the proper documents. Congress mandated automatic dismissals. From a practical point of view, dismissals cannot be automated if the clerk's office must determine *whether* a document must be filed. The clerk's office cannot determine whether debts are primarily consumer debts or whether a debtor received payment advices. I recognize that some persons may try to take advantage of the system by filing false declarations. However, there are appropriate remedies for those who file false documents. By requiring all individuals to file the same § 521(a)(i) documents, § 521(i) can be implemented as intended.

Additional Comments

Rule 2007.2. An issue has arisen with respect to the implementation of the ombudsman provisions of § 333. The statute requires that the court order an ombudsman not later than 30 days after the commencement of the case. However, the court may not learn that a health care business has commenced a case until the 30 days has expired or until it is too late to schedule a

hearing with adequate notice before the expiration of 30 days. I suggest a new Rule 2007.2(a) be inserted as follows:

> *Within 3 business days of the filing of a petition by a debtor in a case under chapter 7, 9, or 11 in which the debtor is a health care business, the debtor must file a motion seeking expedited consideration of whether a health care ombudsman should be appointed pursuant to § 333 of the Code.*

Rule 4004(c)(3). I am concerned that the proposed rule fails to implement the statute as written, at least as it applies to chapter 13 cases. Section 727(a)(12) and § 1328(h) each require notice and hearing "held not more than 10 days before the date of the entry of an order granting the discharge." The proposed rule only becomes effective if a debtor files a Rule 1007(b)(8) statement in a chapter 13. If the debtor never files a Rule 1007(b)(8) statement, then the discharge would be issued without review. In certain jurisdictions, homesteads are available for exemption in amounts greater than the $125,000 limit in § 522(q)(1). Under the proposed rule, a debtor would receive a discharge if the debtor exempted more than $125,000 and failed to file a Rule 1007(b)(8) statement. There is no effective way to implement the complex procedures suggested by the proposed rules. Moreover, the failure to file a Rule 1007(b)(8) statement may be due to unfamiliarity with the requirement to file the statement. In such an event (i.e., an absence of fraud), it is unlikely that a discharge would be vacated.

A second problem with this rule concerns the payment of domestic support obligations ("DSO") in chapter 13 cases. The discharge cannot be issued without a debtor's certification that all amounts payable under a DSO that are due on or before the date of the certification have been paid. *See* § 1328(a). I did not locate a certification in the proposed rules with respect to DSO's.

The rules contemplate that chapter 13 discharges will be issued on motion. See Rule 1007(c). In the Southern District of Texas, we require a chapter 13 debtor to file an affirmative certification requesting a discharge in which the debtor affirms the debtor's entitlement by specific factual averments. There is then notice and an opportunity for hearing just before entry of the discharge. If no party files an objection, the discharge is issued. If an objection is filed, a hearing is held. If a debtor cannot make the certification, but is nevertheless entitled to a discharge, she may seek the discharge at a hearing. Attached as Exhibit "3" is a modified form of the certification used in the Southern District of Texas.

I suggest that providing a debtor's certification in a chapter 13 case will address both the DSO issue and the homestead issue. This certification can be incorporated into a motion for discharge. I believe that the certification would substitute for the Rule 1007(b)(8) statement. The form used in this District is intended to be dispositive (if no objection is filed) for granting discharges. If an objection is filed, the court would be required to review the facts to determine if a debtor who could not file the certification was nevertheless eligible for a discharge.

Official Forms—Petition, Exhibit D. I am concerned that the new warning language regarding credit counseling may mislead debtors. Although I appreciate the thought that a warning notice

might be helpful, that has not been my experience (albeit the experience is limited because of the newness of the form).

The reality is that very few debtors qualify for the waiver or the time extension for credit counseling. The form has led several pro se debtors in my court to check credit counseling boxes that are wrong. [3] I have attached as exhibit "4" a reworded form that may clarify the issue. In any event, rather than encouraging the uninformed to get credit counseling, the new form has simply allowed the filing of false statements. It is true that I would not be aware of whether an individual read the warning and then decided to get credit counseling. However, I suggest that such an event is unlikely.

I have a separate issue with the warning itself. There is an issue as to whether ineligible cases get dismissed or whether petitions filed by ineligible persons get dismissed. This issue has two principal effects. First, if the petition is dismissed (rather than the case), then no automatic stay arises. Second, if the case is dismissed (rather than the petition), then the automatic stay in any refiled case would only have a 30-day life (subject to § 363(c)(3)). The majority of opinions hold that cases (rather than petitions) are dismissed based on eligibility. *See In re Jones,* --- B.R. ----, 2006 WL 3020477 (Bankr. S.D. Tex. Oct. 20, 2006) and *In re Seaman*, 340 B.R. 698 (Bankr. E.D.N.Y. 2006). The minority view is that petitions are dismissed. *See In re Rios,* 336 B.R. 177, (Bankr. S.D.N.Y. 2005). I subscribe to the minority view. *See In re Salazar,* 339 B.R. 622 (Bankr. S.D. Tex. 2006). The only appellate decision that I have seen was issued by Judge Brieant (S.D.N.Y) (*In re Finlay,* 2006 WL 3240522 (S.D.N.Y. Nov. 3, 2006)) in which he held as follows:

> As earlier noted, the Bankruptcy Court concluded that under the law, a voluntary case is "commenced" only if an entity "eligible to be a debtor" files a petition with the Bankruptcy Court under 11 U.S.C. § 301, and that under 11 U.S.C. § 109(h), an individual "may not be a debtor" unless pre-petition credit counseling is obtained, or the Bankruptcy Court grants an extension. See Opinion at 15.
>
> Section 362 of the Bankruptcy Code provides the following as to automatic stays:
>
>> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303], or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 USCS § 78eee(a)(3)], operates as a stay, applicable to all entities, ···

[3] Two anecdotal situations may be helpful. In one situation, a debtor checked box 3 on the current Exhibit "D". At a hearing on the pro se debtor's application to pay filing fees in installments, it became apparent that the debtor checked the box out of convenience and had simply ignored the warnings. In another example, a debtor had also checked box 3. That debtor had a substantial mental disability and was unable to comprehend the form. I ultimately determined that the debtor had a mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities. Those same mental deficiencies made her unable to understand the warnings, and probably led her to check the incorrect box. In this situation, less may be better.

> 11 USCS § 362.
>
> The Bankruptcy Court concluded that when read together, Sections 109(h), 301, and 362(a) establish that no automatic stay can exist for debtors who fail to obtain the required credit counseling or qualify for a "waiver" or extension of time to do so. See Opinion at 17.
>
> This Court agrees.

See p. 4 of Westlaw opinion.

If Judge Brieant is correct, then the current form advises the debtors of the wrong risks. The risk is not that the case may be dismissed; the risk is that the case will not come into being because the petition will be dismissed without ever resulting in an order for relief. A debtor filing a petition without having first received credit counseling may not invoke the automatic stay.

The Official Forms should not guess at the ultimate outcome of this issue. I suggest that if a warning is to be issued that it be more generic than the current warning. Moreover, I suggest that the form eliminate the "equality" of the various options. In this situation, the form should encourage pre-petition credit counseling and allow independent determination of whether an exception to the normal rule exists. Attached as exhibit "4" is a proposed revision.

Conclusion

I again wish to thank you for all of the hard work that is reflected in the proposed rules and forms. I hope that these comments are helpful. Please feel free to contact me if I can provide any clarification regarding my comments.

Sincerely,

Marvin Isgur
713-250-5635

Exhibit "1"

Official Form 6L
Schedule of Creditors

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____

In re: _____, **Case No. _____**
Debtor **(if known)**

SCHEDULE OF CREDITORS

This statement is to be completed by every individual debtor. Check the box that applies.

☐ I have provided a list of creditors and their addresses to my counsel. He has been instructed to file the list of creditors and addresses on the Court's electronic filing system in accordance with the Court's published procedures.

☐ Attached to this Schedule of Creditors is a list containing the name and address of each entity included or to be included on Official Forms 6D, 6E, 6F, 6G and 6H. The attached list is filed in the format required by the Clerk of the Court as published on the Court's website and as available at the Office of the Clerk of the Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ (date).

_____
Debtor's Signature

Exhibit "2"

Official Form 7B
Statement of Payment Advices

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____

In re: _____, **Case No. _____**
Debtor **(if known)**

STATEMENT OF PAYMENT ADVICES

This statement is to be completed by every individual debtor. Check the box that applies.

☐ Attached to this Statement of Payment Advices are copies of all payment advices or other evidence of payment, with all but the last four digits of the debtor's social security number redacted, received by me from an employer within 60 days before the filing of the petition.

☐ I received no payment advices or other evidence of payment from an employer within 60 days before the filing of the petition.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ (date).

_____
Debtor's Signature

Exhibit "3"

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____

In re: _____, **Case No.** _____
Debtor **(if known)**

DEBTORS' CERTIFICATION AND
MOTION FOR ENTRY OF CHAPTER 13 DISCHARGE

THIS MOTION SEEKS AN ORDER DISCHARGING THE DEBTORS PURSUANT TO § 1328(a) OF THE BANKRUPTCY CODE. IF YOU OPPOSE THE MOTION, YOU MUST FILE AN OBJECTION WITHIN 20 DAYS OF THE DATE LISTED BELOW IN THE CERTIFICATE OF SERVICE. YOUR OBJECTION MUST SET FORTH THE SPECIFIC FACTUAL ALLEGATIONS WITH WHICH YOU DISAGREE. IF NO TIMELY OBJECTION IS FILED, THE COURT MAY GRANT THE RELIEF.

The Debtors move for entry of a discharge under § 1328(a) of the Bankruptcy Code.

1. By signing below, the Debtors certify under penalty of perjury under the laws of the United States of America that the following statements, as modified by paragraph 2 hereof, are true and correct:

A. We have completed the personal financial management instructional course from an agency approved by the United States Trustee. A copy of Official Form 23 is attached.

B. If I owe a debt arising from (a) any violation of any state or federal securities laws, regulations or orders; (b) fraud, deceit or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security; (c) a civil remedy under § 1964 of title 18; or (d) a criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years, then I have not claimed an exemption for my residence in an amount in excess of $125,000.

C. All amounts payable by me on a domestic support obligation, that are due through this date (including amounts due before the petition was filed in this case, but only to the extent provided for by the plan) have been paid;

D. I have not received a discharge in a case filed under chapter 7, 11 or 12 of the Bankruptcy Code during the four-year period before the date that my petition was filed in this case;

E. I have not received a discharge in a case filed under chapter 13 of the Bankruptcy Code during the two-year period before the date that my petition was filed in this case;

F. No criminal proceeding is pending against me alleging that I am guilty of a felony; and

G. No civil case is pending against me alleging that I am liable for any (a) violation of the Federal securities laws, any State securities law, or any regulation or order issued under Federal securities laws or State securities laws; (b) fraud, deceit or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security; (c) civil remedy under § 1964 of title 18; or (d) criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

2. The following exceptions exist to the certification contained in paragraph 1: ____

_____

_____

_____.

3. I have made all payments required by my confirmed chapter 13 plan.

Signed: _____ _____
Debtor's Signature Date

_____ _____
Spouse's Signature (in Joint Case Only) Date

Exhibit "4"

EXHIBIT D TO PETITION

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____

In re: _____, **Case No. _____**
Debtor **(if known)**

INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT

This statement is to be completed by every individual debtor. Check the box that applies.

☐ Within 180 days ***before*** the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis. **A copy of the certificate and a copy of any debt repayment plan developed through the agency are attached.**

☐ Within 180 days ***before*** the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis. **A copy of the certificate and a copy of any debt repayment plan developed through the agency will be filed within 15 days.**

☐ I am filing a separate, sworn motion with the Court regarding my eligibility to be a debtor. **I understand that if I am not eligible, the filing of this bankruptcy petition may not stop my creditors and may make any future bankruptcy filing by me less effective. I understand that if the Court does not grant my motion, I may lose my assets even though I am filing this petition. I further understand that the motion must comply with § 109(h)(3) or § 109(h)(4) of the Bankruptcy Code.**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ (date).

_____
Signature of debtor

06 - BK-020

Henry Sommer
<henry@henrysommer.com>
02/14/2007 05:33 PM

To Rules_Comments@ao.uscourts.gov
cc
bcc
Subject Comments of the National Association of Consumer Bankruptcy Attorneys on Proposed Bankruptcy Rules

Dear Mr. McCabe:

I am submitting these comments on the Proposed Amendments to the Federal Rules of Bankruptcy Procedure on behalf of the National Association of Bankruptcy Attorneys ("NACBA"). The over 2600 members of our organization represent hundreds of thousands of consumer debtors every year and have a strong interest in having bankruptcy rules that are both fair and practical.

We wish to say, first, that we think the Committee did a remarkable job in drafting so many appropriate rules in such a short period of time. From my days on the Committee, I know the enormous amount of work that must have been involved. We also wish to reiterate the comments we made earlier, to the extent they were not adopted. We will not repeat those comments here, but would refer the Committee to those prior comments.

In particular, we continue to feel strongly that the forms should not take legal positions and that Rule 4002 should not be amended to add still more document requirements to the already burdensome and expensive document requirements enacted by the 2005 legislation. We note that at least one or two bankruptcy courts chose not to adopt this provision of Interim Rule 4002, a rather extraordinary step, presumably because they felt the same way.

1. Proposed Rule 1007(b)(1)(F) requires the filing of "a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code." This proposed rule suggests, but does not quite say, that a separate record of education savings must be filed in addition to the other documents required, such as the schedules. The Code does not define what a "record" is, nor does the proposed rule, leaving a practitioner to guess what might be sufficient to satisfy the rule. Because Item 11 on Schedule B of Official Form 6 already requests all particulars regarding such accounts, completion of that schedule ought to be sufficient to meet the requirements of the Code. However, the Official Form also states that a separate "record" should be filed.

The rules should provide that setting forth those particulars on the schedule provides the required record of the debtor's interest, rather than leaving a potential trap for the unwary debtor or practitioner who does not know what else might be required. Just as the rules and forms define what papers satisfy section 521(a)'s requirement that a schedule and statement of affairs be filed, so too should they define what paper satisfies the requirement of a "record." There is no policy justification for requiring the filing of yet another document in addition to all the added paperwork required by the 2005 legislation. If the trustee wishes to see account statements or other documents pertaining to such an account in a particular case, he or she is free to request them.

2. Section 109(h)(3) provides that the exigent circumstances exception

to the credit counseling requirement is triggered when the debtor "submits to the court a certification that" meets certain requirements. Nonetheless Exhibit D to the petition states that the debtor must file a motion for determination by the court. The rules and forms should require only a certification of exigent circumstances, as stated in the statute, not a motion. Pro se debtors do not know how to file motions, and it would be easier and more efficient if there were a contested matter only if the certification was challenged or the court was unsure whether to find the certification "satisfactory" under the statute.

3. Sections 727(a)(11) and 1328(g) provide that the debtor is not entitled to a discharge if the debtor has not completed a personal financial management instructional course. Conversely, one would assume that a debtor cannot be denied a discharge on this basis if the course is completed. However, the deadlines in proposed Rule 1007(c) can create a situation in which the debtor is entitled to a discharge under the statute, but would be denied that discharge. This could happen, for example, if the debtor filed the course completion certificate on the 46th day after the meeting of creditors in a chapter 7 case.

The best solution would be for a warning notice to be sent about 30 days before the discharge would be entered if the debtor has not yet filed the certificate. However, a debtor should be entitled to discharge if a course is completed anytime before the discharge otherwise would be entered. The courts should easily be able to verify from the docket, probably electronically, whether the course was completed before entering discharge order, just as they verify that the other prerequisites in Rule 4004(c) have been met.

The rules should also provide a simple and inexpensive procedure for the debtor to cure a failure to complete the course by the time a discharge would be entered. The purpose of the instructional course provision is to provide education to debtors, not to deny a fresh start. If a debtor obtains the required education after the closing of a case without a discharge, the rules should provide that the case shall be reopened and a discharge entered with no fee or only a minimal fee. Such a provision would encourage debtors to obtain the education that Congress wanted them to receive and would grant them the fresh start to which they are otherwise entitled.

4. NACBA opposes the proposed change to Rule 4003(b)(1) lengthening the normal period for exemption objections to 60 days. This extension would delay the discharge and, usually, the closing of any no-asset chapter 7 case in which the section 341 meeting is continued. It would also leave debtors' property in limbo, with potential restrictions on use or transfer, for much longer in every routine chapter 7 case. A party normally can examine the exemptions claimed well before the creditors' meeting and can always ask for an extension of time to object to exemptions if that is necessary. Trustees can and regularly do hold the section 341 meeting open if there are exemption issues, which automatically prevents the objection time period from running. We are not aware of any cases in which the automatic extension to 60 days would have made a difference. Indeed, it is extremely unusual for any parties other than trustees to object to exemptions. The primary effect of this rule change would be simply to delay the prompt administration of cases.

While we do not believe the proposed new Rule 4003(b)(2) is necessary, and we predict it would almost never be utilized, we do wish to point out that it could be more clearly drafted. As drafted, it is not clear that the debtor would receive notice of the objection if the exemption was asserted by another on the debtor's behalf.

5. In addition, we suggest adding to the proposed Rule 4004(c)(1)(K) a provision that would delay the discharge in the situation where a motion for approval of reaffirmation agreement is pending. Such motions, normally by pro se debtors, will often contain improper calculations and it may not always be apparent that a presumption of undue hardship arises. This would also ensure that the last sentence of section 524(m), which can be read to require conclusion of a reaffirmation hearing before the discharge, would not preclude the court from disapproving a proposed reaffirmation agreement that is sought by a motion.

6. Finally, we suggest a national rule that would adopt the procedure created by a number of local rules to deal with the "automatic dismissal" provision in section 521(i). These courts send a notice to the debtor within about 20 days after the petition if the clerk believes any required paper is missing. The debtor has notice that the clerk believes the filing is incomplete and a chance to cure the deficiency (or to argue that the paper is not required or has, in fact, been filed.) Similarly, any party believing a paper is missing should be given a deadline of about 20 days after the petition to allege that a paper is missing, and in the absence of such an allegation should be precluded from later arguing that a document required by section 521(a) was not filed. Such a procedure would ensure that debtors have an opportunity to prevent dismissal of their cases for deficiencies they may not even know exist. It would also ensure that no party (such as, perhaps, a preference defendant) could argue that the case has been automatically dismissed after the 45 days have run and there is no opportunity to correct the error.

Thank you for the consideration that I know the Committee will give to these comments.

Very truly yours,

Henry J. Sommer
President

--
Henry J. Sommer
7118 McCallum St.
Philadelphia, PA 19119
Phone: 215-242-8639
Fax: 215-242-2075

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON TECHNOLOGY AND CROSS BORDER INSOLVENCY

RE: AMENDMENTS TO RULES 1014, 1015, AND 1018

DATE: MARCH 3, 2008

The Subcommittee on Technology and Cross Border Insolvency has two matters, and amendments to three rules, for consideration by the Advisory Committee. First, the Subcommittee recommends an amendment to Rule 1018 regarding the application of that rule to matters beyond contests over the petition for recognition. Second, the Subcommittee studied a suggestion that the rules need to be amended to address the problem of the pendency of both a chapter 15 case and a case concerning the same debtor pending under another chapter of the Code. The Subcommittee recommends that an amendment be made to Rules 1014 and 1015 to resolve a potential problem that can arise when two such cases are pending simultaneously. The Advisory Committee must also determine whether to offer these amendments for publication in August 2008 or to await the submission of additional amendments and to publish these rules when a sufficient bundle of amendments are ready for publication.

Rule 1018

The Subcommittee considered the need to amend Rule 1018 to limit the reach of that rule to matters relating directly to contests over involuntary petitions and petitions filed under chapter 15. The rule had been interpreted to reach other matters, and the Subcommittee concluded that the rule should be more limited in its scope. The Subcommittee concluded also that only Rule 1018 should be amended and rejected a suggestion that Rule 1018 be amended and limited to

involuntary cases and that a new Rule 1018.1 be proposed that would apply only in chapter 15 cases. Additionally, the Subcommittee noted that the reference in the proposed amended Rule 1018 to a "chapter 15 petition" should be amended to be a "chapter 15 petition for recognition" in each place where it appears in the rule. The Subcommittee also concluded that the last sentence of the Committee Note should specifically reference chapter 15 and not just involuntary cases. These changes were made to the rule, and the proposed amendments to Rule 1018 and its Committee Note are set out below. The Subcommittee recommends that the Advisory Committee approve the proposal.

Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing ~~Ancillary~~ Chapter 15 Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings

1 The following rules in Part VII apply to all proceedings
2 ~~relating to a contested~~ contesting an involuntary ~~petition, to~~
3 ~~proceedings relating to a contested~~ petition or a chapter 15 petition
4 for recognition ~~commencing a case ancillary to a foreign~~
5 ~~proceeding~~, and to all proceedings to vacate an order for relief:
6 Rules 7005, 7008-7010, 7015, 7016, 7024-7026, 7028-7037, 7052,
7 7054, 7056, and 7062, except as otherwise provided in Part I of
8 these rules and unless the court otherwise directs. The court may
9 direct that other rules in Part VII shall also apply. For the purposes
10 of this rule a reference in the Part VII rules to adversary
11 proceedings shall be read as a reference to proceedings ~~relating to~~
12 ~~a contested~~ contesting an involuntary ~~petition, or contested~~

13 ~~ancillary~~ petition or a chapter 15 petition for recognition, or

14 proceedings to vacate an order for relief. Reference in the Federal

15 Rules of Civil Procedure to the complaint shall be read as a

16 reference to the petition.

COMMITTEE NOTE

The rule is amended to conform the rule to the enactment of chapter 15 of the Code in 2005. As to chapter 15 cases, the rule applies to contests over the petition for recognition and not to all matters that arise in the case. Thus, proceedings governed by §§ 1519(e) and 1521(e) of the Code must comply with Rules 7001(7) and 7065, which provide that actions for injunctive relief are adversary proceedings governed by Part VII of the rules. The rule is also amended to clarify its scope as it applies to contests over involuntary proceedings, by deleting references to matters "relating to" the contested petitions. Matters that may arise in chapter 15 cases or involuntary cases outside of contests over the petition itself are governed by the otherwise applicable rules.

Concurrent Cases Under Chapter 15 and Another Chapter of the Code

The Advisory Committee received a suggestion from Mr. Richard Broude, a member of the New York bar with extensive experience in cross border cases under the Code, regarding the application of the rules to a situation in which a case is filed under chapter 15 by a foreign representative, and another case is filed by or against the debtor under another chapter of the Code. He notes that Rules 1014(b) and 1015(a) each refer to cases filed "by or against" a debtor. Thus, a question arises as to whether these rules apply when a case is filed by a foreign representative under chapter 15. The case is not really filed "by" the debtor, it is filed by the foreign representative. Moreover, since the petition is only seeking recognition of the foreign proceeding, it is not really a petition filed by or against the debtor, it is just a petition filed to

recognize the foreign proceeding and to enable the foreign representative to take the actions allowed under §§ 1519, et. seq. For those same reasons, the chapter 15 petition would not be a petition filed "against" the debtor, but rather simply is a petition to recognize the petition that is pending in the other country. It may also be considered as not filed "against" the debtor because the reference in the rules to a petition filed "against a debtor" could be understood to refer only to involuntary petitions. If that is the case, then both Rule 1014(b) and Rule 1015(a) would technically not apply to a petition for recognition filed by a foreign representative under chapter 15.

While there do not appear to be any reported decisions on this issue, there is a concern that two or more cases could be pending simultaneously, and confusion would reign over the procedure to determine which case should take precedence over the others. Rules 1014 and 1015 would normally resolve these problems if they apply. The rules as currently in effect could be construed to reach chapter 15 petitions if one views their filing as being done by an authorized representative of the debtor (a petition filed by the debtor) or if they are viewed as being filed against the debtor if the foreign representative is not considered as acting on behalf of the debtor. Such an interpretation would bring these matters under these rules and would apply the existing procedures to the resolution of the question of which court should handle the case. The Subcommittee concluded that the rules are at the very least ambiguous, and that they should be amended to remove the ambiguity by making specific reference to chapter 15 petitions.

The Subcommittee recommends amendments to both Rule 1014(b) and Rule 1015(a). Proposed amendments to the relevant portions of Rules 1014(b) and 1015(a) follow.

Rule 1014. Dismissal and Change of Venue

1 * * * * *

2 (b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME

3 DEBTOR OR RELATED DEBTORS ARE FILED IN

4 DIFFERENT COURTS. If petitions commencing cases under the

5 Code or seeking recognition under chapter 15 are filed in different

6 districts by, regarding, or against (1) the same debtor, or (2) a

7 partnership and one or more of its general partners, or (3) two or

8 more general partners, or (4) a debtor and an affiliate, on motion

9 filed in the district in which the petition filed first is pending and

10 after hearing on notice to the petitioners, the United States trustee,

11 and other entities as directed by the court, the court may

12 determine, in the interest of justice or for the convenience of the

13 parties, the district or districts in which the case or cases should

14 proceed. Except as otherwise ordered by the court in the district in

15 which the petition filed first is pending, the proceedings on the

16 other petitions shall be stayed by the courts in which they have

17 been filed until the determination is made.

COMMITTEE NOTE

Subdivision (b) of the rule is amended to provide that petitions for recognition of a foreign proceeding are included among those that are governed by the procedure for determining which case should go forward when multiple petitions concerning the same debtor are filed. The amendment adds a specific reference to chapter 15 petitions and also provides that the rule governs proceedings regarding a debtor as well as those that are filed by or against a debtor.

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

1 (a) CASES INVOLVING SAME DEBTOR. If two or more

2 petitions by, regarding, or against the same debtor are pending in

3 the same court ~~by or against the same debtor~~, the court may order

4 consolidation of the cases.

5 * * * * *

COMMITTEE NOTE

By amending subdivision (a) to include cases regarding the same debtor, the rule explicitly recognizes that the courts' authority to consolidate cases when more than one petition is filed includes the authority to consolidate cases when one or more of the petitions is filed under chapter 15. This amendment is made in conjunction with the amendment to Rule 1014(b), which also governs petitions filed under chapter 15 regarding the same debtor as well as those filed by or against the debtor.

5B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: CHAPTER 15 RULES

DATE: MARCH 4, 2008

The Advisory Committee has previously approved several rules that would apply in a chapter 15 case. We have retained these rules until a sufficient number of amendments were approved for submission to the Standing Committee as a package. This memorandum sets out these rules for consideration of whether they should be submitted to the Standing Committee for its approval for publication in August 2008 of new rules and amendments to existing rules. Rule 1004.2 is a new rule that requires an identification of the debtor's center of main interests on the petition and establishes a procedure for challenging that identification. Rule 5009(c) requires the foreign representative to file a final report in a chapter 15 case and sets out the scope of that report.[1] New Rule 5012 governs agreements for the coordination of the chapter 15 case and the foreign proceeding. Finally, Rule 9001 is amended to reflect the addition to the Bankruptcy Code of § 1502. The Style Subcommittee has also approved the form of these rules for submission to the Standing Committee.

[1] Rule 5009 also includes proposed amendments that do not apply in chapter 15 cases. Those changes are included in this package to show the entire set of amendments that will be published for comment on the approval of the Standing Committee.

RULE 1004.2. Petition in Ancillary or Other Cross-Border Cases[2]

1 (a) CENTER OF MAIN INTEREST DESIGNATION. A
2 petition commencing a case under chapter 15 of the Code shall
3 state the country where the debtor has the center of its main
4 interests. The petition shall also identify each country in which a
5 foreign proceeding is pending by or against the debtor.
6 (b) MOTION. The United States trustee or a party in
7 interest may file a motion for a determination that the debtor's
8 center of main interests is other than as stated in the petition
9 commencing the chapter 15 case. The motion shall be filed no
10 later than 60 days after notice of the petition for recognition has
11 been given to the movant under Rule 2002(q)(1). The motion shall
12 be transmitted to the United States trustee and served on the
13 debtor, all persons or bodies authorized to administer foreign
14 proceedings of the debtor, all entities against whom provisional
15 relief is being sought under § 1519 of the Code, all parties to

[2]In addition to the adoption of Rule 1004.2, Official Form 1 would be amended to include a line on the form where the foreign representative indicates the county of the debtor's center of main interests. The Official Form would also be amended to include a line or lines on which the filer would set out the countries in which cases are pending.

16 litigation pending in the United States in which the debtor is a

17 party at the time of the filing of the petition, and such other entities

18 as the court may direct.

COMMITTEE NOTE

This rule is new. Subdivision (a) directs any entity that files a petition for recognition of a foreign proceeding under chapter 15 of the Code to set out in the petition the center of the debtor's main interests. The petition must also list each country in which a foreign proceeding involving the debtor is pending. This information will assist the court and parties in interest in determining whether the foreign proceeding is a foreign main or nonmain proceeding.

Subdivision (b) sets a 60-day deadline for filing a motion to challenge the statement in the petition as to the country in which the debtor's center of main interest is located.

RULE 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, ~~and~~ Chapter 13 Individual's Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases

1 (a) CASES UNDER CHAPTERS 7, 12, AND 13. If in

2 a chapter 7, chapter 12, or chapter 13 case the trustee has filed a

3 final report and final account and has certified that the estate has

4 been fully administered, and if within 30 days no objection has

5 been filed by the United States trustee or a party in interest, there

6 shall be a presumption that the estate has been fully administered.

7 (b) NOTICE OF FAILURE TO FILE RULE 1007(b)(7)

8 STATEMENT. If an individual debtor in a chapter 7 or 13 case

9 has not filed the statement required by Rule 1007(b)(7) within 45
10 days after the first date set for the meeting of creditors under §
11 341(a) of the Code, the clerk shall promptly give the debtor notice
12 that the case will be closed without entry of a discharge unless the
13 statement is filed within the applicable time limit under Rule
14 1007(c).
15 (c) CASES UNDER CHAPTER 15. A foreign
16 representative who has been recognized under § 1517 of the Code
17 shall file a final report when the purpose of the representative's
18 appearance in the court is completed. The report shall describe
19 the nature and results of the representative's activities in the
20 United States court. The foreign representative shall transmit the
21 report to the United States trustee, and serve it on the debtor, all
22 persons or bodies authorized to administer foreign proceedings of
23 the debtor, all parties to litigation pending in the United States in
24 which the debtor is a party at the time of the filing of the petition,
25 and such other entities as the court may direct. If within 30 days
26 no objection has been filed by the United States trustee or a party
27 in interest, there shall be a presumption that the case has been fully
28 administered.

COMMITTEE NOTE

The rule is amended to redesignate the former rule as subdivision (a) and adding a new subdivisions (b) and (c) to the

rule. Subdivision (b) requires the clerk to provide notice to an individual debtor in a chapter 7 and 13 case that the case may be closed without the entry of a discharge due to the failure of the debtor to file a timely statement of completion of a personal financial management course. The purpose of the notice is to provide the debtor with an opportunity to complete the course and file the appropriate document prior to the filing deadline. Timely filing of the document avoids the need for a motion to extend the time retroactively and avoids the potential for closing the case without discharge, with the potential for reopening with an additional filing fee. Timely filing also benefits the clerk's office by reducing the number of instances in which cases must be reopened.

Subdivision (c) requires a foreign representative in a chapter 15 case to file a final report setting out the foreign representative's actions and results obtained in the United States court. It also requires the foreign representative to serve the report, and provides interested parties with 30 days to object to the report. In the absence of a timely objection, a presumption arises that the case is fully administered, and the case may be closed under § 350.

RULE 5012. Agreements Concerning Coordination of Proceedings in Chapter 15 Cases

1 Approval of an agreement under § 1527 of the Code shall be
2 sought by motion. The movant shall attach to the motion a copy of
3 the proposed protocol and, unless the court directs otherwise, give
4 at least 30 days' notice of any hearing on the motion by
5 transmitting the motion to the United States trustee, and serving it
6 on the debtor, all persons or bodies authorized to administer
7 foreign proceedings of the debtor, all entities against whom
8 provisional relief is being sought under § 1519, all parties to
9 litigation pending in the United States in which the debtor is a

10 party at the time of the filing of the petition, and such other entities

11 as the court may direct.

COMMITTEE NOTE

This rule is new. In chapter 15 cases, any party in interest may seek approval of an agreement, frequently referred to as a "protocol," that will assist with the conduct of the case. Because the needs of the courts and the parties may vary greatly from case to case, the rule does not attempt to limit the form or scope of a protocol. Rather, the rule simply requires that approval of a particular protocol be sought by motion, and designates the persons entitled to notice of the hearing on the motion. These agreements, or protocols, drafted entirely by parties in interest in the case, are intended to provide valuable assistance to the court in the management of the case. Interested parties may find helpful guidelines published by organizations, such as the American Law Institute and the international Insolvency Institute, in crafting agreements or protocols to apply in a particular case.

RULE 9001. General Definitions

1 The definitions of words and phrases in §§ 101, ~~§~~ 902, ~~and §~~

2 1101 and 1502 and the rules of construction in § 102 of the Code

3 govern their use in these rules. In addition, the following words

4 and phrases used in these rules have the meanings indicated:

5 * * * * *

COMMITTEE NOTE

The rule is amended to add § 1502 of the Code to the list of definitional provisions that are applicable to the Rules. That section was added to the Code in 2005.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

RE: RECOMMENDATIONS ON PUBLISHED AMENDMENTS FOR RULES 7052, 7058, AND 9021

DATE: MARCH 1, 2008

The Subcommittee on Privacy, Public Access, and Appeals met by teleconference on February 29, 2008, to consider, along with other matters, the one comment received on proposed new Rule 7058 and the amendments to Rules 7052 and 9021 which relate to the separate document rule. This memorandum sets out the Subcommittee's consideration of the comments and its recommendation to the Advisory Committee for action on the proposal.

The proposed addition of Rule 7058 and the amendments to Rules 7052 and 9021 are intended to work in tandem to reestablish the separate document rule in adversary proceedings and to remove that doctrine from contested matters. The revision of Rule 9021 and the adoption of Rule 7058 accomplishes this goal. The only comment on these rules was submitted by Bankruptcy Judge Philip Brandt (W.D. Wash.) (**Comment 07-BR-029, also logged in under Comment 07-BK-013)** Judge Brandt suggested that the words "shall be read as a reference to" on lines 3 and 4 of Rule 7052 and on line 3 of Rule 7058 should be deleted and the word "means" be substituted in their place.

This suggestion was made during prior deliberations over the rules, and the Committee had concluded that the change should not be made. There were at least two reasons for choosing the admittedly longer version. First, that language was taken from existing Rule 9021. Second, and more importantly, there was concern that using the word "means" would be too strong of a

statement. The rules did not intend to state what a particular reference "means," but only to require the reader to consider that when they read Civil Rules 52 and 58, they should consider that the reference in those rules to the specific matter is a reference to the entry of judgment or the docket maintained by the clerk under Rule 5003. **The Subcommittee continues to believe that this is the more appropriate language for the rules and recommends that the Advisory Committee approve Rules 7052, 7058, and 9021 as published in August, 2007.**

6A2

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

RE: RECOMMENDATIONS ON PUBLISHED AMENDMENTS FOR NOTICE OF APPEAL DEADLINE IN RULE 8002

DATE: MARCH 1, 2008

The Subcommittee on Privacy, Public Access, and Appeals met by teleconference on February 29, 2008, to consider the comments submitted on the proposed amendments governing the deadline for filing a notice of appeal. The Subcommittee also considered the comments received on proposed new Rule 7058 and the amendments to Rules 7052 and 9021, which relate to the separate document rule; and the effect of proposed time computation changes in Civil Rules 50, 52, and 59, which are incorporated by the Bankruptcy Rules . This memorandum sets out the Subcommittee's consideration of the comments and its recommendation to the Advisory Committee for action on the deadline for filing a notice of appeal. The Subcommittee's consideration of the proposals which relate to the separate document rule and the incorporated Civil Rules are set out in separate memoranda.

Comments on Rule 8002

We received a considerable number of comments on the proposed amendment to Rule 8002(a) to extend the deadline for filing a notice of appeal from the current 10-day limit to a 14-day limit. In addition to publishing the proposed rule amendment in August, the Administrative Office also published a special notice requesting comment on the possibility of an extension of the notice of appeal filing deadline to 30 days. This special notice was published on the request

of the Advisory Committee by action taken at the meeting at Jackson Hole. The two notices, the initial publication of proposed amendments in August and the subsequent special notice, resulted in comments on the proposed rule amendment being logged in on separate charts on the AO website. Between the two locations, 44 comments were logged in. Four comments were logged in on both website locations, so there were a total of 40 comments received on the proposed amendment to Rule 8002(a).

Attached is a spreadsheet that compiles the comments received on Rule 8002. The columns of the spreadsheet set out the number of the comment as logged in by the AO, the name of the person or group submitting the comment, an identification of the person as either a BJ (bankruptcy judge), Assoc. (association), or Prac. (practitioner)[1], and three columns in which to indicate whether the person prefers a 10-, 14-, or 30-day deadline for filing a notice of appeal. Of the 40 comments, 17 indicated a preference for retaining the current 10-day deadline, 16 preferred the 14-day deadline set out in the proposed amendment to Rule 8002, and 7 preferred that the deadline be extended to 30 days. These preferences, however, tell only a part of the story. The preferences as expressed by the practitioners and associations were overwhelmingly in favor of retaining the 10-day deadline as compared to the 14- or 30-day options (11 to 2 to 1). Among judges and clerks, the preference was for the 14 day deadline over the other two (6 to 14 to 6). Moreover, there were a number of persons who submitted comments in favor of either a 10- or 14-day deadline that expressed significant objections to the extension of the appeal deadline to 30 days. If anything is clear from the comments submitted, it is that adopting

[1] A few of the status designations differ slightly. One is for a Seventh Circuit Judge, another for a professor, and a third for a staff attorney of the Tenth Circuit. There were also comments submitted by clerks of court.

the 30-day deadline would likely cause a firestorm of protest.

Not only was there significant opposition to the 30-day deadline, but there was also substantial objection to the proposed change from 10 to 14 days for the deadline to file a notice of appeal under Rule 8002. A number of the association and practitioner responses opposed the 14-day period set out in the proposed rule. They noted that the filing of a notice of appeal is a relatively simple task often only one page in length. They also suggested that any extension of the time to appeal would have a negative impact on the case in general as well as the particular order or decree that might be appealed. This concern was expressed both as to orders that would apparently be governed by §§ 363(m) and 364(e) which provide that the reversal of the order on appeal does not affect the validity of actions taken under those orders. The commentators still asserted that even as to these orders that the prospect of a reversal causes parties to wait until the conclusion of the appeal period to take action under the orders. Of course, for matters outside those provisions, there are no similar statutory protections for the order.

Summary of Comments Submitted

The following is a description of the comments we received regarding the proposed amendment to Rule 8002. The comments are available by going to the Federal Rulemaking page of the Judiciary website at http://www.uscourts.gov/rules/proposed0807-1.htm and selecting a link to one of the two lists of comments on the bankruptcy amendments. Simply click on the number of the particular comment and it will appear on the screen. The numbering system for the comments on Rule 8002 begins with 07-BR-___. The numbering system for the comments on other proposed rules (including some comments on Rule 8002) begins with 07-BK-___.

07-BR-001 Matt McKee (Charlotte, NC attorney). Mr. McKee states quite simply that a 30-day deadline is his preference. He says that the change will not have a material impact in most cases.

07-BR-002 Bankruptcy Judge Judith Wizmur (D.N.J.). Judge Wizmur supports the 14-day deadline and suggests that the Committee might consider whether some matters should be governed by a 30-day deadline and others by the 14-day deadline.

07-BR-003 Bankruptcy Judge Margaret Dee McGarity (E.D. Wis.) Judge McGarity slightly favors the 14-day deadline over the 30-day deadline. She notes that she does not feel particularly strongly about this, but notes that the 10-day period "can sometimes be problemmatic."

07-BR-004 Niki Heller (Senior Staff Attorney, Tenth Circuit) Ms Heller states that from an appellate perspective, she prefers 30 days which would make it consistent with other federal appeal deadlines. She did not mention the 10-day appeal time in federal criminal cases.

07-BR-005 Bankruptcy Judge Roger Efremsky (N.D. Cal.) Judge Efremsky suggests that the 14-day deadline "is a reasonable accomodation between the two other deadlines.

07-BR-006 Bankruptcy Judge Terry Myers (D. Ida.) Judge Myers believes that the 14-day deadline would not make too much difference from the current deadline, but he does not find the arguments in support of the longer 30-day deadline persuasive.

07-BR-007 Max Tucker (Dallas, TX attorney) Mr. Tucker supports the extension of the deadline. His preference is to allow 30 days. He is unpersuaded by arguments that the bankruptcy process must move more quickly because in his experience, when a bankruptcy appeal is filed, resolution of that appeal often takes quite some time. He also cites the doctrine

of equitable mootness as a means to "weed out appeals where the delay results in prejudice."

07-BR-008 Bankruptcy Judge G. Harvey Boswell (W.D. Tenn.) Judge Boswell supports the 14-day deadline and sees no negative impact.

07-BR-009 Bankruptcy Judge Henry Boroff (D. Mass.) Judge Boroff prefers to keep the 10-day deadline for filing a notice of appeal. He states that making it 14 days will still present the prospect of catching the non-bankruptcy attorney unaware of the deadline, and he rejects the adoption of the 30-day deadline as inconsistent with the need for "prompt final dispositions in bankruptcy cases."

07-BR-010 Bankruptcy Judge Christopher Sontchi (D. Del.) Judge Sontchi approves the idea of a 14-day deadline, but he strongly opposes a 30-day deadline. He notes that the interdependence of the orders in cases, particularly chapter 11 cases, requires an appeal deadline of shorter than 30 days.

07-BR-011 Bankruptcy Judge Raymond Lyons (D. N.J.) Judge Lyons generally favors a 30-day deadline, at least for adversary proceedings. Other orders, including those governed by §§ 363(m) and 364(e) would be governed by a shorter deadline (he does not indicate a preference for either 10 or 14 days). He also notes that some parties are unwilling to rely on the doctirne of equitable mootness to proceed with a transaction.

07-BR-012 Bankruptcy Judge Judith Fitzgerald (W.D. Pa.) Judge Fitzgerald opposes any change from the current 10-day limit on the filing of a notice of appeal. She asserts that the quest for consistency between the civil and bankruptcy rules is an insufficient reason to move to the 30-day deadline. She also believes that persons could become confused by a 14-day deadline especially if there is a 10-day deadline for filing a motion for reconsideration. Finally, she notes

that bankruptcy cases generally operate on a "compressed time frame" that properly requires a shorter time for filing an appeal. Also, the presence of CM/ECF provides nearly immediate notice to parties. This effectively provides even more notice than parties have received in the past.

07-BR-013 Bankruptcy Judge Robert Kressel (D. Minn.) Judge Kressel, a former member of the Committee, noted the difficulties faced when Rule 9006(a) was amended in the 1980s. He also stated that the extension of the deadline to 30 days would promote consistency between the rules and would protect the uninitiated who are unfamiliar with the short deadline and would discourage the filing of "protective" notices of appeal by the initiated.

07-BR-014 Bankruptcy Judge Douglas Dodd (M.D. La.) Judge Dodd notes that the change from 10 to 14 would not help the person who mistakenly believed that the appeal deadline was 30 days. He also does not believe that the deadline for filing a notice of appeal in a bankruptcy case should change from the 10-day deadline currently in Rule 8002.

07-BR-015 Circuit Judge Frank Easterbrook (7th Cir.) Judge Easterbrook did not offer a comment on Rule 8002, other than to state his general support for the time computation amendments.

07-BR-016 Bankruptcy Judge Jerry Brown (E.D. La.) Judge Brown supports the 14-day deadline, but he strongly opposes extending the deadline to 30 days. He states that the longer period would substantially delay both sales of property and ordinary bankruptcy procedures.

07-BR-017 Bankruptcy Judge David Adams (E.D. Va.) Judge Adams supports the 14-day period but opposes the 30-day period. He is concerned that the longer period would lead to irreparable harm accruing during that waiting time.

07-BR-018 Bankruptcy Judge Bruce McCullough (W.D. Pa.) Judge McCullough sees no reason to change from the 10-day period that has governed the bankruptcy appeal time for a century. He notes that time is both jobs and money, and extension of the deadline would have an adverse impact on the process. He also reserved the right to supplement his response, but we have not received any further comment from him to date.

07-BR-019 Bankruptcy Judge Benjamin Goldgar (N.D. Ill.) Judge Goldgar noted that prior to his service as a judge, he was an appellate lawyer for the State of Illinois and served a term as the President of the Illinois Appellate Lawyers Association. He supports the increase of the deadline to 14 days because it would not materially disrupt bankruptcy practice. He does not, however, support the expansion of the deadline to 30 days. In his view, the pace of bankruptcy is too brisk. Moreover, he has observed that parties await the passage of the appeal time even in the face of § 363(m), equitable mootness, and other protections. Finally, he states that he is unpersuaded by the argument that the rule should be 30 days to protect those who are unfamiliar with the bankruptcy appellate process because "appellate lawyers are the most rule conscious members of the bar."

07-BR-020 Bankruptcy Court Clerk Margaret Grammar Gay (D.N.M.) Ms. Grammar Gay supports the 14-day deadline and states that it would not disrupt bankruptcy practice. She notes, however, that if there is any likelihood that the 14-day deadline is just a brief stop on the road to a 30-day deadline, that the change should be made to 30 days in the first instance.

07-BR-021 Bankruptcy Judge James Starzynski (D.N.M.) Judge Starzynski supports the 30-day deadline so as to avoid this deadline being a trap for the unwary. He notes as well that once the appeal is taken, the final decision in the appeal will not be materially later because an

additional 20 days was added to the time for filing a notice of appeal. He recognizes that there may be a concern that the time to file a notice in some appeals should be shortened, so he proposed that the rules allow for the shortening of the period by a specific and prominently ordered reduction in the time.

07-BR-022 Bankruptcy Judge Timothy Mahoney (D. Neb.) Judge Mahoney believes that the current 10-day period is insufficient and supports an extension of that time period. He notes that 14 is better than 10, but he would prefer that the time be lengthened to 30 days. He states that this is especially important for persons who do not participate through ECF, a group that is often likely not to be represented by counsel.

07-BR-023 Walter Bussart (Lewisburg, Tenn. attorney) Mr. Bussert supports all of the time computation amendments, but he does not mention Rule 8002.

07-BR-024 Richard Rogan (San Francisco attorney) Mr. Rogan, a long time bankruptcy practitioner, urges the retention of the 10-day time limit for filing a notice of appeal. He states that the added delay would be detrimental to sales and plans of reorganization. Also, he notes that 10 days is ample time to file the notice.

07-BR-025 Heather Lennox (Cleveland, Oh. attorney) Ms. Lennox opposes the expansion of the time to file a notice of appeal beyond the 10 days in the current rule. She notes that the filing of a notice of appeal is relatively simple and 10 days is more than adequate. She also points out that Congress has just amended the Code to expedite both large and small chapter 11 cases, so it

would be contrary to that Congressional intent to expand the time allowed for filing a notice of appeal.

07-BR-026 Prof. Alan Resnick (New York attorney and professor) Professor Resnick, former Reporter to the Committee, strongly opposes the change in Rule 8002 from 10 days to either 14 or 30 days. He notes the general need for matters to proceed quickly in bankruptcy cases, and he states as well that the filing of a notice of appeal does not require any significant amount of time. Further, he argues that the presence of an additional layer of appeals in bankruptcy cases provides another reason not to add to the delay in the case. He also points out that the 1987 change to Rule 9006(a) that effectively extended the appeal time was not well received and led to its almost immediate repeal when the bar fully understood its implications. To that end, he also notes that a change in the rules to make the appeal time 14 days would likely catch some or many bankruptcy practitioners unaware of the change, and vulnerable to appeals taken after they acted to close a transaction on the 11th day after the entry of the relevant order. Finally, he notes that the "uniformity" argument for changing the rule to allow 30 days for appeals is in fact not uniform. Criminal appeals must be taken in 10 days under the current rule (14 under the proposed revision to Appellate Rule 4). Professor Resnick also submitted recommendations regarding other Bankruptcy Rules that he believes may need to be revised. In particular, he notes that Rule 9023 should be amended to prevent the proposed amendment to Civil Rule 59 to circumvent the deadline for filing a notice of appeal in a bankruptcy case. Rule 59, as amended, would allow a party 30 days after entry of an order to file a motion for new trial or a motion to alter or amend a judgment. Although not mentioned in the comment, similar issues could arise under proposed Civil Rule 50 which is made applicable by Bankruptcy Rule 7050. Professor

Resnick also argues that if the 10-day appeal time is to remain in effect, the 10-day periods in Rules 3002(e), 4001(a)(3), 6004(g), and 6006(d) should not be changed to 14 days as proposed in the Time Computation changes. He notes that these deadlines are comparable to the notice of appeal deadline, and they should be the same in each of these rules. Professor Resnick makes a similar argument regarding Rules 7062 and 9033.

07-BR-027 Bankruptcy Judge Barry Schermer (E.D. Mo.)[2] Judge Schermer opposes the expansion of the deadline to file a notice of appeal to either 14 or 30 days, and instead argues that the current deadline is both appropriate and necessary. He states that the extension of the deadline will increase uncertainty in the process that will lead to additional costs to the parties and the process. Many parties are affected by decisions in bankruptcy cases, including the debtor, the debtor's employees, and creditors. The comment also suggests that the rule is not difficult to read or understand, so that anyone who takes the time to read the rule would not be "unwary" of the deadline. Moreover, he notes that the rules already permit some extensions of the appeal time under Rule 8002(c). He concludes that the need for uniformity does not outweigh the harm that would follow from the proposed extension of the deadline. He also suggests that it is unnecessary, and perhaps even counterproductive, to protect unwary practitioners.

07-BR-028 American Bankruptcy Institute The ABI conducted a survey of its membership (approximately 11,000) as to the proposed changes to Rule 8002. The members were asked whether the change from 10 to 14 days would have a significantly detrimental or significantly

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[2] The other Bankruptcy Judges in the District, Judges Surratt-States, McDonald, and Rendlen joined in this comment, as did Dana McWay, the Clerk of the Court.

beneficial impact on bankruptcy cases, or whether there would be no significant impact from such a change. There were 183 responses, and 45% thought there would be no significant impact, and 27% each thought the impact would be significantly detrimental or beneficial. As to the impact of making the appeal time 30 days, 70% said it would be significantly detrimental, and 23% responded that it would be significantly beneficial. Only 8% said that the 30-day deadline would not have a significant effect. The respondents identifying themselves as practicing in business bankruptcy cases were far more likely to find the changes from 10 days to be significantly detrimental.

07-BR-029 Bankruptcy Judge Philip Brandt (W.D. Wash.) Judge Brandt opposes any change from the 10-day deadline set out in current Rule 8002. He states that many orders are not implemented until a day or two after the expiration of the appeal deadline. In many cases, the daily costs could be extensive, so extending the deadline even just 4 days could have a negative impact on many cases. Judge Brandt also noted that the pending proposed amendment to Civil Rule 59 would create problems when it is incorporated into the Bankruptcy Rules through Rule 9023, and he cautioned against permitting those problems to arise.

07-BR-030 Business Law Section of the State Bar of Michigan The Business Law Section and the Debtor/Creditors' Rights Committee of the State Bar oppose the extension of the deadline for filing a notice of appeal beyond the 10 days already provided for in current Rule 8002.

07-BR-031 Bankruptcy Judge Martin Teel and Nancy Mayer-Whittington, Clerk (D.D.C.)[3] Judge Teel and Ms. Mayer-Whittington support the change in the appeal time from 10 to 14

[3] This comment is listed under the name Patti Meador. Ms. Meador submitted the comment on behalf of Judge Teel and Ms. Mayer-Whittington.

days. They note that the order being appealed from is effective unless it is stayed, no matter what the deadline may be for filing the appeal. They also suggest that the deadline might be set at 28 days. They express a concern that the 10-day period is sometimes too short to decide whether to appeal, particularly if a few days pass before the parties receive notice of the underlying order.

07-BR-032 Business Law Section of the State Bar of California The Insolvency Law Committee of the Business Law Section opposes the change in the deadline for filing a notice of appeal. The Committee notes that the courts in chapter 11 cases enter numerous orders that relate to the operation of the debtor's business, and additional time for appeals would inject additional uncertainty and delay into the process. It notes that the 10-day appeal time has worked well since 1898 and does not need to be changed.

07-BR-033 Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York The Committee states that the extension of the appeal time would cause a material disruption in the operation of bankruptcy practice. These disruptions also outweigh any benefits that might be obtained by making the appeal deadline consistent with the deadline for an appeal in a civil case. The Committee points out that in civil litigation, courts almost always are adjudicating disputes about past conduct, while many matters that bankruptcy courts resolve provide the debtor with authority to go forward in its business activities either specifically or generally. Many parties rely on these orders, and they must be implemented with dispatch given the potential for changing market conditions and the like. The Committee also points out that other Bankruptcy Rules such as Rules 3020(e), 6004(g) and 6006(d) provide specific stay relief from certain orders that are appealed, and that this recent judgment of the

Rules Committee shows that protection is available in those instances where it is particularly important, and no further protection is necessary. The Committee also noted the potential problems that could arise if Civil Rules 52 and 59 are amended and incorporated into the Bankruptcy Rules without change.

07-BR-034 Commercial Law League of America The CLLA has no comment on the proposal to extend the 10-day deadline in Rule 8002 to 14 days. It does, however, oppose the extension of the deadline to 30 days. It points out that bankruptcy cases impact the interests of a number of parties, and the delays that are created would have a negative effect on those parties. It also notes that the added delays would undermine the debtor's fresh start as well as delay the distribution of assets in cases. The CLLA also expresses some sympathy for the unwary, occasional bankruptcy practitioner, but it asserts that it is an insufficient justification for the proposed amendment.

07-BR-035 Bankruptcy Appeals Clerk Alesia Wallace (W.D.N.C.) Ms. Wallace states that the extension of the deadline to 14 days would have little or no impact on the court, but that an extension to 30 days would impact deadlines for closing bankruptcy cases and may lead to more frivolous appeals.

07-BR-036 Seventh Circuit Bar Association The Association opposes the extension of the deadline for filing a notice of appeal in a bankruptcy case, and even suggested that if there was a need to restate the deadline in a multiple of 7 days, then the deadline should perhaps be 7 days rather than 14.

07-BR-037 American Bar Association The Association opposes the amendment and urges that the 10-day deadline for filing a notice of appeal be retained. It states that the deadline has

been in place for over 100 years, and it questions whether there is any empirical support for the idea that the rule has operated to trap the unwary. It further asserts that the short deadline is necessary in bankruptcy cases where parties usually demand that no action be taken until the appeal deadline has passed. The Association notes that neither equitable mootness nor the statutory protections in §§ 363 and 364 are sufficient to protect a party who acts prior to the conclusion of the appeal period. Thus, the Association proposes that the 10-day limit be retained. This position was also adopted by the State Bar of Michigan and the State Bar of California responses in Comment 07-BR-030 and 07-BR-033, respectively.

07-BK-002 Kenneth Klee (Los Angeles attorney and professor) Mr. Klee opposes extending the deadline from 10 to 30 days. He notes that the added costs resulting from the 20 additional days to wait for an order to be final is very costly. He also notes that the rules already permit an extension of the time to file a notice of appeal in many cases.

07-BK-003 Bankruptcy Judge Paul Mannes (D. Md.) Judge Mannes, a former Chair of the Committee, asserts that the 10-day deadline has worked well, but he would grudgingly support the extension to 14 days for the sake of uniformity. He opposes any additional extension.

07-BK-022 National Bankruptcy Conference The Conference endorses and supports the comment of Professor Resnick (07-BR-026, above), stating that it is vitally important that bankruptcy matters be resolved as expeditiously as possible. The Conference also suggests that the Advisory Committee not permit the proposed amendment to Civil Rule 59 to operate to effectively extend the appeal time in bankruptcy cases through its incorporation into the Bankruptcy Rules by Rule 9023. It also urges the Advisory Committee to further study the impact of the changes in the Civil Rules that change deadlines of less than 30 days to deadlines

that are multiples of 7 days.

Subcommittee Consideration and Recommendation

The Subcommittee discussed the matter at great length and carefully considered the comments submitted by the bench and bar. The Subcommittee initially considered whether to adopt a 30-day deadline. While there was some support for that deadline both among the comments and during the discussion within the Subcommittee, the Subcommittee concluded that the 30-day deadline should not be adopted. It would be a significant change from long standing bankruptcy practice, it could inject substantial additional uncertainty and cost into cases, and it was opposed (often quite strongly) by the vast majority of those who submitted comments on the proposal.

The Committee then considered whether the proposed 14-day deadline should be adopted or whether the current 10-day deadline should be retained. Two primary arguments were offered in favor of the new 14-day deadline. First, it would implement the time computation program thereby enhancing the uniformity of the rules across the different sets of rules. Secondly, and more substantively, extending the appeal period would provide some additional protection against the loss of appeal rights for those who either were unaware of the short deadline in bankruptcy cases, or those for whom the notice was not received in enough time to consider and decide whether to appeal and to prepare the necessary notice of appeal. Some parties do not receive notice through electronic means, and some others, such as local governmental units, face difficulty in getting the notices to the right person as quickly as the expedited bankruptcy appellate process demands. Thus, they face the loss of their right to appeal simply because the

time is sometimes too short to allow an effective appeal. Moreover, the addition of only four days to the appeal time should not adversely affect the process too greatly when balanced against the rights of parties that are eliminated if they cannot accomplish a filing of a notice of appeal before the 10-day deadline. Furthermore, limits on the effect of appeals under §§ 363 and 364, as well as the availability of the equitable mootness doctrine, make the extension of the deadline less significant that it might otherwise be. Finally, the instances of parties having their appeal rights cut off due to their failure to timely file a notice of appeal occurs much more frequently than published decisions would indicate because many of those cases simply result in the dismissal of the appeal without any published decision.

A number of arguments were raised in support of retaining the 10-day deadline. There is a need for the expeditious resolution of matters in bankruptcy cases because delay is costly. This is especially significant for debtors whose financial life is already in the balance. Furthermore, the results of decisions within a bankruptcy case often have direct and immediate impact on related decisions in the case. Delay in the resolution of one matter could have a significant an impact on the ability to go forward in the case. As noted in the comments, the 10-day appeal rule has been in the governing statutes or rule for over 100 years and has operated well. The rule is not ambiguous and should not be changed just because some attorneys who take on matters in bankruptcy courts do not sufficiently acquaint themselves with the governing rules. Furthermore, the response from the bar, both as to individual attorneys and from groups was overwhelmingly in support of retaining the 10-day rule. This opposition mirrors the post-adoption opposition to the amendment of Rule 9006 in the late 1980s which had excluded intervening weekends and holidays from time periods of less than 11 days. The result of that

opposition was the almost immediate repeal of that change.

The Subcommittee considered these competing arguments, and each position was challenged. **At the close of the discussion, the Subcommittee concluded by a majority vote in favor of the 14-day deadline for the filing of a notice of appeal.** The Subcommittee concluded that the added protection from the loss of appeal rights and related reasons outweighed the need to expedite the resolution of bankruptcy cases that the bulk of practitioners responding to the proposal seem to prefer.

Related Deadlines

As a part of the Time Computation project, Civil Rules 50, 52, and 59 are proposed to change from 10 days to 30 days. The Committee Notes to those proposed amendments state that "Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays." Amending those rules to make the filing of these post-judgment motions due in 30 days rather than 10 days creates no conflict in the Civil Rules because the time to file a notice of appeal is also 30 days. Civil Rules 50, 52, and 59 are incorporated into the Bankruptcy Rules by Rules 9015(a), 7052, and 9023, respectively. If Bankruptcy Rule 8002(a) is amended to set a 14-day deadline for filing a notice of appeal, then the incorporation of Civil Rules 50, 52, and 59 would effectively operate to provide an extension of the appeal deadline to 30 days. A party could file a motion for judgment as a matter of law under Rule 50, a motion to amend or provide additional findings under Rule 52, or a motion for a new trial under Rule 59 long after the 14-day appeal time had passed. Consequently, we need to limit the time for

making these motions to not more than 14 days so that they do not indirectly extend the appeal time. Similarly, if the Committee concludes that the appeal time under Rule 8002 should remain at 10 days, then these Civil Rule deadlines would have to be limited to 10 days for purposes of bankruptcy cases. This can be done by expressly limiting these deadlines in the Bankruptcy Rules that incorporate these Civil Rules. Proposed amendments to those rules are set out separately.

These are not the only rules amendments that would be necessary if the Committee concludes that the appeal time should remain at 10 days. The time computation changes proposed for the Bankruptcy Rules included amendments to the deadlines in Rules 3020(e), 4001(a)(3), 6004(g) and 6006)(d). Each of these current 10-day deadlines would become 14 days rather than the 10-day periods in the current versions of those rules. If the Committee concludes that the deadline for filing a notice of appeal should be 10 days, then the deadlines set out in these rules should also be retained as 10-day periods. These deadlines each provide a specific stay of orders that are comparable to the appeal rules. They are intended to provide a stay of orders entered under those rules until the appeal time has run, so they should continue to correspond to the appeal deadline. Therefore, if the Advisory Committee adopts a 14-day deadline for filing a notice of appeal, these rules could be adopted as published, but if the appeal time is returned to 10 days, then these proposed rule amendments should not be adopted and they should remain in their current form.

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: COMMENTS RECEIVED ON TIME COMPUTATION RULE 9006

DATE: MARCH 3, 2008

The Committee received a substantial number of comments on the rules published in August regarding the amendments to Rule 9006(a). We also received many comments on the related proposed amendment to Rule 8002(a) regarding the deadline for filing a notice of appeal. In all, we received approximately 46 comments on these issues. Thirty-five of the comments were addressed solely to the proposed amendment to Rule 8002(a), and they are set out and considered separately in the agenda materials. Twelve comments were directed more generally toward the issues under Rule 9006(a). Some of these "time computation" comments also raise specific issues with the proposed amendment to Rule 8002, but they are included in this memorandum as well as the other because they include support, suggestions, or objections to the time computation rule.

In response to a comment on the published amendments to Rule 9006(a), we have already recommended the correction to subdivision (a)(3) which included an incorrect cross reference. That matter is addressed in the materials behind Tab 6.E. As to other changes, the Standing Committee's Time Computation Subcommittee is recommending changes to the Committee Note as it addresses potential conflicts with local rules, and also recommends an amendment to subdivision (a)(6)(B) as will be more fully set out below.

First, several comments were received noting that the adoption of a "days are days"

computation method could have a significant impact on local rules. The national rules supercede the local rules, but concern was expressed that some local rules may not be changed, and the result would be the significant shortening of periods under those rules by the inclusion of intermediate weekends and holidays under the new computation system. The Time Computation Subcommittee considered the matter and concluded that no special protections should be provided for local rules provisions. If certain time limits in the local rules become too short, those rules will need to be amended in a manner consistent with the national rule. The Time Computation Subcommittee concluded that a more explicit statement regarding the impact of the new system on local rules should be included in the Committee Note. Thus, two new sentences would be added to the end of the first paragraph of the Committee Note to Rule 9006(a). Those sentences would read as follows:

> Thus, for example, a local rule should not set a time period in "business days," because subdivision (a) directs that one "count every day, including intermediate Saturdays, Sundays, and legal holidays." A local rule providing that "[r]eply papers shall be filed and served at least three business days before the return date" must be interpreted, under subdivision (a), as though it refers to "three days" instead of "three business days."

The second change to Rule 9006(a) being recommended by the Time Computation Subcommittee is an amendment to the text of the rule in subdivision (a)(6)(B). The change is being offered in response to a comment received on the general Time Computation Rule. Specifically, concern was expressed that under the proposed rule, when a backwards counting system is in use (e.g., a filing is due at least 5 days prior to a scheduled hearing), the rule provides that you continue to count in the same direction to determine the applicable deadline. So, if the fifth day prior to a scheduled hearing is a Saturday, then Friday becomes the deadline

for the filing of the document. Concern was expressed that parties may not realize the impact of this computational rule when little known state holidays come into play. For example, Illinois recognizes Casmir Pulaski Day as a state holiday. If the fifth day prior to a scheduled hearing fell on a Thursday that also happened to be Casimir Pulaski Day, then in a federal court in Illinois, the document would be due on Wednesday. That is a particularly harsh result when most litigants and their attorneys may not even be aware that there is Casimir Pulaski Day or that it is a holiday in Illinois on the first Monday in March. Little known state holidays do not create problems when the computation of a period is going forward, because in those circumstances, the person subject to the deadline cannot be caught short. In that instance, they will be gaining another day before the deadline passes. It is only when a backward counting period applies that the problem arises. Consequently, the Time Computation Subcommittee is recommending a change to subdivision (a)(6) of the rule which defines a "legal holiday" under the rule. The revision would leave subparagraph (a)(6)(A) unchanged, but would break current subparagraph (6)(B) into a (B) and (C). The revision would provide:

(6) ***"Legal Holiday" Defined.*** "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; ~~and~~

(B) any other day declared a holiday by the President~~,~~ <u>or</u> Congress;~~ or~~ <u>and</u>

(C) for periods that are measured after an event, any other day declared a holiday by the state in which is located either the district court that rendered the challenged judgment or order, or the circuit clerk's principal office. (In this rule, 'state' includes the District of Columbia and any United States commonwealth, territory, or possession.)

The last paragraph of the Committee Note would be replaced with the following (the underlined portions of the Committee Note highlight the change from the published version of the rule:

> **Subdivision (a)(6).** New subdivision (a)(6) defines "legal holiday" for purposes of the Federal Rules of Bankruptcy Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of "legal holiday" days that are "declared a holiday by the President." For two cases that applied this provision to find a legal holiday on days when the President ordered the government closed for purposes of celebration or commemoration, *see Hart v. Sheahan*, 396 F.3d 887, 891 (7th Cir. 2005) (President included December 26, 2003 within scope of executive order specifying pay for executive department and independent agency employees on legal holidays), and *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1098 (D.C. Cir. 2003) (executive order provided that "[a]ll executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty on Monday, December 24, 2001").
>
> For forward-counted periods – i.e., periods that are measured after an event – subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, subdivision (a)(6)(C) does not apply to backward-counted periods (i.e., periods that are measured before an event).
>
> Subdivision (a)(6)(C) defines the term "state" – for purposes of subdivision (a)(6) – to include the District of Columbia and any commonwealth, territory or possession of the United States. Thus, for purposes of subdivision (a)(6)'s definition of "legal holiday," "state" includes the District of Columbia,

Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

The bankruptcy rule version of the Time Computation Rule is Rule 9006(a). **The August 2007 published version of the rule follows.**

Rule 9006. Computing and Extending Time

1 ~~(a) Computation. In computing any period of time~~
2 ~~prescribed or allowed by these rules or by the Federal Rules of~~
3 ~~Civil Procedure made applicable by these rules, by the local rules,~~
4 ~~by order of court, or by any applicable statute, the day of the act,~~
5 ~~event, or default from which the designated period of time begins~~
6 ~~to run shall not be included. The last day of the period so~~
7 ~~computed shall be included, unless it is a Saturday, a Sunday, or a~~
8 ~~legal holiday, or, when the act to be done is the filing of a paper in~~
9 ~~court, a day on which weather or other conditions have made the~~
10 ~~clerk's office inaccessible, in which event the period runs until the~~
11 ~~end of the next day which is not one of the aforementioned days.~~
12 ~~When the period of time prescribed or allowed is less than 8 days,~~
13 ~~intermediate Saturdays, Sundays, and legal holidays shall be~~
14 ~~excluded in the computation. As used in this rule and in Rule~~
15 ~~5001(c), "legal holiday" includes New Year's Day, Birthday of~~
16 ~~Martin Luther King, Jr., Washington's Birthday, Memorial Day,~~
17 ~~Independence Day, Labor Day, Columbus Day, Veterans Day,~~

18 ~~Thanksgiving Day, Christmas Day, and any other day appointed as~~

19 ~~a holiday by the President or the Congress of the United States, or~~

20 ~~by the state in which the court is held.~~

21 (a) Computing Time. The following rules apply in computing

22 any time period specified in these rules, in the Federal

23 Rules of Civil Procedure, in any local rule or court order,

24 or in any statute that does not specify a method of

25 computing time.

26 (1) *Period Stated in Days or a Longer Unit.* When the

27 period is stated in days or a longer unit of time:

28 (A) exclude the day of the event that triggers the

29 period;

30 (B) count every day, including intermediate

31 Saturdays, Sundays, and legal holidays; and

32 (C) include the last day of the period, but if the

33 last day is a Saturday, Sunday, or legal

34 holiday, the period continues to run until the

35 end of the next day that is not a Saturday,

36 Sunday, or legal holiday.

37 (2) *Period Stated in Hours.* When the period is stated

38 in hours:

39 (A) begin counting immediately on the

40 occurrence of the event that triggers the
41 period;
42 (B) count every hour, including hours during
43 intermediate Saturdays, Sundays, and legal
44 holidays; and
45 (C) if the period would end on a Saturday,
46 Sunday, or legal holiday, then continue the
47 period until the same time on the next day
48 that is not a Saturday, Sunday, or legal
49 holiday.
50 (3) *Inaccessibility of Clerk's Office.* Unless the court
51 orders otherwise, if the clerk's office is
52 inaccessible:
53 (A) on the last day for filing under Rule 6(a)(1),
54 then the time for filing is extended to the
55 first accessible day that is not a Saturday,
56 Sunday, or legal holiday; or
57 (B) during the last hour for filing under Rule
58 9006(a)(2), then the time for filing is
59 extended to the same time on the first
60 accessible day that is not a Saturday,
61 Sunday, or legal holiday.

62 (4) *"Last Day" Defined.* Unless a different time is set
63 by a statute, local rule, or order in the case, the last
64 day ends:
65 (A) for electronic filing, at midnight in the
66 court's time zone; and
67 (B) for filing by other means, when the clerk's
68 office is scheduled to close.
69 (5) *"Next Day" Defined.* The "next day" is determined
70 by continuing to count forward when the period is
71 measured after an event and backward when
72 measured before an event.
73 (6) *"Legal Holiday" Defined.* "Legal holiday" means:
74 (A) the day set aside by statute for observing
75 New Year's Day, Martin Luther King Jr.'s
76 Birthday, Washington's Birthday, Memorial
77 Day, Independence Day, Labor Day,
78 Columbus Day, Veterans' Day,
79 Thanksgiving Day, or Christmas Day; and
80 (B) any other day declared a holiday by the
81 President, Congress, or the state where the
82 district court is located. (The word 'state,' as
83 used in this Rule, includes the District of

84 Columbia and any commonwealth, territory,

85 or possession of the United States.)

* * * * * *

COMMITTEE NOTE

Subdivision (a). Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a Federal Rule of Bankruptcy Procedure, a Federal Rule of Civil Procedure, a statute, a local rule, or a court order. In accordance with Bankruptcy Rule 9029(a), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) "does not apply to situations where the court has established a specific calendar day as a deadline"), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is "no later than November 1, 2007," subdivision (a) does not govern. But if a filing is required to be made "within 10 days" or "within 72 hours," subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 11 U.S.C. § 527(a)(2) (debt relief agencies must provide a written notice to an assisted person "not later than 3 business days" after providing bankruptcy assistance services).

Subdivision (a)(1). New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. See, e.g., Federal Rule of Civil Procedure 60(b) made applicable to

under Rule 9024. Subdivision (a)(1)(B)'s directive to "count every day" is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 9006(a), a period of eight days or more was computed differently than a period of less than eight days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 9006(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results.

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than eight days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. See, e.g., Rules 2008 (trustee's duty to notify court of acceptance of the appointment within five days is extended to seven days); 6004(b) (time for filing and service of objection to proposed use, sale or lease of property extended from five days prior to the hearing to seven days prior to the hearing); and 9006(d) (time for giving notice of a hearing extended from five days prior to the hearing to days).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. See, e.g., Rules 1007(h) (10 day period to file

supplemental schedule for property debtor becomes entitled to acquire after the commencement of the case is extended to 14 days); 3020(e) (10 day stay of order confirming a chapter 11 plan extended to 14 days); 8002(a)(10 day period in which to file notice of appeal extended to 14 days). A 14-day period also has the advantage that the final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting seven-day periods to replace some of the periods set at less than 10 days, 21-day periods to replace 20-day periods, and 28-day periods to replace 25-day periods. Thirty-day and longer periods, however, were generally retained without change.

Subdivision (a)(2). New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be "rounded up" to the next whole hour. Subdivision (a)(3) addresses situations when the clerk's office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

Subdivision (a)(3). When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk's office is inaccessible during the last hour of the filing

period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday or day when the clerk's office is inaccessible.

Subdivision (a)(3)'s extensions apply "[u]nless the court orders otherwise." In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to "weather or other conditions" as the reason for the inaccessibility of the clerk's office. The reference to "weather" was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, *see, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Bankruptcy Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing, *see, e.g.*, D. Kan. Rule 5.4.11 ("A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.").

Subdivision (a)(4). New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may provide, for example, that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." A corresponding provision exists in Rule5001(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g.*, *Casalduc v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of

after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

Subdivision (a)(5). New subdivision (a)(5) defines the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Bankruptcy Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. See, e.g., Rules 1007(c) (the schedules and statements, other than the statement of intention, shall be filed by the debtor within 14 days after entry of the order for relief."); 1019(b)(ii) ("the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account"); and 7012(a) ("If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court.").

A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rules 6004(b) ("an objection to a proposed use, sale, or lease of property shall be filed and served not less than five days before the date set for the proposed action"); 9006(d) ("A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than five days before the time specified for such hearing". In determining what is the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31.

Subdivision (a)(6). New subdivision (a)(6) defines "legal holiday" for purposes of the Federal Rules of Bankruptcy Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6)(B) continues to include within the definition of "legal holiday" days that are "declared a holiday by the President." For two cases that applied this provision to find a legal holiday on days when the President ordered the government closed for purposes of celebration or commemoration, see *Hart v.*

Sheahan, 396 F.3e 887, 891 (7th Cir. 2005) (President included December 26, 2003 within scope of executive order specifying pay for executive department and independent agency employees on legal holidays), and *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1098 (D.C. Cir. 2003) (executive order provided that "[a]ll executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty on Monday, December 24, 2001"). Subdivision (a)(6)(B) includes certain state holidays within the definition of legal holidays, and defines the term "state" – for purposes of subdivision (a)(6) – to include the District of Columbia, and any commonwealth, territory, and possession of the United States. Thus, for purposes of subdivision (a)(6)'s definition of "legal holiday," "state" includes the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

The Rule and Committee Note **with the changes recommended by the Time Computation Subcommittee** is as follows.

Rule 9006. Computing and Extending Time

1 ~~(a) Computation. In computing any period of time~~
2 ~~prescribed or allowed by these rules or by the Federal Rules of~~
3 ~~Civil Procedure made applicable by these rules, by the local rules,~~
4 ~~by order of court, or by any applicable statute, the day of the act,~~
5 ~~event, or default from which the designated period of time begins~~
6 ~~to run shall not be included. The last day of the period so~~
7 ~~computed shall be included, unless it is a Saturday, a Sunday, or a~~
8 ~~legal holiday, or, when the act to be done is the filing of a paper in~~
9 ~~court, a day on which weather or other conditions have made the~~
10 ~~clerk's office inaccessible, in which event the period runs until the~~

11 ~~end of the next day which is not one of the aforementioned days.~~

12 ~~When the period of time prescribed or allowed is less than 8 days,~~

13 ~~intermediate Saturdays, Sundays, and legal holidays shall be~~

14 ~~excluded in the computation. As used in this rule and in Rule~~

15 ~~5001(c), "legal holiday" includes New Year's Day, Birthday of~~

16 ~~Martin Luther King, Jr., Washington's Birthday, Memorial Day,~~

17 ~~Independence Day, Labor Day, Columbus Day, Veterans Day,~~

18 ~~Thanksgiving Day, Christmas Day, and any other day appointed as~~

19 ~~a holiday by the President or the Congress of the United States, or~~

20 ~~by the state in which the court is held.~~

21 (a) Computing Time. The following rules apply in computing

22 any time period specified in these rules, in the Federal

23 Rules of Civil Procedure, in any local rule or court order,

24 or in any statute that does not specify a method of

25 computing time.

26 (1) *Period Stated in Days or a Longer Unit.* When the

27 period is stated in days or a longer unit of time:

28 (A) exclude the day of the event that triggers the

29 period;

30 (B) count every day, including intermediate

31 Saturdays, Sundays, and legal holidays; and

32 (C) include the last day of the period, but if the

33 last day is a Saturday, Sunday, or legal
34 holiday, the period continues to run until the
35 end of the next day that is not a Saturday,
36 Sunday, or legal holiday.
37 (2) *Period Stated in Hours.* When the period is stated
38 in hours:
39 (A) begin counting immediately on the
40 occurrence of the event that triggers the
41 period;
42 (B) count every hour, including hours during
43 intermediate Saturdays, Sundays, and legal
44 holidays; and
45 (C) if the period would end on a Saturday,
46 Sunday, or legal holiday, then continue the
47 period until the same time on the next day
48 that is not a Saturday, Sunday, or legal
49 holiday.
50 (3) *Inaccessibility of Clerk's Office.* Unless the court
51 orders otherwise, if the clerk's office is
52 inaccessible:
53 (A) on the last day for filing under Rule
54 9006(a)(1), then the time for filing is

55 extended to the first accessible day that is
56 not a Saturday, Sunday, or legal holiday; or
57 (B) during the last hour for filing under Rule
58 9006(a)(2), then the time for filing is
59 extended to the same time on the first
60 accessible day that is not a Saturday,
61 Sunday, or legal holiday.
62 (4) *"Last Day" Defined.* Unless a different time is set
63 by a statute, local rule, or order in the case, the last
64 day ends:
65 (A) for electronic filing, at midnight in the
66 court's time zone; and
67 (B) for filing by other means, when the clerk's
68 office is scheduled to close.
69 (5) *"Next Day" Defined.* The "next day" is determined
70 by continuing to count forward when the period is
71 measured after an event and backward when
72 measured before an event.
73 (6) ***"Legal Holiday" Defined.*** "Legal holiday" means:

74 (A) the day set aside by statute for observing
75 New Year's Day, Martin Luther King Jr.'s

76 Birthday, Washington's Birthday, Memorial
77 Day, Independence Day, Labor Day,
78 Columbus Day, Veterans' Day,
79 Thanksgiving Day, or Christmas Day; ~~and~~

80 (B) any other day declared a holiday by the
81 President~~;~~ <u>or</u> Congress;~~ or~~ <u>and</u>

82 (C) <u>for periods that are measured after an event,</u>
83 <u>any other day declared a holiday by</u> the state
84 in which is located either the district court
85 that rendered the challenged judgment or
86 order, or the circuit clerk's principal office.
87 (In this rule, 'state' includes the District of
88 Columbia and any United States
89 commonwealth, territory, or possession.)
90 * * * * * *

COMMITTEE NOTE

Subdivision (a). Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a Federal Rule of Bankruptcy Procedure, a Federal Rule of Civil Procedure, a statute, a local rule, or a court order. In accordance with Bankruptcy Rule 9029(a), a local rule may not

direct that a deadline be computed in a manner inconsistent with subdivision (a). Thus, for example, a local rule should not set a time period in "business days," because subdivision (a) directs that one "count every day, including intermediate Saturdays, Sundays, and legal holidays." A local rule providing that "[r]eply papers shall be filed and served at least three business days before the return date" must be interpreted, under subdivision (a), as though it refers to "three days" instead of "three business days."

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) "does not apply to situations where the court has established a specific calendar day as a deadline"), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is "no later than November 1, 2007," subdivision (a) does not govern. But if a filing is required to be made "within 10 days" or "within 72 hours," subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 11 U.S.C. § 527(a)(2) (debt relief agencies must provide a written notice to an assisted person "not later than 3 business days" after providing bankruptcy assistance services).

Subdivision (a)(1). New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. See, e.g., Federal Rule of Civil Procedure 60(b) made applicable to under Rule 9024. Subdivision (a)(1)(B)'s directive to "count every day" is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 9006(a), a period of eight days or more was computed differently than a period of less than eight days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 9006(a) thus made computing

deadlines unnecessarily complicated and led to counterintuitive results.

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than eight days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. See, e.g., Rules 2008 (trustee's duty to notify court of acceptance of the appointment within five days is extended to seven days); 6004(b) (time for filing and service of objection to proposed use, sale or lease of property extended from five days prior to the hearing to seven days prior to the hearing); and 9006(d) (time for giving notice of a hearing extended from five days prior to the hearing to days).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. See, e.g., Rules 1007(h) (10 day period to file supplemental schedule for property debtor becomes entitled to acquire after the commencement of the case is extended to 14 days); 3020(e) (10 day stay of order confirming a chapter 11 plan extended to 14 days); 8002(a)(10 day period in which to file notice of appeal extended to 14 days). A 14-day period also has the advantage that the final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting seven-day periods to replace some of the

periods set at less than 10 days, 21-day periods to replace 20-day periods, and 28-day periods to replace 25-day periods. Thirty-day and longer periods, however, were generally retained without change.

Subdivision (a)(2). New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be "rounded up" to the next whole hour. Subdivision (a)(3) addresses situations when the clerk's office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

Subdivision (a)(3). When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk's office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday or day when the clerk's office is inaccessible.

Subdivision (a)(3)'s extensions apply "[u]nless the court orders otherwise." In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to "weather or other conditions" as the reason for the inaccessibility of the clerk's office. The reference to "weather" was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, *see, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Bankruptcy Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing, *see, e.g.*, D. Kan. Rule 5.4.11 ("A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.").

Subdivision (a)(4). New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may provide, for example, that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that "[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders." A corresponding provision exists in Rule 5001(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g.*, *Casalduc v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

Subdivision (a)(5). New subdivision (a)(5) defines the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Bankruptcy Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. See, e.g., Rules 1007(c) (the schedules and statements, other than the statement of intention,

shall be filed by the debtor within 14 days after entry of the order for relief."); 1019(b)(ii) ("the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account"); and 7012(a) ("If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court.").

A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rules 6004(b) ("an objection to a proposed use, sale, or lease of property shall be filed and served not less than five days before the date set for the proposed action"); 9006(d) ("A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than five days before the time specified for such hearing". In determining what is the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31.

Subdivision (a)(6). New subdivision (a)(6) defines "legal holiday" for purposes of the Federal Rules of Bankruptcy Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of "legal holiday" days that are "declared a holiday by the President." For two cases that applied this provision to find a legal holiday on days when the President ordered the government closed for purposes of celebration or commemoration, *see Hart v. Sheahan*, 396 F.3d 887, 891 (7th Cir. 2005) (President included December 26, 2003 within scope of executive order specifying pay for executive department and independent agency employees on legal holidays), and *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1098 (D.C. Cir. 2003) (executive order provided that "[a]ll executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty on Monday, December 24, 2001").

<u>For forward-counted periods – i.e., periods that are</u>

measured after an event – subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, subdivision (a)(6)(C) does not apply to backward-counted periods (i.e., periods that are measured before an event).

Subdivision (a)(6)(C) defines the term "state" – for purposes of subdivision (a)(6) – to include the District of Columbia and any commonwealth, territory or possession of the United States. Thus, for purposes of subdivision (a)(6)'s definition of "legal holiday," "state" includes the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

In arriving at this "bankruptcy" version of the time computation rule, the Time Computation Subcommittee considered but rejected several comments submitted by persons or groups with particular interest in bankruptcy. For example, Professor Alan Resnick, former Reporter to the Advisory Committee, urged that Rule 9006(a) not be amended to adopt a "days are days" approach to computing time under the rules. Similar views were offered by the National Bankruptcy Conference which specifically adopted Professor Resnick's position. The Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York also opposed the "days are days" approach on the ground that the system has been in place for some time and has worked generally without incident. They also note that the counting rule applies to many statutory deadlines that would effectively be changed by the new computation system. As to the statutory deadlines, that issue is considered in the agenda materials behind Tab 6.B.

Other comments and suggestions submitted that the Time Computation Subcommittee did not find persuasive were those that urged a more definite description of "last day" under subdivision (a)(4)(A) when electronic filing is employed. The Subcommittee considers the

definition sufficient and rejected a suggestion that either the text or the Committee Note state that a day ends at 11:59:59. The Subcommittee also concluded that the definition of "last day" should not be altered to address more specifically the issue of filing by means of a drop box or similar method. Bankruptcy Judge Philip Brandt offered that suggestion, but the Subcommittee concluded that the text of the rule and the Committee Note each permit the adoption of local rules that would allow courts to accept a "drop box" filing up to midnight (or any time on the day) that the court allows.

The comments submitted on the time computation rules generally, including Bankruptcy Rule 9006(a), are summarized below.

07-BK-004: Committee on Civil Litigation of the U.S. District Court for the Eastern District of New York ("EDNY Committee"). The EDNY Committee writes in general opposition to the time-computation proposals, but supports certain of the Civil Rules Committee's proposals to lengthen specific Civil Rules deadlines. The EDNY Committee also makes some suggestions for improving the project if it goes forward.

- Overall cost/benefit analysis. The EDNY Committee predicts that the proposed change in time-computation approach will cause much disruption, given the great number of affected deadlines that are contained in statutes, local rules, and standard forms. The EDNY Committee believes that the current time-counting system works well. To the extent that some litigants have difficulty computing time under the current approach, the EDNY Committee suggests that one could build into the electronic case filing software a program that could perform the necessary computations.

- Incompleteness of offsetting changes. The EDNY Committee notes that as to short time periods set by the Rules, the proposed amendments mitigate the effect of no longer skipping weekends, but do not offset the fact that under the new approach holidays will no longer be skipped either. The EDNY Committee argues strongly that if the new time-counting approach is to be adopted then Congress must be asked to lengthen all affected statutory time periods. Likewise, the EDNY Committee notes that steps must be taken to lengthen all affected time periods set by local rules, standing orders, and standard-form orders.
- Business-day provisions in local rules. The EDNY Committee observes that some local rules contain periods counted in business days, and argues that any change in the time-counting rules should be tailored so as not to change such periods to calendar days.
- Backward-counted time periods. The EDNY Committee warns that the proposed amendments, by clarifying the way to compute backward-counted time periods, would effectively shorten the response time allowed under rules that count backwards. Moreover, the EDNY Committee notes that the proposed time-computation template (like the existing rules) does not provide for a longer response time when motion papers are served by mail. The EDNY Committee proposes that the best solution to the backward-counting problem is to eliminate backward-counted periods; as an example, the EDNY Committee points to the Local Civil Rule 6.1 which is in use in the Eastern and Southern Districts of New York.

07-BR-015: Chief Judge Frank H. Easterbrook. Chief Judge Easterbrook writes in support of the time-computation proposals. He suggests that in addition to the proposed changes, the three-day rule contained in Appellate Rule 26(c) should be abolished. He argues that the three-day rule is particularly incongruous for electronic service, and that adding three days to a period thwarts the goal served by our preference for setting periods in multiples of seven days.

07-BK-007: Walter W. Bussart. Mr. Bussart states generally that the proposed amendments are helpful and that he supports their adoption.

07-BK-008: Jack E. Horsley. Overall, Mr. Horsley views the proposed amendments with favor.

07-BK-010: Stephen P. Stoltz. Mr. Stoltz generally supports the time-computation proposals. He argues, however, that the time-counting rules should define the "last day" as ending "at 11:59:59 p.m." rather than "at midnight." He suggests this because "[m]ost people today would agree that a day begins at midnight and ends at 11:59:59 p.m. local time." He warns that if the time-counting rules provide that the "last day" of a period ends "at midnight," there will be confusion and courts may conclude that a "deadline is actually the day (or evening) before the particular day."

07-BK-011: Robert J. Newmeyer. Mr. Newmeyer is an administrative law clerk to Judge Roger T. Benitez of the U.S. District Court for the Southern District of California. Mr. Newmeyer stresses that the 10-day period set by 28 U.S.C. § 636(b)(1) must be lengthened to 14 days. This statute will presumably be on the short list of statutory periods that Congress should be asked to lengthen, so this suggestion is in line with the Project's current scheme.

Mr. Newmeyer further suggests that it would be worthwhile to consider setting an even longer period for filing objections to case-dispositive rulings by magistrate judges. This suggestion seems to fall within the Civil Rules Committee's jurisdiction rather than that of the Time-Computation Project.

Mr. Newmeyer also expresses confusion as to whether the Civil Rule 6(a) time-computation proposals affect the "three-day rule." As you know, the time-computation project does not propose to change the three-day rule, and it seems unlikely that there will be confusion on this score in the event that the time-computation proposals are adopted (Mr. Newmeyer's confusion probably springs from the fact that the time-computation rules as published include only provisions in which a change is proposed, and thus omit Civil Rule 6(d)). In any event, Mr. Newmeyer suggests that the three-day rule should be deleted. This suggestion, like Chief Judge Easterbrook's suggestion, is one that the Advisory Committees may well wish to add to their agendas, but is not one that seems appropriate for resolution in connection with the time-computation project itself.

07-BK-012: Carol D. Bonifaci. Ms. Bonifaci, a paralegal at a Seattle law firm, expresses confusion concerning the proposed time-computation rules' treatment of backward-counted and forward-counted deadlines. Ms. Bonifaci believes that if a backward-counted deadline falls on a weekend, the time-computation proposals would direct one to reverse direction and count forward to Monday.

Ms. Bonifaci observes that the proposed Committee Note makes clear that a deadline stated as a date certain (e.g., "no later than November 1, 2008") is not covered by the proposed time-computation rules, and she suggests that this should also be stated in the text of the

proposed Rules.

07-BK-014: Robert M. Steptoe, Jr. Mr. Steptoe, a partner at Steptoe & Johnson, expresses concern "that the proposed time-computation rules would govern a number of statutory deadlines that do not themselves provide a method for computing time," and that the proposed rules "may cause hardship if short time periods set in local rules are not adjusted." Therefore, he urges that the time-computation proposals "not be implemented unless and until the Standing Committee is sure that it will receive the necessary cooperation from Congress and the local rules committees to meet the desired objective of simplification."

07-BK-018: FDIC. Richard J. Osterman, Jr., Acting Deputy General Counsel of the Litigation Branch of the Federal Deposit Insurance Corporation, writes to urge that Congress *not* be asked to amend the time periods set in certain provisions of the Federal Deposit Insurance Act. He explains that banking agencies such as the FDIC already "employ calendar days in their computations of time to respond to regulatory and enforcement decisions" – thus indicating that no adjustment is necessary or appropriate in connection with the time-computation project. Since no participant in the time-computation project has suggested that the FDIA provisions should be included on the short list of statutory periods that Congress should be asked to change in light of the time-computation project, it seems fair to say that Mr. Osterman's suggestion accords with the approach that the project is already taking.

Mr. Osterman also suggests that Civil Form 3 be amended to "include a paragraph that references federal defendants, who have a full 60 days to respond as opposed to the standard 21 days you are proposing. This language is absent from the current summons form." This suggestion concerns the Civil Rules Committee rather than the Time-Computation

Subcommittee. (The version of Form 3 that is currently in effect does include an italicized parenthetical that states: "(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)") Under Bankruptcy Rule 7012, federal defendants have 35 days to respond to a complaint. The deadline is set out on the bankruptcy summons, Director's Forms 250A, 250B, 250C, and 250D.

07-BK-019: DOJ. Craig S. Morford, Acting Deputy Attorney General, writes on behalf of the Department of Justice to express support for the goals of the time-computation project, but also to express strong concerns "about the interplay of the proposed amendment with both existing statutory periods and local rules." The DOJ argues that "changes should be addressed in relevant statutory and local rule provisions before a new time-computation rule is made applicable." Otherwise, the DOJ fears that the purposes of some statutes "may be frustrated." The DOJ argues that exempting statutory time periods from the new time-counting approach would be an undesirable solution since it would create "confusion and uncertainty" to have two different time-counting regimes (one for rules and one for statutes).

Mr. Morford does not specifically state the DOJ's position on which of the statutory time periods should be lengthened to offset the change in time-computation approach. His letter does refer to the Committee's identification of "some 168 statutes ... that contain deadlines that would require lengthening."

The DOJ urges that the time-computation amendments not be allowed to take effect unless and until (1) Congress enacts legislation to lengthen all relevant statutory periods, (2) the local rulemaking bodies have had the opportunity to amend relevant local-rule deadlines, and (3) the bench and bar have had time to learn about the new time-counting rules.

07-BR-036: Rules and Practice Committee of the Seventh Circuit Bar Association. Thomas J. Wiegand writes on behalf of the Seventh Circuit Bar Association's Rules and Practice Committee. He reports that the Bar Association sponsored a lunchtime discussion of the proposed Rules amendments this past December. One topic of discussion was whether the proposed time-computation rules' directive to "count every hour" when computing hour-based time periods will alter the application of Civil Rule 30(d)(2)'s presumptive seven-hour limit on the length of a deposition. He suggests that "the Committee might desire to make clear whether any change is intended for calculating the 7-hour period in Rule 30(d)(2)." He also notes: "On the assumption that changing how to calculate the 7-hour period is outside of this year's proposed changes to the Civil Rules, some members believe that changing either the 7-hour duration in Rule 30(d)(2), or how to calculate it, should be considered by the Committee in the future." One member of the group suggested that if the deadline for filing a notice of appeal under Rule 8002(a) were to be changed, it should be reduced to 7 days rather than extended to 14.

07-BR-026; 07-BK-009: Alan N. Resnick. Professor Resnick previously served as first the Reporter to and then a member of the Bankruptcy Rules Committee. Of particular relevance to the overall Time-Computation Project, Professor Resnick opposes adoption of a "days are days" time-computation approach in Bankruptcy Rule 9006. He points out that a "days are days" approach would result in "the shortening of some state and federal statutory time periods."

Professor Resnick raises additional points that are less closely tied to the overall Time-Computation Project and are thus more appropriate for initial consideration by the Bankruptcy Rules Committee. Professor Resnick stresses that if time periods set by the Bankruptcy Rules

and the Civil Rules are altered, care must be taken to adjust the Bankruptcy Rules so that newly-lengthened Civil Rules time periods are not inappropriately incorporated into the Bankruptcy Rules. In particular, Professor Resnick notes that the Bankruptcy Rules Committee should consider altering Bankruptcy Rule 9023's incorporation of Civil Rule 59's provisions if Civil Rule 59 is amended to change current 10-day time limits to 30 days. Professor Resnick also adds his voice to those that oppose the lengthening of Bankruptcy Rule 8002's ten-day appeal period. But if Rule 8002's ten-day period is lengthened, then Professor Resnick points out other time periods in the Bankruptcy Rules that he argues should be corresponding lengthened.

07-BK-013; 07-BR-029: Judge Philip H. Brandt. Judge Brandt, a U.S. Bankruptcy Judge in the Western District of Washington, argues that proposed Bankruptcy Rule 9006(a)(4)'s definition of the end of the "last day" "would eliminate 'drop-box' filings, and would advantage electronic filers over debtors and other parties representing themselves, and over attorneys who practice infrequently in bankruptcy court and are not electronic filers." The root of his concern is that (a)(4) sets a default rule that the end of the day is midnight for e-filers, but sets a default rule that the end of the day falls at the scheduled closing of the clerk's office for non-e-filers. He urges that 9006(a)(4) be amended to state "simply ... that the time period 'ends at midnight in the court's time zone'" for all filers.

Judge Brandt also raises points about Bankruptcy Rules 8002 and 9023; but those points are directed more toward the Bankruptcy Rules Committee than toward the Time-Computation Subcommittee.

07-BK-015: Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York. The Committee on Bankruptcy and Corporate

Reorganization of the Association of the Bar of the City of New York ("ABCNY Bankruptcy Committee") writes in opposition to the time-computation proposals. The Committee focuses its opposition on the time-computation proposal for Bankruptcy Rule 9006. With respect to the time-computation proposals for the other sets of Rules, the Committee cites with approval the comments of the Committee on Civil Litigation of the U.S. District Court for the Eastern District of New York ("EDNY Committee").

The ABCNY Bankruptcy Committee's objections to the time-computation proposals are very similar to those stated by the EDNY Committee; in sum, the ABCNY Bankruptcy Committee believes that the costs of the time-computation proposals strongly outweigh their benefits. This summary highlights those aspects of the ABCNY Bankruptcy Committee's comments that differ from those of the EDNY Committee. The ABCNY Bankruptcy Committee suggests, among other problems, that "some local courts might decide to retain the present computational approach through the promulgation of local rules," which would compound the resulting confusion. The ABCNY Bankruptcy Committee also suggests that "'[m]idnight' is often defined as 12:00 a.m., or the beginning of a given day." Thus, the Committee "believes that the intent of the proposal was to permit filings up to and including 11:59 p.m., or the end of a given day."

07-BK-022: National Bankruptcy Conference. Richard Levin writes on behalf of the National Bankruptcy Conference ("NBC"), which "strongly endorses and supports" the comments previously submitted by Professor Alan Resnick. The NBC also warns that the proposed changes to various bankruptcy-relevant time periods could result in unintended consequences; it thus suggests "that the Advisory Committee delay incorporation of the 7, 14,

21, and 28 day time period changes into the Bankruptcy Rules until the impact of those changes [is] studied further ....”

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MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: CIVIL RULES AND POST JUDGMENT MOTIONS

DATE: MARCH 4, 2008

As a part of the Time Computation Project, each of the Advisory Committees published a number of rule changes to implement the policy that all time periods of less than 30 days should be set out in multiples of seven. Although the purpose of the revisions was to make these conversions, the Civil Rules Committee proposed amendments to Rules 50, 52, and 59 that proposed changing the 10 day periods in those rules to 30 day periods. Each rule applies to post judgment motions, and the Civil Rules Committee concluded that the 10 day period was insufficient for a variety of reasons. It settled on a 30 day deadline for each of the motions, and that change presented a problem for our Committee. Each of these civil rules is incorporated into the bankruptcy rules. Civil Rule 50 is incorporated by Rule 9015, Civil Rule 52 is incorporated by Rule 7052, and Civil Rule 59 is incorporated by Rule 9023.

I initially considered simply stating in each of the bankruptcy rules that the relevant civil rule was incorporated, but that any 30 day period in the rule would be a 14 day period.[1] I was concerned that other possible changes to the civil rules in the future could include other deadlines within those rules that should not be set at 10 days. As a result, I decided to

[1] This assumes that the time for filing a notice of appeal under Rule 8002(a) will be 14 days as set out in the version of that rule published in August 2007. If Rule 8002(a) is not changed and the appeal deadline remains at 10 days, then the changes to Rules 7052, 9015, and 9023 would include 10 day rather than 14 day periods.

incorporate each relevant subdivision from the civil rule into the corresponding bankruptcy rule. Each proposed amendment to the bankruptcy rule continues to incorporate each of the civil rules, but the bankruptcy rule specifically provides that the incorporation is subject to the remainder of the bankruptcy rule. The bankruptcy rule then reprints the portion of the civil rule with the 14 day deadline instead of the 30 day deadline.

Those proposed amendments are followed by a more streamlined approach to the limited incorporation of these Civil Rules into the Bankruptcy Rules. This approach restricts the timing of the motions to 14 days without tying the limitation to the number of days set out in the Civil Rule. That is, it does not attempt to solve the cross reference problem by saying "all 30 day periods in the rule are 14 day periods for purposes of the Bankruptcy Rules." Instead, this proposal identifies the motions or court actions covered by the rule and sets the 14 day deadline. Please consider whether you prefer one form over the other, or if you think some other solution might be even more appropriate.

"Full Text Incorporation Option"

RULE 7052. Findings by the Court

1 (a) APPLICABILITY OF CIVIL RULE 52. Except as provided in
2 this rule, Rule 52 F.R.Civ.P. applies in adversary proceedings.
3 (b) AMENDED OR ADDITIONAL FINDINGS. On a party's
4 motion filed no later than 14 days after the entry of judgment, the
5 court may amend its findings — or make additional findings —
6 and may amend the judgment accordingly. The motion may

7 accompany a motion for a new trial under Rule 59.

COMMITTEE NOTE

The rule is amended by redesignating the former rule as subdivision (a) and explicitly limiting the applicability of Rule 52 F.R. Civ. P. The amendment also adds a new subdivision (b) that limits the time for filing post judgment motions for amended or additional findings. In 2009, Rule 52 F.R. Civ. P. was amended to extend the deadline for the filing those post judgment motions to no later than 30 days after the entry of the judgment. That deadline corresponds to the deadline for filing a notice of appeal in a civil case under Rule 4(a)(a)(A). In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 30 day deadline for filing a motion for amended or additional findings would effectively override the notice of appeal deadline under Rule 8002(a). Thus, the incorporation of Rule 52 into the Bankruptcy Rules is limited by establishing a 14 day deadline for filing a motion for additional or amended findings in adversary proceedings.

RULE 9015. JURY TRIALS

1 (a) APPLICABILITY OF CERTAIN FEDERAL RULES OF

2 CIVIL PROCEDURE. Rules 38, 39, ~~and 47-51~~ 47-49, and 51,

3 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury

4 trials, apply in cases and proceedings, except that a demand made

5 ~~pursuant to~~ under Rule 38(b) F.R.Civ.P. shall be filed in

6 accordance with Rule 5005.

7 (b) APPLICABILITY OF CIVIL RULE 50. Except as provided in

8 this subdivision, Rule 50 F.R.Civ.P. applies in cases and

9 proceedings.

10 (1) RENEWING THE MOTION AFTER TRIAL;

11 ALTERNATIVE MOTION FOR A NEW TRIAL. If the court
12 does not grant a motion for judgment as a matter of law made
13 under Rule 50(a) F.R.Civ.P., the court is considered to have
14 submitted the action to the jury subject to the court's later deciding
15 the legal questions raised by the motion. No later than 14 days
16 after the entry of judgment — or if the motion addresses a jury
17 issue not decided by a verdict, no later than 14 days after the jury
18 was discharged — the movant may file a renewed motion for
19 judgment as a matter of law and may include an alternative or joint
20 request for a new trial under Rule 59 F.R.Civ.P. In ruling on the
21 renewed motion, the court may:
22 (A) allow judgment on the verdict, if the jury returned a
23 verdict;
24 (B) order a new trial; or
25 (C) direct the entry of judgment as a matter of law.
26 (2) TIME FOR A LOSING PARTY'S NEW-TRIAL
27 MOTION. Any motion for a new trial under Rule 59 F.R.Civ.P.
28 by a party against whom judgment as a matter of law is rendered
29 must be filed no later than 14 days after the entry of the judgment.

COMMITTEE NOTE

The rule is amended by revising and redesignating the former rule as subdivision (a). The rule is also amended to limit the time for post judgment motions for a new trial. In 2009, Rule 50 F.R. Civ. P. was amended to extend the deadline for the filing of these

post judgment motions to 30 days. That deadline corresponds to the deadline for filing a notice of appeal in a civil case under Rule 4(a)(a)(A). In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 30 day deadline for filing a post judgment motion for a new trial would effectively override the notice of appeal deadline under Rule 8002(a). The amendment continues the incorporation of Rule 50 into the Bankruptcy Rules and makes it applicable in adversary proceedings, but it limits the time for filing a post judgment motion for a new trial to 14 days after the entry of the judgment.

Other amendments are stylistic.

RULE 9023. New Trials; Amendment of Judgments

1 (a) APPLICABILITY OF CIVIL RULE 59. Except as provided in
2 this rule and in Rule 3008, Rule 59 F.R.Civ.P. applies in cases
3 under the Code ~~,except as provided in Rule 3008~~.
4 (b) TIME TO FILE A MOTION FOR A NEW TRIAL. A motion
5 for a new trial must be filed no later than 14 days after the entry of
6 judgment.
7 [(c) TIME TO SERVE AFFIDAVITS. When a motion for a new
8 trial is based on affidavits, they must be filed with the motion. The
9 opposing party has 14 days after being served to file opposing
10 affidavits. The court may permit reply affidavits.][2]

[2] This subdivision could be deleted from Rule 9023 because it does not include any time limits that could potentially disrupt the bankruptcy appellate process. I believe it is better to include the full subdivision in the Rule 9023 to avoid confusion. Including the subdivision makes the rule more parallel to Rule 59. If subdivision (c) were not included, subdivision (d) would become subdivision (c), and that may lead some readers to the erroneous conclusion that Rule 59(c) is not incorporated into the Bankruptcy Rules.

11 (d) NEW TRIAL ON THE COURT'S INITIATIVE OR FOR

12 REASONS NOT IN THE MOTION. No later than 14 days after

13 the entry of judgment, the court, on its own, may order a new trial

14 for any reason that would justify granting one on a party's motion.

15 After giving the parties notice and an opportunity to be heard, the

16 court may grant a timely motion for a new trial for a reason not

17 stated in the motion. In either event, the court must specify the

18 reasons in its order.

COMMITTEE NOTE

The rule is amended to limit the time for filing a post judgment motion for a new trial. In 2009, Rule 59 F.R. Civ. P. was amended to extend the deadline for the filing of post judgment motions for a new trial to 30 days after the entry of judgment. That deadline corresponds to the deadline for filing a notice of appeal in a civil case under Rule 4(a)(a)(A). In a bankruptcy case, however, the deadline for filing a notice of appeal is 14 days. Therefore, the 30 day deadline for filing a motion for a new trial would effectively override the notice of appeal deadline under Rule 8002(a). So, subdivisions (b), (c), and (d) incorporate those subdivisions of Rule 59 into the Bankruptcy Rules, but establish a 14 day deadline after the entry of the for filing a post judgment motion for a new trial.

"Streamlined Option"

RULE 7052. Findings by the Court

1 Rule 52 F.R.Civ.P. applies in adversary proceedings, except that

2 any motion under subdivision (b) of that rule for amended or

3 additional findings must be filed no later than 14 days after the

4 entry of judgment.

COMMITTEE NOTE

The rule is amended by limiting the time for filing post judgment motions for amended or additional findings. In 2009, Rule 52 F.R. Civ. P. was amended to extend the deadline for the filing those post judgment motions to no later than 30 days after the entry of the judgment. That deadline corresponds to the deadline for filing a notice of appeal in a civil case under Rule 4(a)(a)(A). In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 30 day deadline for filing a motion for amended or additional findings would effectively override the notice of appeal deadline under Rule 8002(a). Thus, the incorporation of Rule 52 into the Bankruptcy Rules is limited by establishing a 14 day deadline for filing a motion for additional or amended findings in adversary proceedings.

RULE 9015. JURY TRIALS

1 (a) APPLICABILITY OF CERTAIN FEDERAL RULES OF
2 CIVIL PROCEDURE. Rules 38, 39, ~~and 47-51~~ 47-49, and 51,
3 F.R.Civ.P., and Rule 81(c) F.R.Civ.P. insofar as it applies to jury
4 trials, apply in cases and proceedings, except that a demand made
5 ~~pursuant to~~ under Rule 38(b) F.R.Civ.P. shall be filed in
6 accordance with Rule 5005.
7 (b) APPLICABILITY OF CIVIL RULE 50. Rule 50 F.R.Civ.P.
8 applies in cases and proceedings, except that any renewed motion
9 for judgment or request for a new trial must be filed no later than
10 14 days after the entry of judgment.

COMMITTEE NOTE

The rule is amended by revising and redesignating the former rule as subdivision (a). Subdivision (b) is new. It makes Rule 50

applicable in cases and proceedings, but limits the time for filing certain post judgment motions. In 2009, Rule 50 F.R. Civ. P. was amended to extend the deadline for the filing of these post judgment motions to 30 days. That deadline corresponds to the deadline for filing a notice of appeal in a civil case under Rule 4(a)(a)(A). In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 30 day deadline for filing these post judgment motions would effectively override the notice of appeal deadline under Rule 8002(a). The amendment continues the incorporation of Rule 50 into the Bankruptcy Rules, but it limits the time for filing a renewed motion for judgment and at motion for a new trial to 14 days after the entry of the judgment.

Other amendments are stylistic.

RULE 9023. New Trials; Amendment of Judgments

1 Rule 59 F.R.Civ.P. applies in cases under the Code ,except as
2 provided in Rule 3008 <u>and except that any motion for a new trial</u>
3 <u>must be filed no later than 14 days after the entry of judgment and</u>
4 <u>any sua sponte order for a new trial must be issued no later than 14</u>
5 <u>days after entry of judgment</u>.

COMMITTEE NOTE

The rule is amended to limit the time for a party to file a post judgment motion for a new trial and for the court to issue a sua sponte order for a new trial. In 2009, Rule 59 F.R. Civ. P. was amended to extend the deadline for these actions 30 days after the entry of judgment. That deadline corresponds to the deadline for filing a notice of appeal in a civil case under Rule 4(a)(a)(A). In a bankruptcy case, however, the deadline for filing a notice of appeal is 14 days. Therefore, the 30 day deadline for filing a motion for a new trial would effectively override the notice of appeal deadline under Rule 8002(a). So, Rule 59 continues to be incorporated into the Bankruptcy Rules, but a 14 day deadline after the entry of judgment is set for filing a post judgment motion for a new trial and for the court to issue a sua sponte order for a new trial.

6B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: AD HOC COMMITTEE ON TIME COMPUTATION RULES

RE: RECOMMENDATIONS TO CONGRESS FOR STATUTORY AMENDMENTS

DATE: MARCH 3, 2008

The first stage of the Time Computation project was the publication of proposed amendments to Rule 9006(a) governing the computation of time periods under the rules and applicable statutes. Part II of that process was to review the entire set of Bankruptcy Rules to identify the need for changes that would be necessary if we were to adopt the amendments to Rule 9006 that would eliminate the exclusion of intervening weekends and holidays in periods of less than 8 days. That part of the process has also been completed, at least up to the point of the publication of proposed amendments to the rules that also make all periods of less than 30 days a multiple of seven. Thus, 10 day periods became 14 day periods, 20 day periods became 21 day periods, and 25 day periods became 28 day periods in the amendments that were published for comment in August 2007.

Part III of the project consists of reviewing applicable statutory periods to determine whether we should recommend that Congress amend those sections. For example, under existing Rule 9006(a), a 5 day statutory period would be computed by excluding all intervening weekends and holidays. In the vast majority of instances, the "5 day" statutory period would actually be seven days due to the exclusion of the Saturday and Sunday that would occur in the 5

day period.[1] Under the proposed Rule 9006, however, days are days, and intervening weekends and holidays are not excluded.[2] Therefore, these deadlines that Congress has included in statutes would actually be shortened if proposed Rule 9006(a) is adopted. The Time Computation Committee asked each Advisory Committee to conduct a study of the statutory provisions that the change in the time computation methodology would most significantly affect, and to compile a list of recommended amendments for presentation to Congress. The Ad Hoc Committee undertook the study, and its recommendations follow.

The Committee reviewed Title 11 in its entirety as well as the bankruptcy specific provisions in titles 18 and 28 to identify deadlines in those statutes. Attached is a spreadsheet that sets out all of the deadlines in these titles. Title 11 alone contains 235 provisions with specific time deadlines. There were six deadlines in Title 28, and just one in Title 18. None of the deadlines in titles 18 and 28 were less than 8 days, so none of those deadlines would be affected by the change in Rule 9006(a). In Title 11, however, there are sixteen separate deadlines of 7 days or less. Ten of these deadlines are 5 day periods, four are 7 day periods, one is a 3 day period, and one is a 1 day period. The 3 day period is set out and described in line 112 of the spreadsheet. The 5 day deadlines are found on the following lines: 14; 23; 27; 33; 94; 98; 113; 153; 165; and 234.[3] The 7 day deadlines are set out on lines 93, 173, 177, and 180. The 1

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[1] If the period included a legal holiday, the 5 day period would most likely last for 8 days.

[2] If the last day of a period falls on a weekend or holiday, however, the period is extended to the next day that is not a weekend or holiday. This computation is the same under existing Rule 9006 and proposed Rule 9006.

[3] Line 234 of the spreadsheet contains Section 749(b) of the Bankruptcy Code. That section was inadvertently omitted initially from the list of Code provisions setting out deadlines. Professor Gibson fortunately caught that omission, and it is added out of order at the end of the

day period is contained in §1308(a) and is set out on line 235 of the spreadsheet.

The Ad Hoc Committee reviewed each of these provisions and proposes that the Advisory Committee recommend that, with one exception, Congress expand all of the 5 day periods to 7 days. We recommend no change in the deadline in § 528(a) as set out on line 113 of the spreadsheet. The Ad Hoc Committee reached this conclusion because the expansion of these 5 day periods to 7 days would result in there being no actual change from the current law. Under existing Rule 9006, each of those 5 day periods would be 7 calendar days long. In every instance, an intervening weekend would extend the period to at least 7 days.[4] We do not recommend changing the deadline in § 528(a) as set out on line 113 of the spreadsheet because Congress set that deadline as "5 business days" in the statute. Under proposed Rule 9006(a), that deadline would be treated exactly as it would under the existing rule. By setting the deadline in terms of "business days", Congress included a time computation method in the statute itself. There would be no change in the calculation of "business day" deadlines under the section, so there is no need to recommend any amendment to that section of the Code.

The Ad Hoc Committee does not recommend any changes for the three 7 day periods set out in the Code. Lines 93, 173, and 180 each refer to 7 day periods. Since most of the new deadlines are set in multiples of 7 days, it seems inappropriate to expand those to 9 days to

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list of Bankruptcy Code provisions. Section 1308(a) suffered a similar initial fate and is set out on line 235 of the spreadsheet.

[4] The only exception to this would be a situation in which a particular deadline begins to run on a weekend. For example, if the day of the order or act from which the period begins to run occurred on a Sunday, the Sunday would be excluded, and the period would be counted beginning on Monday. That 5 day period would conclude on Friday. This is a relatively unlikely scenario, and in most instances the 5 days set out in the statute would be 7 days long under the computation provided by Bankruptcy Rule 9006(a).

reflect the exclusion of intervening weekends and holidays. We recognize that this shortens a small number of deadlines, but on balance we believe that maintaining consistency generally by using deadlines in multiples of 7 is a sufficient justification for effectively shortening these three deadlines. It is unlikely that we would have proposed to expand these deadlines to 14 days, and much more likely that we would have chosen to retain the 7 day deadline for that provision.

There is one 3 day period which is described on line 112 of the spreadsheet. Section 527(a)(2) contains a "3 business day" deadline. Like §528(a)(1) (see line 113 of the spreadsheet), this provision sets out its deadline in a period of business days. Again, Congress has already included a computational method for totaling the deadlines under the section, so it is unnecessary to change the deadline from the 3 business days set out in the section.

The only other short period that is not to be changed is the deadline set out in §1308(a) on line 235 of the spreadsheet. We do not believe there is any need to change this provision. First, it would be impossible for a weekend or holiday to "intervene" within 1 day. Furthermore, the deadline applies to the filing of documents with taxing authorities rather than with the Bankruptcy Court. Consequently, we do not believe there is any need to amend this provision. Under proposed Rule 9006, the definition of "next day" in subdivision (a)(5) would require a debtor to file the tax return on a Friday as it would be the day before a Monday scheduled § 341 (a) meeting of creditors. This is consistent with current practice.

Ad Hoc Committee Recommendation

The Ad Hoc Committee recommends that the following Bankruptcy Code provisions set out in lines 14, 23, 27, 33, 94, 98, 153, 165, and 234 be amended by changing their 5 day deadlines to 7 day deadlines: §§ 19(h)(3)(A)(ii); 322(a); 332(a); 342(e)(2); 521(e)(3)(B);

521(i)(2); 704(b)(1)(B); 764(b), and 749(b). It also recommends that no changes be made to the four 7 day deadlines set out in the Bankruptcy Code in §§ 521(e)(2)(A)(I); 1113(d)(1); 1114(k)(1); and 1116(1).

	A	B	C	D	E	F	G	H	I	J	K
1				Title 11 of the Bankruptcy Code- Time Computation Rules							
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
4	11	101	(10A)(A)(i)	The term "current monthly income" means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived from the ***6-month*** period ending on (i) ***the last day of the calendar month*** immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii);				6			I believe time computation rules apply here- if the last day of the calendar month is on a weekend or legal holiday. What is the proper unit of time? (6 months?)
5	11	101	(14)(B)	The term "disinterested person" means a person that (A) is not a creditor, an equity security holder, or an insider; (B) is not and was not, within ***2 years*** before the date of the filing of the petition, a director, officer, or employee of the debtor;					2		
6	11	101	(22A)(A)	The term "financial participant" means (A) an entity that, at the time it enters into a securities contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total in notional or actual principal amount outstanding on any day during the previous ***15-month period***, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than the affiliate) on any day during the previous ***15-month*** period;				15			
7	11	101	(47)(A)	(47) The term "repurchase agreement" (which definition also applies to a reverse purchase agreement) (A) means (i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kin described in this clause, at a date certain not later than ***1 year*** after such transfer or on demand, against the transfer of funds;					1		
8	11	108	(a)(2)	(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) ***two years*** after the order of relief					2		
9	11	108	(b)(2)	Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) ***60 days*** after the order of relief		60					
10	11	108	(c)(2)	Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case, or (2) ***30 days*** after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim		30					
11	11	109	(g)	Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding ***180 days*** if (1)the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title		180					
12	11	109	(h)(1)	Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has during the ***180-day*** period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.		180					

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1	Title 11 of the Bankruptcy Code- Time Computation Rules										
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
13	11	109	(h)(2)(B)	The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than ***1 year*** after the date of such determination, and not less frequently than annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) at any time.					1		
14	11	109	(h)(3)(A)(ii)	Subject to paragraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that (ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the ***5-day*** period beginning on the date on which the debtor made that request;		5					
15	11	109	(h)(3)(B)	With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is ***30 days*** after the debtor files a petition, except that the court, for cause, may order an additional 15 days.		30					
16	11	109	(h)(3)(B)	With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional ***15 days***.		15					
17	11	110	(h)(2)	A declaration under penalty of perjury by the bankruptcy petition preparer shall be filed together with the petition, disclosing any fee received from or on behalf of the debtor within ***12 months*** immediately prior to the filing of the case, and any unpaid fee charged to the debtor.				12			
18	11	110	(h)(3)(A)(i)	The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services (i) rendered by the bankruptcy petition preparer during the ***12-month period*** immediately preceding the date of the filing of the petition;							
19	11	110	(h)(5)	A bankruptcy petition preparer shall be fined no more than $500 for each failure to comply with at court order made to turn over funds within ***30 days*** of the service of such order.		30					
20	11	111	(b)(3)	If an nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed ***6 months***.				6		?	
21	11	111	(b)(5)	Not later than ***30 days*** after any final decision under paragraph (4), an interested person may seek judicial review of such decision in the appropriate district court of the United States		30					
22	11	303	(h)(2)	If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if (1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount; or (2) within ***120 days*** before the date of filing the petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.		120					
23	11	322	(a)	Except as provided in subsection (b)(1), a person selected under the section 701, 702, 703, 1104, 1163, 1202, or 1302 of this title to serve as trustee in a case under this title qualifies it before ***five days*** after such selection, and before beginning official duties, such person has filed with the court a bond in favor of the United States conditioned on the faithful performance of such official duties.		5					
24	11	322	(d)	A proceeding on a trustee's bond may not be commenced after ***two years*** after the date on which such trustee was discharged					2		
25	11	329	(a)	Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after ***one year*** before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.					1		
26	11	331		A trustee, an examiner, a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every ***120 days*** after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.		120					

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1	Title 11 of the Bankruptcy Code- Time Computation Rules										
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
27	11	332	(a)	If a hearing is required under section 363(b)(1)(B), the court shall order the United States trustee to appoint, not later than ***5 days*** before the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.		5					
28	11	333	(a)(1)	If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than ***30 days*** after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.		30					
29	11	333	(b)(2)	An ombudsman appointed under subsection (a) shall (1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians; (2) not later than ***60 days*** after the date of appointment, and not less frequently than at 60-day intervals thereafter, report to the court after notice to the parties in interest, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor;		60					
30	11	342	(c)(2)(A)	If, within the ***90 days*** before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number		90					
31	11	342	(c)(2)(B)	If a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.		90					"such 90-day period" refers that the 90-day period discussed in Section 342 (c)(2)(A) above.
32	11	342	(d)	In a case under chapter 7 of this title in which the debtor is an individual and in which the presumption of abuse arises under section 707(b), the clerk shall give written notice to all creditors not later than ***10 days*** after the date of the filing of the petition that the presumption of abuse has arisen.		10					
33	11	342	(e)(2)	Any notice in such case required to be provided to such creditor by the debtor or the court later than ***5 days*** after the court and the debtor receive such creditor's notice of address, shall be provided to such address.		5					
34	11	342	(f)(2)	In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than ***30 days*** after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).		30					
35	11	347	(a)	***Ninety days*** after the final distribution under sections 726, 1226, or 1326 of this title in a case under chapter 7, 12, or 13 of this title, as the case may be the trustees shall stop payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.		90					
36	11	351	(1)(A)	If a health care business commences a case under chapter 7,9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements may apply: (1) The trustee shall (A) promptly publish notice, in 1 or more appropriate newspapers, that if records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is ***365 days*** after the date of that notification, the trustee will destroy the patient records; and		365					
37	11	351	(1)(B)	(B) during the first ***180 days*** of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.		180					
38	11	351	(2)	If, after providing the notification under paragraph (1), patient records are not claimed during the ***365-day*** period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.		365					

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1				Title 11 of the Bankruptcy Code- Time Computation Rules							
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
39	11	362	(b)(12)	The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay (12) under subsection (a) of this section, after the date which is ***90 days*** after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under section 207 or title XI of the Merchant Marine Act, 1936, or under applicable State law;		90					
40	11	362	(b)(13)	The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay (13) under subsection (a) of this section, after the date which is ***90 days*** after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act, 1936;		90					
41	11	362	(b)(20)	The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay (20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of ***2 years*** after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;					2		
42	11	362	(b)(23)	The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property of the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the ***30-day*** period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be use a controlled substance on the property;		30					
43	11	362	(c)(3)	Except as provided in subsections (d), (e), (f), and (h) of this section (3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if single or joint case of the debtor was pending within the preceding ***1-year*** period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)-					1		
44	11	362	(c)(3)(A)	the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the ***30th day*** after the filing of the later case;		30					
45	11	362	(c)(3)(B)	on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any oral creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the ***30-day*** period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed		30					
46	11	362	(c)(3)(C)(i)(I)	for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) (i) as to all creditors, if (I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding ***1-year*** period;					1		
47	11	362	(c)(3)(C)(i)(II)	for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) (i) as to all creditors, if (II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to (aa) file or amend the petition of other documents as required by this title or the court without substantial excuse (but more inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney; (bb) provide adequate protection as ordered by the court, or (cc) perform the terms of a plan confirmed by the court;					1		
48	11	362	(c)(4)(B)	if, within ***30 days*** after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;		30					

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1				Title 11 of the Bankruptcy Code- Time Computation Rules							
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
49	11	362	(c)(4)(D)(i)(I)	for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) (i) as to all creditors if (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the ***1-year*** period;					1		
50	11	362	(d)(3)	On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay (3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is ***90 days*** after the entry of the order for relief (or such later date as the court may determine for cause by order entered within the 90-day period) or ***30 days*** after the court determines that the debtor is subject to this paragraph, whichever is later		90/30					
51	11	362	(d)(4)(B)	with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such property. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than ***2 years*** after the date of the entry of such order by the court, except that a debtor in subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.					2		
52	11	362	(e)(1)	Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under the subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing. unless the ***30-day*** period is extended with the consent of the parties in interest or for a sp		30					
53	11	362	(e)(2)(A)	Notwithstanding paragraph (1), In a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is ***60 days*** after a request is made by a party in interest under subsection (d), unless (A) a final decision is rendered by the court during the ***60-day period*** beginning on the date of the request; or		60					The "60-day period" discussed in 11 USC 362(e)(2)(B)(i) & (ii) refers to the 60-day period described in 11 USC 362(e)(2)(A)
54	11	362	(l)(1)(A) & (B)	Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is ***30-days*** after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that (A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and (B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the ***30-day*** period after the filing of the bankruptcy petition.		30					The "30-day period" discussed in 11 USC 362(l)(2) refers to the 30-day period described in 11 USC 362(l)(1).
55	11	362	(l)(3)(A)	If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within ***10 days*** after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.		10					
56	11	362	(m)(1)	Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is ***15 days*** after the date on which the lessor files and serves a certification described in subsection (b)(23).		15					
57	11	362	(m)(2)(B)	If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within ***10 days*** after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.		10					
58	11	362	(m)(3)(A) & (B)	If the debtor fails to file, within ***15 days***, an objection under paragraph (2)(A) (A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and (B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.		15					
59	11	363	(b)(2)(B)(i)-(iii)	If notification is required under subsection (a) of section 7A of the Clayton Act in the case of a transaction under this subsection, then (B) not withstanding subsection (b) of such section, the required waiting period shall end on the ***15th day*** after the day of the receipt, by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, of the notification required under such subsection (a), unless such waiting period is extended (i) pursuant to subsection (e)(2) of such section, in the same manner as such subsection (e)(2) applies to a cash tender offer; (ii) pursuant to subsection (g)(2) of such subsection; or (iii) by the court after notice and a hearing.		15					

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1				**Title 11 of the Bankruptcy Code- Time Computation Rules**							
2	**Title**	**Section**	**Subsection**	**Nature of Deadline**	**Unit of Time**					**Issues**	**Comments**
3					**Hours**	**Days**	**Weeks**	**Months**	**Year(s)**		
60	11	365	(d)(1)	In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within ***60 days*** after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.		**60**					
61	11	365	(d)(3)	The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within ***60 days*** after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) or this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.		**60**					
62	11	365	(d)(4)(A)(i)	Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of (i) the date that is ***120 days*** after the date of the order for relief;		**120**					
63	11	365	(d)(4)(B)(i)	the court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for ***90 days*** on the motion of the trustee or lessor for cause.		**90**					The "120-day period" mentioned refers to that discussed in 11 USC 365(d)(4)(A)(i)
64	11	365	(d)(5)	The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after ***60 days*** after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected not withstanding section 503(b)(1) of this title, unless the court, after notice and a hearing based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof.		**60**					
65	11	365	(p)(2)(B)	If, not later than ***30 days*** after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.		**30**					
66	11	366	(b)	Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within ***20 days*** after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date.		**20**					
67	11	366	(c)(2)	Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the ***30-day*** period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.		**30**					
68	11	502	(b)(9)	Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition and shall allow such claim in such amount, except to the extent that (9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before ***180 days*** after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide, and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed on or before the date that is ***60 days*** after the date on which such return was filed as required.		**180/60**					
69	11	502	(k)(1)	The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if (B) the offer of the debtor under subparagraph (A)(i) was made at least ***60 days*** before the date of the filing of the petition; and		**60**					The "60 day period" discussed in 11 USC 502(k)(2)(B) refers to the 60 day period discussed in 502(k)(1).
70	11	503	(b)(7)	After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title including (7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of ***2 years*** following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from an entity other than the debtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);					**2**		
71	11	503	(b)(9)	After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title including (9) the value of any goods received by the debtor within ***20 days*** before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.		**20**					
72	11	505	(a)(2)(B)(i)	The court may not so determine (B) any right of the estate to a tax refund, before the earlier of (i) ***120 days*** after the trustee properly requests such refund from the governmental unit from which such refund is claimed;		**120**					

	A	B	C	D	E	F	G	H	I	J	K
1	Title 11 of the Bankruptcy Code- Time Computation Rules										
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
73	11	505	(b)(2)(A)(i) & (ii)	A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax at the address and in the manner designated in paragraph (1). Unless such return is fraudulent, or contains a material misrepresentation, the estate, the trustee, or the debtor, and any successor to the debtor are discharged from any liability for such tax (A) upon payment of the tax shown on such return, if (i) such governmental unit does not notify the trustee, within ***60 days*** after such request, that such return has been selected for examination; or (ii) such governmental unit does not complete such an examination and notify the trustee of any tax due, within ***180 days*** after such request or within such additional time as the court, for cause, permits;		**60/180**					
74	11	507	(a)(4)	The following expenses and claims have priority in the following order: (4) Fourth, allowed unsecured claims, but only to the extent of $10,000 for each individual or corporation, as the case may be, earned within ***180 days*** before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first		**180**					
75	11	507	(a)(5)(A)	Fifth, allowed unsecured claims for contributions to an employee benefit plan (A) arising from services rendered within ***180 days*** before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first;		**180**					
76	11	507	(a)(8)(A)(i)	Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for (A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition (i) for which a return, if required, is last due, including extensions, after ***three years*** before the date of the filing petition;					**3**		
77	11	507	(a)(8)(A)(ii)	Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for (A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition (ii) assessed within ***240 days*** before the date of the filing of the petition, exclusive of		**240**					
78	11	507	(a)(8)(A)(ii)(I)	(ii) assessed within 240 days before the date of the filing of the petition, exclusive of (I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus ***30 days***		**30**					
79	11	507	(a)(8)(A)(ii)(II)	assessed within 240 days before the date of the filing of the petition, exclusive of (II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus ***90 days***		**90**					
80	11	507	(a)(8)(B)	Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for (B) a property tax incurred before the commencement of the case and last payable without penalty after ***one year*** before the date of the filing of the petition;					**1**		
81	11	507	(a)(8)(D)	Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for (D) an employment tax on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after ***three years*** before the date of the filing of the petition;					**3**		
82	11	507	(a)(8)(E)(i)	Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for (E) an excise tax on (i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after ***three years*** before the date of the filing of the petition; or					**3**		
83	11	507	(a)(8)(E)(ii)	if a return is not required, a transaction occurring during ***the three years*** immediately preceding the date of the filing of the petition;					**3**		
84	11	507	(a)(8)(F)(i)	Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for (F) a customs duty arising out of the importation of merchandise (i) entered for consumption within ***one year*** before the date of the filing of the petition;					**1**		
85	11	507	(a)(8)(F)(ii)	covered by an entry liquidated or reliquidated within ***one year*** before the date of the filing of the petition; or					**1**		
86	11	507	(a)(8)(F)(iii)	entered for consumption within ***four years*** before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date; or					**4**		
87	11	507	(a)(8)(G)	An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection taken or proposed against the debtor, plus **90 days**; plus any time during which the stay of proceedings was in effect a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus **90 days**.		**90/90**				?	
88	11	521	(a)(1)(B)(iv)	copies of all payment advices or other evidence of payment received within ***60 days*** before the date of the filing of the petition, by the debtor from any employer of the debtor		**60**					
89	11	521	(a)(1)(B)(vi)	a statement disclosing any reasonable anticipated increased in income or expenditures over the ***12-month period*** following the date of the filing of the petition				**12**			

	A	B	C	D	E	F	G	H	I	J	K
1	Title 11 of the Bankruptcy Code- Time Computation Rules										
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
90	11	521	(a)(2)(A)	within ***thirty days*** after the date of the filing of a petition under chapter 7of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk's a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;		**30**					In sections (a)(2)(A) and (a)(2)(B) "thirty days" is written three different ways (thirty days, 30 days, 30-days)
91	11	521	(a)(2)(B)	within ***30 days*** after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such ***30-day*** period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and		**30**					
92	11	521	(a)(6)	in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in party by an interest in such personal property unless the debtor, not later than ***45 days*** after the first meeting of creditors under section 341(a), either (A) enters into an agreement with the creditor pursuant to section 524(c) with respect to the claim secured by such property; or (B) redeems such property from the security interest pursuant to section 722.		**45**					
93	11	521	(e)(2)(A)(i)	The debtor shall provide (i) not later than ***7 days*** before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed.		**7**					
94	11	521	(e)(3)(B)	If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plant filed by the debtor, then the court shall make available to such creditor a copy of the plan (A) at a reasonable cost; and (B) not later than ***5 days*** after such request is filed.		**5**					
95	11	521	(f)(4)(A)	in a case under chapter 13 (A) on the date that is either ***90 days*** after the end of such tax year or ***1 year*** after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and		**90**			**1**		
96	11	521	(f)(4)(B)	annually after the plan is confirmed and until the case is closed, not later than he date that is ***45 days*** before the anniversary of the confirmation of the plan;		**45**					
97	11	521	(i)(1)	Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within ***45 days*** after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.		**45**					
98	11	521	(i)(2)	Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than ***5 days*** after such request.		**5**					
99	11	521	(i)(3)	Subject to paragraph (4) and upon request of the debtor made within ***45 days*** after the date of the filing of the petition described in paragraph (1), the court may allow the debtor an additional period of not to exceed **45 days** to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.		**45/45**					
100	11	521	(j)(2)	If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within ***90 days*** after the request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate		**90**					
101	11	522	(a)(3)(A)	Property listed in this paragraph is (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the ***730 days*** immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located at a single State for such 730-day period, the place in which the debtor's domicile was located for ***180 days*** immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;		**730/180**					
102	11	522	(b)(4)(D)(ii)(II)	Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code or 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution. (ii) A distribution described in this clause is an amount that (I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and (II) to the extent allowed by law, is deposited in such a fund or account not later than ***60 days*** after the distribution of such amount.		**60**					
103	11	522	(p)(1)	Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result o electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the ***1215-day period*** preceding the date of the filing of the petition that exceeds in the aggregate $125,000 in value in (A) real or personal property that the debtor or a dependent of the debtor uses as a residence; (B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; (C) a burial plot for the debtor or a dependent of the debtor; or (D) real or personal property that the debtor or dependent of the debtor claims as a homestead.		**1215**				For this time computation rule, the computation must be made for the first day of the period?	
104	11	522	(p)(2)(B)	For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such ***1215-day period***) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.		**1215**					
105	11	522	(q)(1)(B)(iv)	the debtor owes a debt arising from (iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding ***5 years***.					**5**		

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1	Title 11 of the Bankruptcy Code- Time Computation Rules										
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
106	11	523	(a)(1)(B)(ii)	A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt (1) for tax or a customs duty (B) with respect to which a return, or equivalent report or notice, if required (i) was not filed or given; or (ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after ***two years*** before the date of the filing for the petition;					2		
107	11	523	(a)(2)(C)(i)(I)	for the purposes of subparagraph (A) (I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within ***90 days*** before the order for relief under this title are presumed to be nondischargeable; and		90					
108	11	523	(a)(2)(C)(i)(II)	cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within ***70 days*** before the order for relief under this title, are presumed to be nondischargeable;		70					
109	11	523	(a)(7)(B)	to the extent such debt is for a fine, penalty or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty (B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;					3		
110	11	524	(k)(3)(J)(i)	"Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order or before the expiration of the ***60-day*** period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later.		60					
111	11	524	(m)(1)	Until ***60 days*** after an agreement of the kind specified in subsection (c) is filed wit the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the debtor f the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's complete and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt.		60					
112	11	527	(a)(2)	A debt relief agency providing bankruptcy assistance to an assisted person shall provide (2) to the extent not covered in the written notice described in paragraph (1), and not later than ***3 business days*** after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advise assisted persons that-		3				Section 101 does not provide a definition of "business days." However, this might be commonly understood?	
113	11	528	(a)(1)	A debt relief agency shall (1) not later than ***5 business days*** after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously (A) the services such agency will provide to such assisted persons; and (B) the fees or charges for such services, and the terms of payment;		5				see note above	
114	11	541	(a)(5)	Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within ***180 days*** after such date (A) by bequest, devise, or inheritance; (B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or (C) as a beneficiary of a life insurance policy or of a death benefit plan.		180					
115	11	541	(b)(5)	Property of the state does not include (5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than ***365 days*** before the date of the filing of the petition in a case under this title but-		365					
116	11	541	(b)(5)(C)	(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than ***720 days*** nor later than ***365 days*** before such date, only so much of much funds as does not exceed $5,000;		720/365					
117	11	541	(b)(6)	Property of the state does not include (6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but-		365					
118	11	541	(b)(6)(C)	(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than ***720 days*** nor later than ***365 days*** before such date, only so much of such funds as does not exceed $5,000;		720/365					
119	11	541	(b)(9)(A)	any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made (A) on or after the date that is ***14 days*** prior to the date on which the petition is filed;		14					
120	11	543	(c)(3)	The court, after notice and a hearing, shall (3) surcharge such custodian, other than an assignee for the benefit of the debtor's creditors that was appointed or took possession more than **120 days** before the date of the filing of the petition, for an improper or excessive disbursement, other than a disbursement that has been made in accordance with applicable law or that has been approved, after notice and a hearing, by a court of competent jurisdiction before the commencement of the case under this title.		120					
121	11	543	(d)(2)	After notice and hearing, the bankruptcy court (2) shall excuse compliance with subsections (a) and (b)(1) of this section if the custodian is an assignee for the benefit of the debtor's creditors that was appointed or took possession more than ***120 days*** before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice		120					
122	11	546	(a)(1)(A)	An action or proceeding under section 544, 545, 547, 548, 553 of this title may not be commenced after the earlier of (1) the later of (A) ***2 years*** after the entry of the order for relief; or					2		

	A	B	C	D	E	F	G	H	I	J	K
1	Title 11 of the Bankruptcy Code- Time Computation Rules										
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
123	11	546	(a)(1)(B)	***1 year*** after the appointment or election of the first trustee under section 702, 1104, 1163, 1202, or 1302 of this title if such appointment or such election occurs before the expiration of the period of specified in subparagraph (A);					1		
124	11	546	(c)(1)	Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within ***45 days*** before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods-		45					
125	11	546	(c)(1)(A)	not later than ***45 days*** after the date of receipt of such goods by the debtor; or		45					
126	11	546	(c)(1)(B)	not later than ***20 days*** after the date of commencement of the case, if the 45-day period expires after the commencement of the case.		20					
127	11	546	(d)(1)	such producer or fisherman may not reclaim any grain or fish unless such producer or fisherman demands, in writing, reclamation of such grain or fish before ten days after receipt thereof by the debtor;		10					
128	11	546	(h)	Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than ***120 days*** after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case		120					
129	11	547	(b)(4)(A)	Except as provided in subsections (c) and (j) of this section, the trustee may avoid any transfer of an interest of the debtor in property (4) made (A) on or within ***90 days*** before the date of the filing of the petition; or		90					
130	11	547	(b)(4)(B)	between ***ninety days*** and ***one year*** before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and		90			1		
131	11	547	(c)(3)(B)	The trustee may not avoid under this section transfer (3) that creates a security interest in property acquired by the debtor (B) that is perfected on or before ***30 days*** after the debtor receives possession of such property;		30					
132	11	547	(c)(5)(A)(i)	The trustee may not avoid under this section transfer (5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferees caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of (A)(i) with respect to a transfer to which subsection (b)(4)(A) of this section applies. ***90 days*** before the ate of the filing of the petition; or		90					
133	11	547	(c)(5)(A)(ii)	with respect to a transfer which subsection (b)(4)(B) of this section applies, ***one year*** before the date of the filing of the petition					1		
134	11	547	(e)(2)(A)	For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made (A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within ***30 days*** after, such time, except as provided in subsection (c)(3)(B);		30					
135	11	547	(e)(2)(B)	at the time such transfer is perfected, if such transfer is perfected after such ***30 days*** ; or		30					
136	11	547	(e)(2)(C)(ii)	immediately before the date of the filing of the petition, if such transfer is not perfected at the later of (i) the commencement of the case; or (ii) ***30 days*** after such transfer takes effect between the transferor and the transferee.		30					
137	11	547	(f)	For the purposes of this section, the debtor is presumed to have been insolvent on and during the ***90 days*** immediately preceding the date of the filing of the petition.		90				?	
138	11	547	(i)	If the trustee avoids under subsection (b) a transfer made between ***90 days*** and ***1 year*** before the date of the filing of the petition, by the debtor to an entity hat is an inside, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.		90			1		
139	11	548	(a)(1)	The trustee may avoid ay transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including nay obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within ***2 years*** before the date of the filing of the petition,							
140	11	548	(b)	The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within ***2 years*** before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.					2		
141	11	548	(e)(1)	In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within ***10 years*** before the date of the filing of the petition,					10		
142	11	549	(d)(1)	An action or proceeding under this section may not be commenced after the earlier of (1) two years after the date of the transfer sought to be avoided;					2		
143	11	550	(c)	If a transfer made between ***90 days*** and ***the year*** before the filing of the petition (1) is avoided under section 547(b) of this title; and (2) was made for the benefit of a creditor that at the time of such transfer was an insider; the trustee may not recover under subsection (a) from a transferee that is not an insider.		90			1		

	A	B	C	D	E	F	G	H	I	J	K
1	Title 11 of the Bankruptcy Code- Time Computation Rules										
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
144	11	553	(a)(2)(B)(i)	Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that (2) such claim was transferred, by an entity other than the debtor, to such creditor (B)(i) after ***90 days*** before the date of the filing of the petition;		90					
145	11	553	(a)(3)(A)	the debt owed to the debtor by such creditor was incurred by such creditor (A) after ***90 days*** before the date of the filing of the petition,		90					
146	11	553	(b)(1)	Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, 561, 365(h), 546(h), or 365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against the debtor on or within ***90 days*** before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of		90					
147	11	553	(b)(1)(A)	***90 days*** before the date of the filing of the petition; and		90					
148	11	553	(b)(1)(B)	the first date during the ***90 days*** immediately preceding the date of the filing of the petition on which there is an insufficiency.		90					
149	11	553	(c)	For the purposes of this section, the debtor is presumed to have been insolvent on and during the ***90 days*** immediately preceding the date of the filing of the petition.		90					
150	11	557	(c)(1)	Notwithstanding sections 362, 363, 365, and 554 of this title, on the court's own motion the court may, and on the request of the trustee or an entity that claims an interest in grain or the procedures for the grain the court shall, expedite the procedures for the determination of interests in and the disposition of grain and the proceeds of grain, by shortening to the greatest extent feasible such time periods as are otherwise applicable for such procedures and by establishing, by order, a timetable having a duration of not to exceed ***120 days*** for the completion of the applicable procedure specified in subsection (d) of this section.		120					
151	11	557	(f)	The court may extend the period for final disposition of grain or the proceeds of grain under this section beyond ***120 days*** if the court finds that (1) the interests of justice so require in light of the complexity of the case; and (2) the interests of those claimants entitled to distribution of grain or the proceeds of grain will not be materially injured by such additional delay.		120					
152	11	704	(b)(1)(A)	With respect to a debtor who is an individual in a case under this chapter (A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than ***10 days*** after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and		10.					
153	11	704	(b)(1)(B)	not later than ***5 days*** after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.		5					
154	11	704	(b)(2)	The United States trustee (or the bankruptcy administrator, if any) shall, not later than ***30 days*** after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determinesthat the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than (A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or (B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.		30					
155	11	707	(a)(3)	The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including (3) failure of the debtor in a voluntary case to file, within ***fifteen days*** or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.		15					
156	11	726	(a)(1)(A)	Except as provided in section 510 of this title, property of the estate shall be distributed (1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of (A) the date that is ***10 days*** after the mailing to creditors of the summary of the trustee's final report; or (B) the date on which the trustee commences final distribution under this section;		10					
157	11	727	(a)(7)	The court shall grant the debtor a discharge unless (7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within ***one year*** before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;					1		
158	11	727	(a)(8)	The court shall grant the debtor a discharge unless (8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14,371 or 476 of the Bankruptcy Act, in a case commenced within ***8 years*** before the date of the filing of the petition;					8		
159	11	727	(a)(9)	The court shall grant the debtor a discharge unless (9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within ***six years*** before the date of the filing of the petition, unless payments under the plan in such case totaled at least (A) 100 percent of the allowed unseasoned claims in such case; or (B)(i) 70 percent of such claims; and (ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;					6		

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1				**Title 11 of the Bankruptcy Code- Time Computation Rules**							
2	**Title**	**Section**	**Subsection**	**Nature of Deadline**	**Unit of Time**					**Issues**	**Comments**
3					**Hours**	**Days**	**Weeks**	**Months**	**Year(s)**		
160	11	727	(a)(11)	The court shall grant the debtor a discharge unless (11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than ***1 year*** after the date of such determination, and not less frequently than annually thereafter); or					1		
161	11	727	(a)(12)	The court shall grant the debtor a discharge unless (12) the court after notice and a hearing held not more than ***10 days*** before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that (A) section 522(q)(1) may be applicable to the debtor; and (B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).		10					
162	11	727	(e)	The trustee, a creditor, or the United States trustee may request a revocation of a discharge (1) under subsection (d)(1) of this section within ***one year*** after such discharge is granted:					1		
163	11	741	(6)(B)	"net equity" means, with respect to all accounts of a customer that such customer has in the same capacity (B) any payment by such customer to the trustee, within ***60 days*** after notice under section 342 of this title, of any business related claim of the debtor against such customer in such capacity;		60					
164	11	744		Notwithstanding section 365(d)(1) of this title, the trustee shall assume or reject, under section 365 of this title, any executory contract of the debtor for the purchase or sale of a security in the ordinary course of the debtor's business, within a reasonable time after the date of the order for relief, but not to exceed ***30 days***.		30					
165	11	764	(b)	Notwithstanding sections 544, 545, 547, 548, 549, and 724(a) of this title, the trustee may not avoid a transfer made before ***five day*** after the order for relief, if such transfer is approved by the Commission by rule or order, either before or after such transfer, and if such transfer is (1) a transfer off a commodity contact entered into or carried by or through the debtor on behalf of a customer ,and of any cash securities, or other property margining or securing such commodity contract; or (2) the liquidation of a commodity contract entered into or carried by or through the debtor on behalf of a customer.		5					
166	11	1104	(b)(1)	Except as provided in section 1163 of this title, on the request of a party in interest made not later than ***30 days*** after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as a trustee in the case.		30					
167	11	1110	(a)(2)(A)	The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 if (A) before the date that is ***60 days*** after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract;		60					
168	11	1110	(a)(2)(B)(i)	any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract (i) that occurs before the date of the order is cured before the expiration of such 60-day period; (ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of (I) the date that is ***30 days*** after the date of the default; or (II) the expiration of such 60-day period; and (iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.		30					The "60-day period" refers to section (a)(2)(A) immediately above
169	11	1112	(a)(3)	the court shall commence the hearing on a motion under this subsection not later than ***30 days*** after filing of the motion, and shall decide the motion not later than ***15 days*** after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.		30/15					
170	11	1112	(e)	Except as provided in (c) and (f), the court, on request of the United States trustee, may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate if the debtor in a voluntary case fails to file, within ***fifteen days*** after the filing of the petition commencing such case or such additional time as the court may allow, the information required by paragraph (1) of section 521, including a list containing the names and addresses of the holders of the twenty largest unsecured claims (or of all unsecured claims if there are fewer than twenty unsecured claims), and the approximate dollar amounts of each of such claims.		15					
171	11	1113	(d)(1)	Upon the filing of an application for rejection the court shall schedule a hearing to be held not later than ***fourteen days*** after the date of the filing of such application.		14					
172	11	1113	(d)(1)	All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ***ten days*** before the date of such hearing.		10					
173	11	1113	(d)(1)	The court may extend the time for the commencement of such hearing for a period not exceeding ***seven days*** where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and representative agree.		7					
174	11	1113	(d)(2)	The court shall rule on such application for rejection within ***thirty days*** after the date of the commencement of the hearing.		30					
175	11	1114	(k)(1)	Upon the filing of an application for modifying retiree benefits, the court shall schedule a hearing to be held not later than ***fourteen days*** after the date of the filing of such application.		14					

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1				Title 11 of the Bankruptcy Code- Time Computation Rules							
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
176	11	1114	(k)(1)	All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ***ten days*** before the date of such hearing.		10					
177	11	1114	(k)(1)	The court may extend the time for the commencement of such hearing for a period not exceeding ***seven days*** where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and the authorized representative agree.		7					
178	11	1114	(k)(2)	The court shall rule on such application for modification within ***ninety days*** after the date of the commencement of the hearing.		90					
179	11	1114	(l)	If the debtor, during the ***180-day*** period ending on the date of the filing of the petition (1) modified the retiree benefits; and (2) was insolvent on the date such benefits were modified; the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.		180				?	
180	11	1116	(1)	In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall (1) append to the voluntary petition or, in an involuntary case, file not later than ***7 days*** after the date of the order for relief (A) its most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return; or (B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;		7					
181	11	1116	(3)	In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall (3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than ***30 days*** after the date of the order for relief, absent extraordinary and compelling circumstances;		30					
182	11	1121	(b)	Except as otherwise provided in this section, only the debtor may file a plan until after ***120 days*** after the date of the order for relief under this chapter.		120					
183	11	1121	(c)(3)	Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or an indenture trustee, may file a plan if and only if (3) the debtor has not filed a plan that has been accepted, before ***180 days*** after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.		180					
184	11	1121	(d)(2)(A)	The 120-day period specified in paragraph (1) may not be extended beyond the date that is ***18 months*** after the date of the order for relief under this chapter.				18			
185	11	1121	(d)(2)(B)	The 180-day period specified in paragraph (1) may not be extended beyond a date that is ***20 months*** after the date of the order for relief under this chapter.				20			
186	11	1121	(e)(1)	In a small business case (1) only the debtor may file a plan until after ***180 days*** after the date of the order for relief unless that period is (A) extended as provided by this subsection, after notice and a hearing; or (B) the court, for cause, orders otherwise;		180					
187	11	1121	(e)(2)	In a small business case (2) the plan and a disclosure statement (if any) shall be filed not later than ***300 days*** after the date of the order for relief;		300					
188	11	1125	(f)(3)(B)	Notwithstanding subsection (b), in a small business case (3)(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than ***25 days*** before the date of the hearing on confirmation of the plan;		25					
189	11	1129	(a)(9)(C)(ii)	Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that (C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash (ii) over a period ending not later than ***5 years*** after the date of the order for relief under section 301, 302, or 303;					5		
190	11	1129	(e)	In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than ***45 days*** after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).		45					
191	11	1141	(d)(5)(C)	In a case in which the debtor is an individual (C) unless after notice and a hearing held not more than ***10 days*** before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that (i) section 522(q)(1) may be applicable to the debtor; and (ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).		10					
192	11	1143		If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than ***five years*** after the date of the entry of the order of confirmation.							
193	11	1145	(a)(3)(C)(i)	Except with respect to an entity that is an underwriter as defined in subsection (b) of this section, section 5 of the Securities Act of 1933 and any State or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security do not apply to (3) the offer or sale, other than under a plan, of a security of an issuer other than the debtor or an affiliate, if (C) such offer or sale is of securities that do not exceed (i) during the ***two-year*** period immediately following the date of the filing of the petition, four percent of the securities of such class outstanding on such date; and					2		
194	11	1145	(a)(3)(C)(ii)	during any ***180-day period*** following such two-year period, one percent of the securities outstanding at the beginning of such 180-day period;		180					

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1				Title 11 of the Bankruptcy Code- Time Computation Rules							
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
195	11	1145	(a)(4)	a transaction by a stockbroker in a security that is executed after a transaction of a kind specified in paragraph (1) or (2) of this subsection in such security and before the expiration of ***40 days*** after the first date on which such security was bona fide offered to the public by the issuer or by or through an underwriter, if such stockbroker provides, at the time of or before such transaction by such stockbroker, a disclosure statement approved under section 1125 of this title, and, if the court orders, information supplementing such disclosure statement.		40					
196	11	1145	(d)	The Trust Indenture Act of 1939 does not apply to a note issued under the plan that matures not later than one year after the effective date of the plan.					1		
197	11	1146	(b)(2)	The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of (1) the date on which such governmental unit responds to the request under this subsection; or (2) ***270 days*** after such request.		270					
198	11	1168	(a)(1)(A)	The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that right to take possession and enforce those other rights and remedies shall be suction to section 362, if (A) before the date that is ***60 days*** after the date of the commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract;		60					
199	11	1168	(a)(1)(B)(ii)(I)	any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract (ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of (I) the date that is ***30 days*** after the date of the default or event of the default;		30					
200	11	1172	(b)	If, except for the pendency of the case under this chapter, transfer of, or operation of or over, any of the debtor's rail lines by an entity other than the debtor or a successor to the debtor under the plan would require approval by the Board under a law of the United States, then a plan may not propose such a transfer or such operation with the Board and, within such time as the court may fix, not exceeding ***180 days***, the Board, with or without a hearing, as the Board may determine, and with or without modification or condition, approves such application or does not act on such application.		180					
201	11	1174		On request of a party in interest and after notice and a hearing, the court may, or, if a plan has not been confirmed under section 1173 of this title before ***five years*** after the date of the order for relief, the court shall order the trustee to cease the debtor's operation and to collect and reduce to money all of the property of the estate in the same manner as if the case were a case under chapter 7 of this title.					5		
202	11	1201	(d)	***Twenty days*** after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.		20					
203	11	1221		The debtor shall file a plan not later than ***90 days*** after the order for relief under this chapter, except that the court may extend such period if then need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.		90					
204	11	1222	(a)(4)	The plan shall (4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a ***5-year period*** beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.					5	?	
205	11	1222	(c)	Except as provided in subsections (b)(5) and (b)(9), the plan may not provide for payments over a period that is longer than ***three years*** unless the court for cause approves a longer period, but the court may not approve a period that is longer than ***five years***.					3/5		
206	11	1224		After expedited notice, the court shall hold a hearing on confirmation of the plan. A party in interest, the trustee, or the United States trustee may object to the confirmation of the plan. Except for cause, the hearing shall be concluded not later than ***45 days*** after the filing of the plan.		45					
207	11	1225	(b)(1)(B)	If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plant (B) the plan provides that all of the debtor's projected disposable income to be received in the ***three-year period***, or such longer period as the court may approve under section1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or					3		
208	11	1225	(b)(1)(C)	the value of the property to be distributed under the plan in the ***3-year period***, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.					3		
209	11	1228	(d)	On request of a party in interest before ***one year*** after a discharge under this section is granted, an after notice and a hearing, the court may revoke such discharge only if (1) such discharge was obtained by the debtor through fraud; and (2) the requesting party did not know of such fraud until after such discharge was granted.					1		

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1	Title 11 of the Bankruptcy Code- Time Computation Rules										
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
210	11	1228	(f)	The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than ***10 days*** before the date of the entry of the order granting that discharge finds that there is no reasonable cause to believe that (1) section 522(q)(1) may be applicable to the debtor; and (2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).		**10**					
211	11	1229	(c)	A plan modified under this section may not provide for payments over a period that expires after ***three years*** after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after ***five years*** after such time.					**3/5**		
212	11	1230	(a)	On request of a party in interest at any time within ***180 days*** after the date of the entry of an order of confirmation under section 1225 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.		**180**					
213	11	1231	(b)(2)	The court may authorize the proponent of a plan to request a determination, limited to questions of law, by any governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of (1) the date on which such governmental unit responds to the request under this subsection; or (2) ***270 days*** after such request.		**270**					
214	11	1301	(d)	***Twenty days*** after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.		**20**					identical to section 1201(d) above
215	11	1307	(c)(9)	Except as provided in subsection (3) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including (9) only on request of the United States trustee, failure of the debtor to file, within ***fifteen days***, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521;		**15**					
216	11	1308	(b)(1)(A)	Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond (A) for any return that is past due as of the date of the filing of the petition, the date that is ***120 days*** after the date of that meeting; or		**120**					
217	11	1308	(b)(1)(B)(i)	for any return that is not past due as of the date of the filing of the petition, the later of (i) the date that is 1 ***20 days*** after the date of that meeting; or (ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable bankruptcy law.		**120**					
218	11	1308	(b)(2)(A)	After notice and a hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period by the trustee under this subsection for (A) a period of not more than 30 days for returns described in paragraph (1);							
219	11	1322	(a)(4)	The plan shall (4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a ***5-year period*** beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.					**5**		identical to section 1222(a)(4)
220	11	1322	(d)(1)(C)	If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12 is not less than (C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4, the plan my not provide for payments of a period that is longer than ***5 years***.					**5**	?	
221	11	1322	(d)(2)(C)	If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12 is not less than (C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4, the plan may not provide for payments over a period that is longer than ***3 years***, unless the court, for cause, approves of a longer period, but the court may not approve a period that is longer than ***5 years***.					**3/5**	?	
222	11	1324	(b)	The hearing on confirmation of the plan may be held not earlier than ***20 days*** and not later than ***45 days*** after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.		**20/45**					
223	11	1325	(a)(9)	For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the ***910-day (period)*** preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of another thing of value, if the debt was incurred during the ***1-year period*** preceding that filing;		**910**			**1**		
224	11	1325	(b)(4)(A)(i)	For purposes of this subsection, the "applicable commitment period" (A) subject to subparagraph (B), shall be (i) ***3 years***; or					**3**		

	A	B	C	D	E	F	G	H	I	J	K
1	Title 11 of the Bankruptcy Code- Time Computation Rules										
2	Title	Section	Subsection	Nature of Deadline	Unit of Time					Issues	Comments
3					Hours	Days	Weeks	Months	Year(s)		
225	11	1325	(b)(4)(A)(ii)	not less than ***5 years***, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than (I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; (II) in the case of a debtor in a household of 2,3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or (III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 individuals, plus $525 per month for each individual in excess of 4; and					**5**		
226	11	1326	(a)(1)	Unless the court orders otherwise, the debtor shall commence making payments not later than ***30 days*** after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount (A) proposed by the plan to the trustee;		**30**					
227	11	1326	(a)(4)	Not later than ***60 days*** after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in party to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.		**60**					
228	11	1328	(f)(1)	Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge (1) in a case filed under chapter 7, 11, or 12 of this title during the ***4-year period*** preceding the date of the order for relief under this chapter, or					**4**		
229	11	1328	(f)(2)	in a case filed under chapter 13 of this title during the ***2-year period*** preceding the date of such order.					**2**		
230	11	1328	(g)(3)	The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than ***1 year*** after the date of such determination, and not less frequently than annually thereafter.					**1**		
231	11	1328	(h)	The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than ***10 days*** before the date of the entry of the order granting that discharge finds that there is no reasonable cause to believe that (1) section 522(q)(1) may be applicable to the debtor, and (2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).		**10**					identical to section 1228(f) above
232	11	1329	(c)	A plan modified under this section may not provide for payments over a period that expires after the applicable commitment period under section 1325(b)(1)(B) after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves of a longer period, but the court may not approve a period that expires after ***five years*** after such time.					**5**		
233	11	1330	(a)	On request of a party in interest at any time within ***180 days*** after the date of the entry of an order of confirmation under section 1325 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.		**180**					
234	11	749	(b)	Notwithstanding sections 544, 545, 547, 548, 549, and 724(a) of this title, the trustee may not avoid a transfer made before **five days** after the order for relief, if such transfer is approved by the Commission by rule or order, either before or after such transfer, and if such transfer is (1) a transfer of a securities contact entered into or carried by or through the debtor on behalf of a customer, and of any cash, security, or other property margining or securing such securities contract; or (2) the liquidation of a securities contract entered into or carried by or through the debtor on behalf of a customer.		**5**					
235	11	1308	(a)	Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with the appropriate tax authorities all tax returns for all tax periods ending during the 4-year period ending on the date of the filing of the petition.		**1**					

	A	B	C	D	E	F	G	H	I	J	K
1	**Title 18 of the Bankruptcy Code- Time Computation Rules**										
2	**Title**	**Section**	**Subsection**	**Nature of Deadline**	**Unit of Time**					**Issues**	**Comments**
3					**Hours**	**Days**	**Weeks**	**Months**	**Year(s)**		
4	18	1961	(5)	"pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ***ten years*** (excluding any period of imprisonment) after the commission of a prior act of racketeering activity					**10**		

	A	B	C	D	E	F	G	H	I	J	K
1				**Title 28 of the Bankruptcy Code- Time Computation Rules**							
2	**Title**	**Section**	**Subsection**	**Nature of Deadline**	**Unit of Time**					**Issues**	**Comments**
3					**Hours**	**Days**	**Weeks**	**Months**	**Year(s)**		
4	28	152	(a)(1)	Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the circuit court of appeals to the United States for the circuit in which such district is located. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is ***180 days*** after the expiration of the term or the date of the appointment of a successor.		**180**					
5	28	152	(B)(2)(C)(i)(II)	If a bankruptcy court issues an order exercising its authority under subparagraph (A), the court (i) through the Administrative Office of the United States courts, shall (II) not later than ***180 days*** after the expiration of such court order submit a brief report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives describing the impact of such order,		**180**					
6	28	158	(b)(1)	The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that- (A) there are insufficient judicial resources available in the circuit; or (B) the establishment of such service would result in undue delay or increased cost to parties in cases under title 11. Not later than ***90 days*** after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.		**90**					
7	28	158	(c)(1)(B)	Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless (B) any other party elects, not later than ***30 days*** after the service of notice of the appeal;		**30**					
8	28	158	(d)(2)(E)	Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.		**60**					
9	28	586	(d)(2)	A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the district court of the United States for which the panel to which the trustee is appointed under subsection (a)(1), or in the district court of the United States for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within ***90 days*** after the trustee requests administrative remedies.		**90**					
10	28	589a	(d)	The Attorney General shall transmit to the Congress, not later than ***120 days*** after the end of each fiscal year, a detailed report on the amounts deposited in the Fund and a description of expenditures made under this subsection.		**120**					

	A	B	C	D	E	F	G	H	I	J	K
11	28	604	(a)(3)	The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall; (3) Submit to the annual meeting of the Judicial Conference of the United States, at least ***two weeks*** prior thereto, a report of the activities of the Administrative Office and the state of the business of the courts, together with the statistical data submitted to the chief judges of the circuits under paragraph (a)(2) of this section, and the Director's recommendations, which report, data and recommendations shall be public documents.			**2**				
12	28	657	(c)(1)	Within ***30 days*** after the filing of an arbitration award with a district court under subsection (a), any party may filed a written demand for a trial de novo in the district court.		**30**					
13	28	1408	(1)	Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the ***one hundred and eighty days*** immediately preceding such commencement, of for a longer portion of such one-hundred-and-eighty-day period than the domicile residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district;		**180**					
14	28	1930	(a)(6)	The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.						??- What If the last day of the calendar month is on Sunday or a holiday?	

6C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: AMENDMENT TO RULE 9006(a)(1) TO CREATE SPECIAL COUNTING RULE FOR PERIODS OF LESS THAN 8 DAYS

DATE: MARCH 3, 2008

The Committee received a comment from the Clerk of the Bankruptcy Court for the Southern District of New York suggesting that the Bankruptcy Rules not adopt the "days are days" rule of the time computation project, at least in part, because the very short deadlines in some provisions of the Bankruptcy Code make such a system unwise. In particular, the Clerk noted that § 704(b)(1)(B) requires the clerk to provide a copy of the United States trustee's statement as to whether a presumption of abuse exists under § 707(b) "not later than 5 days after receiving [the] statement." Professor Alan Resnick made the same point in his **Comment 07-BK-009**.

As noted in the memorandum behind Tab 6.B. of the Agenda Book, the Time Computation Project includes a set of suggested legislative amendments that arguably are made necessary by the change to a "days are days" counting regime. Section 704(b)(1)(B) is among those provisions. The Ad Hoc Committee on Time Computation has generally recommended that all 5 day periods under the Bankruptcy Code be amended to become 7 day periods. If this change is made, there would be no need to amend Rule 9006(a) to reinstate the exclusion of intermediate weekends and holidays.[1]

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[1] I recognize that a week that includes a holiday would normally result in a 5 day period lasting 8 days, but in the interest of uniformity and to retain the general use of multiples of seven for periods of less than 30 days, we concluded that 7 days is an appropriate change to § 704(b)(1)(B).

6D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON PRIVACY, PUBLIC ACCESS, AND APPEALS

RE: SUGGESTION FOR AMENDMENT OF RULE 8006

DATE: MARCH 1, 2008

During its teleconferences on December 4, 2007, and February 29, 2008, the Subcommittee on Privacy, Public Access, and Appeals considered a comment received from former Advisory Committee member John Shaffer regarding a possible ambiguity in Rule 8006. In the case of an interlocutory appeal, this rule requires the appellant to file its designation of items to be included in the record and its statement of issues within 10 days from the entry of an order by the district court or the BAP granting leave to appeal. The rule then permits the appellee "10 days after the service of the appellant's statement" to file and serve a designation of additional items to be included in the record.

The problem Mr. Shaffer pointed out in his email comment was that if an appellant prematurely serves its designation and statement before leave to appeal has been granted, the literal wording of the rule starts the running of the time for the appellee's designation at that point, even though there is no certainty that an appeal will be allowed. He also raised a concern that the appellant's premature designation and statement might cause the bankruptcy clerk's office to transmit the record to the appellate court, leading to the docketing of the appeal and the commencement of the briefing period – again, all before leave to appeal is granted.

During its initial teleconference, the Subcommittee was presented with a possible amendment of Rule 8006 designed to address the problem Mr. Shaffer raised. Language similar

to that used in Rule 8002(a) to deal with the premature filing of a notice of appeal could be added to Rule 8006 as follows:

Rule 8006. Record and Issues on Appeal

1 Within 10 days after filing the notice of appeal as provided
2 by Rule 8001(a), entry of an order granting leave to appeal, or
3 entry of an order disposing of the last timely motion outstanding of
4 the type specified in Rule 8002(b), whichever is later, the appellant
5 shall file with the clerk and serve on the appellee a designation of
6 the items to be included in the record on appeal and a statement of
7 the issues to be presented. <u>In the case of an appeal from an</u>
8 <u>interlocutory order or decree, a designation and statement served</u>
9 <u>before the entry of an order granting leave to appeal shall be</u>
10 <u>treated as served after such entry and on the day thereof.</u> Within
11 10 days after the service of the appellant's statement the appellee
12 may file and serve on the appellant a designation of additional
13 items to be included in the record on appeal and, if the appellee has
14 filed a cross appeal, the appellee as cross appellant shall file and
15 serve a statement of the issues to be presented on the cross appeal
16 and a designation of additional items to be included in the record. .
17 . .

During the Subcommittee's discussion, questions were raised about (1) whether problems have been encountered with the similarly worded Fed. Rule of App. Proc. 10(b)(3)(B) and thus

the Advisory Committee on Appellate Rules might want to take the lead on this issue; (2) whether the problem Mr. Shaffer posed occurs with sufficient frequency in bankruptcy to warrant an amendment to Rule 8006; and (3) whether an amendment to Rule 8006 might raise negative implications with respect to other similarly worded rules in Part VIII.

Discussions with the reporter for the Advisory Committee on Appellate Rules indicated that the issue we presented – an appellant prematurely serving an order of a transcript and statement of issues – does not seem to be presenting a problem with respect to interlocutory appeals sought to be taken from district courts to courts of appeals. This is not, therefore, an issue on which the Appellate Rules Committee is likely to take any action.

In order to gain a better sense of the frequency with which this issue is occurring in the bankruptcy courts, at the Subcommittee's request, Jim Waldron sent out an inquiry to bankruptcy clerks about whether this is an issue that they have encountered and, if so, how frequently. The results of his survey can be viewed at http://www.keysurvey.com/report/187096/-1/11348 . There were 55 responses. Of these, 80% reported that the premature filing of appellant's designation and statement and the resulting filing by appellee was not a problem that their courts had ever encountered. Of those that had experienced this problem, all reported that they had encountered the problem between 1 and 5 times within the last year. When asked how they dealt with the problem if they had encountered it, most indicated that they awaited a ruling on the motion for leave to appeal before forwarding any papers to the appellate court. Several of the clerks also indicated that they informed the appellee that the time for filing its designation would not begin to run unless and until leave to appeal was granted. Three of the respondents expressed a desire for a rule change to eliminate the possibility of this problem occurring,

although all three indicated it had not yet occurred in their courts. Several other respondents indicated that they had developed either a local rule or a procedure in the clerk's office to deal with this issue.

A review of the other Part VIII rules revealed that Rule 8009(a), which governs the timing for filing of appellate briefs, also contains a provision that triggers an appellee's obligation to act on the appellant's service upon the appellee. In this case, the appellee must file and serve its brief within 15 days after service of the brief of the appellant. As with Rule 8006, if an appellant should file its brief prematurely (before the docketing of the appeal), a literal reading of the rule would require the appellee to go ahead and file its brief within 15 days of the service. Other rules in Part VIII that require the appellee to act within a certain period of time from action by the appellant – Rules 8003(a) and 8011(a) – are less likely to involve premature action by the appellant.

After a full discussion of the issue during its February 29, 2008 teleconference, **the Subcommittee unanimously decided not to recommend an amendment of Rule 8006 at this time.** Although the problem raised by Mr. Shaffer occurs occasionally, in most instances it appears that courts are properly handling the issue. The Subcommittee noted that any harm occasioned by a premature filing by an appellant was relatively minor and that in many cases an appellee could avoid having to take premature action in response to service by an over-eager appellant by communicating with the appellant and the clerk's office. It was suggested, however, by a member of the Subcommittee that the issue raised by Mr. Shaffer might be part of a larger issue presented by appellants who are uncertain whether the order they are appealing from is interlocutory or final and thus they file both notices of appeal and motions for leave to

appeal. The Subcommittee concluded that consideration of any amendment of Rule 8006, as well as the larger issue, could be included in any future comprehensive review of the Part VIII rules that the Advisory Committee might authorize.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: TECHNICAL AMENDMENTS TO RULE 9006

DATE: MARCH 3, 2008

The published amendment to Rule 9006(a) has one technical amendment made necessary because of an error in subdivision (a)(3)(A) of the published rule. Line 50 of the published rule contains a cross reference to Rule 6(a)(1), but the cross reference should be to Rule 9006(a)(1). The Ad Hoc Committee on Time Computation Rules recommends that this change be made to the rule. The formal change to the rule is set out in the separate agenda materials that include a description of the comments on Rule 9006(a).

Another technical amendment needs to be made to Rule 9006. Subdivision (f) of the rule currently contains a cross reference to Civil Rule 5(b)(2)(C) or (D). Those provisions govern service by leaving a copy of the document with the clerk of court for persons with no known address, and service by any other means, including by electronic means, consented to by the person being served. Under the Civil Rules Restyling Project, subdivision (b)(2) of the rule was revised and some subparagraphs were reconfigured. As a result, former subparagraphs (b)(2)(C) and (D) became subparagraphs (b)(2)(D), (E), and (F). These changes were not listed in the Current and Restyled Rules Comparison Chart that was published as a part of the Restyling Project. We did not make a change to Bankruptcy Rule 9006(f) to correspond to the changes made in the Civil Rules Restyling Project. Those changes should now be made, and they should be made as technical changes that do not require publication. The proposed amendment to Rule

9006(f) is set out below.

RULE 9006 Time.

1 * * * * * *

2 (f) ADDITIONAL TIME AFTER SERVICE BY MAIL OR

3 UNDER RULE ~~5(b)(2)(C) or (D)~~ 5(b)(2)(D), (E), or (F) F.R.Civ.P.

4 When there is a right or requirement to act or undertake

5 some proceedings within a prescribed period after service and that

6 service is by mail or under Rule 5 ~~(b)(2)(C) or (D)~~ 5(b)(2)(D),(E),

7 or (F) F.R.Civ.P., three days are added after the prescribe period

8 would otherwise expire under Rule 9006(a).

COMMITTEE NOTE

Subdivision (f) is amended to conform to the changes made to Rule 5(b)(2) of the Federal Rules of Civil Procedure as a part of the Civil Rules Restyling Project. As a part of that project, subparagraphs (b)(2)(C) and (D) of that rule were rewritten as subparagraphs (b)(2)(D), (E), and (F). The cross reference to those rules contained in subdivision (f) of this rule is corrected by this amendment.

James Wannamaker/DCA/AO/USCOURTS

02/29/2008 12:14 PM

To Eugene Wedoff/ILNB/07/USCOURTS@USCOURTS, Kenneth Meyers/ILSB/07/USCOURTS@USCOURTS, Elizabeth Perris/ORB/09/USCOURTS@USCOURTS, Jeffery

cc Laura T Swain/NYSD/02/USCOURTS@USCOURTS, Scott Myers/DCA/AO/USCOURTS@USCOURTS, Jeff.Morris@notes.udayton.edu, elizabeth_gibson@unc.edu

bcc

Subject Negative Notice -- Rule 9006 Amendments

Judge Swain has asked me to circulate a negative notice on two conforming or technical amendments to Rule 9006 to the bankruptcy judges on the Advisory Committee. Neither amendment appears to be controversial.

(1) The first amendment is to correct the reference in the published amendment to Rule 9006(a)(3)(A) to "Rule 6(a)(1)." That should be a reference to "Rule 9006(a)(1)."

(2) The second amendment is a technical fix to Rule 9006(f), which was not part of the published amendments.
Subsection 9006(f) includes a cross-reference to Civil "Rule 5(b)(2)(C) or (D)". The Civil Rule was restyled and renumbered effective 12.1.07. Old subsections (b)(2)(C) and (D) are now subsections (b)(2)(D) and (F) and the provision for an extra three days for service by electronic means (which used to be part of subsection (b)(2)(D) has been separated out and is now subsection (b)(2)(E).

In order to cover the same types of service in the cross-reference, Rule 9006(f) would have to be revised to refer in the heading and text to "Rule 5(b)(2)(D), (E), and (F)".

FYI, service by mail is specified in Rule 9006(f) itself. Although what is now Civil Rule 5(b)(3) used to be part of subsection (b)(2)(D), it refers back to service under new subsection 5(b)(2)(E). I don't believe that needs to be included in the cross reference in Rule 9006(f).

If you oppose either of these amendments, please respond to Judge Swain, Professors Morris and Gibson, Scott Myers, and me by email before 4 p.m. Monday, March 3.

Thank you. Jim

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE

RE: AMENDMENTS TO OFFICIAL FORMS 8 AND 27

DATE: MARCH 3, 2008

The Forms Subcommittee considered comments submitted on Official Forms 8 and 27 that were published in August 2007. Form 8 is the debtor's statement of intention in which debtors must set out their intentions as to personal property that is either subject to a lien or security interest, or that the debtor holds under a lease. Proposed Official Form 27 is the cover sheet for reaffirmation agreements. Please note that it is a cover sheet that requires the disclosure of specific information intended to assist the courts in making the determination required under § 524(m) of the Code, and it is not a form for the reaffirmation agreement itself.

Comments on Official Form 8

There were three comments submitted on the amendments to Official Form 8. **Comment 07-BK-001** was submitted by David S Yen on behalf of the Legal Assistance Foundation of Metropolitan Chicago. Mr. Yen suggests that the form include a certificate of service or, if not a certificate of service, a warning that Rule 1007(b)(2) requires that the form be served on the trustee, creditors and lessors. Only two of the Official Forms include anything that is akin to a certificate of service -- (1) the statement in Form 19 that the bankruptcy petition preparer has given the debtor a copy of the form and (2) the certification added to Form 1, which became effective on December 1, 2007, that the debtor has served the landlord with a copy of the

debtor's certification as a tenant of residential property. Otherwise, the format and wording of certificates of service generally have been left to counsel and local practice or to the Bankruptcy Noticing Center. There does not appear to be any problem with this practice. Moreover, adding a certificate of service to Form 8 could cause a negative inference about service requirements for other forms.

The Official Forms have not included instructions on who is to be served. That is left to the rules and the informal instructions posted by the AO along with the forms. These instructions either refer to the relevant rule or set out the text of the rule. It seems preferable to leave the instruction or warning on service to the informal instructions – even though putting a warning on Form 8 probably might be helpful for pro se debtors. If a warning referring to Rule 1007(b)(2) were added, it probably should go on the bottom of page 2 and be similar to the warnings about bankruptcy crimes on several forms.

The Subcommittee considered the matter and concluded that no change should be made to the form with regard to a certificate of service or instructions to that effect.

The second comment received on the form was from Bankruptcy Judge Henley Hunter. Judge Hunter (W.D. La.) submitted **Comment 07-BK-005** in response to the proposed amendment. His comment echos concerns expressed by the Bankruptcy Judges Advisory Group (BJAG) which had a brief opportunity to review the proposed form. Generally, the concern is that the form, as revised, is too complicated and attempts to accomplish too much. The initial impetus for the proposed revision of the form was the suggestion provided by Judge Perris urging that the form be clarified to make it less likely that debtors (and particularly pro se debtors) would improperly complete the form. The form is intended to inform interested parties

about the debtor's intentions with respect to collateral that is subject to liens and security interests. It is intended to implement §§ 521(a)(2) and 362(h) of the Code by requiring the debtor to set out in appropriate detail what the debtor intends to do with the property. The Subcommittee considered the matter over several telephone conferences and struggled to strike the proper balance between gathering the necessary information and not unduly complicating the form. Judge Hunter and the BJAG are suggesting that the proposed form as amended is too complex. He notes that the proposed form allows a debtor to state that something "other" than surrender, reaffirmation or redemption will be done with the property. He suggests that no other option is available. Furthermore, he asserts that the form should not include any reference to whether the debtor intends to claim the property as exempt. This additional information, Judge Hunter argues, will confuse the issues. He notes that exemptions are covered by Schedule C, and he suggests that information regarding exemptions be limited to that form.

The third comment we received was **Comment 07-BK-023** from Ms. Margaret Grammar Gay, Chief Deputy Clerk of the Bankruptcy Court for the District of New Mexico. Ms. Grammar Gay notes her agreement with Judge Hunter's comments which are summarized above. She also notes that she finds the explanation or instructions for the fourth column on the form to be confusing and not illustrative of the form. Furthermore, she states that the form should require the debtor's signature to be verified as required by Rule 1008, and she believes the form could delete the declaration of a petition preparer who would already be required to file Official Form 19 (petition preparer's declaration) with Official Form 8 when it is filed.

Forms Subcommittee Actions and Recommendations Regarding Official Form 8

Judge Perris prepared a revised version of Official Form 8 that takes into account these comments. The Subcommittee considered the revision by teleconference and recommends that the attached version of Official Form 8 be approved by the Advisory Committee and forwarded to the Standing Committee. The revisions to the form included setting the question of whether the debtor intends to claim the property as exempt apart from the question of whether the debtor intends to retain the property. It also retains the option of permitting the debtor to claim "other" treatment of the property and lists, by way of example at this point on the form, that the debtor may seek to avoid the lien on the property.

The Subcommittee believes that the form as revised is accurate and is more user friendly than the initially published version of the form, and recommends that Official Form 8 be approved as revised and set out in the attached version. The Subcommittee also recommends that the Form be proposed for adoption by the Standing Committee and Judicial Conference without the need for republication. The changes in the form from the published version are essentially stylistic in nature and are intended to capture the same information as is set out in the published version of the form. The Subcommittee recommends that the amendments to the form become effective on December 1, 2008.

Official Form 27 – Reaffirmation Cover Sheet

We received five comments on proposed Official Form 27, the Reaffirmation Cover Sheet. The comments submitted separately by the Financial Services Roundtable and the American Bankers Association and related groups were quite similar. All of the comments

submitted on Form 27 are summarized below.

Comment 07-BK-013 Bankruptcy Judge Philip Brandt (W.D. Wash.) Judge Brandt's comment suggests that the form include a line that would capture reaffirmation agreements that are proposed as settlements of unsecured claims alleged to be nondischargeable. He proposes that the form require that, if a reaffirmation is based on such a claim, the form include a sworn statement that sets out the factual basis of the debt and why it is nondischargeable. This issue could be addressed in the first information item on the form as more fully discussed in connection with Comment 07-BK-017.

Comment 07-BK-016 Mr. Philip Bartlett, CEO and President of the Financial Services Roundtable Mr. Bartlett does not offer any comment directly on proposed Official Form 27, other than to say that additional work should be done to prepare a required for of reaffirmation agreement itself. He notes that there is a wide range of forms being used across the country, and he suggests that there should be a single, uniform reaffirmation agreement.

Comment 07-BK-020 American Bankers Association, et. al. (including the Financial Services Roundtable) These groups note that they do not "per se" object to the form, but they urge the Committee to take action to ensure that reaffirmation agreements comply with the requirements of the Bankruptcy Code. Among the suggestions is that there should be rules or forms that ensure that reaffirmation agreements include the language that is specifically required by the Code. The Committee has declined to propose such a rule or form because our practice has been not to repeat statutes that are effective without any need for rules or forms implementation. The group states that the Committee should not be troubled by the discrepancies among the courts with regard to the form and content of reaffirmation agreements

because a form that would preserve adherence to the Code could not raise substantive disagreement among the courts. The comment notes that there are wide disparities around the country, yet it seems to ignore those disparities as somehow not indicative of different substantive views of what may be included in a reaffirmation agreement. They express concern that although the Code provisions governing reaffirmations require increased uniformity, there is still a variety of forms that they must use in different courts across the country.

Comment 07-BK-017 Bankruptcy Clerk Thomas Hart (D. Vt.) Mr. Hart submitted a lengthy comment that generally supports proposed Official Form 27, and that includes a number of suggestions for the improvement of the form. More significantly, the submission includes a form of reaffirmation cover sheet that the District of Vermont has used along with an extensive instruction sheet that provides much more detail than is included in the proposed Official Form. He notes that the District was in the process of creating a form of reaffirmation cover sheet, but they decided to use the proposed Official Form 27, with one modification, as their form. They also decided to make a few stylistic changes to the form along with a much more extensive instruction sheet that accompanies the form. Although they are somewhat lengthy, the form and instruction used in Vermont are quite similar to the published form. The "substantive" modification made by the District of Vermont was to delete the item on proposed Official Form 27 that asks for the amount of the debt as of the commencement of the case. They deleted the question because they found it to be ambiguous. That item calls for the "amount of debt as of commencement of case", and they noted that it could be read to mean all of the debt owed as of the commencement of the case rather than just the debt owed to the creditor who is a party to the reaffirmation agreement. The language is ambiguous, so I think that we should consider

alternative language. I do not believe that we should delete the information. A revision of that item may also provide a way to capture the information that Judge Brandt suggests should be included in the form.

Comment 07-BK-023 Chief Deputy Bankruptcy Court Clerk Margaret Grammar Gay (D.N.M.) Ms. Grammar Gay makes several suggestions regarding proposed Official Form 27. First, she notes that the form should be denominated OF27 rather than B27 at the top of the form. Second, she suggests that at the top of the form, that an instruction be added directing the appropriate person to "Complete this form and file it within the time set under Rule 4008." She further suggests that the form not require a listing of the debtor's name and address, and that the third sentence on the form provide that the filer must "Attach the reaffirmation agreement to this cover sheet." She suggests that the words "set out" be deleted in lines 8 and 11 on the form and that in the sentences at the first check box, the words "greater than" be underlined to provide greater emphasis to the concept. She also notes that the filer's certification would not be necessary if the reaffirmation agreement is attached to the form.

Forms Subcommittee Actions and Recommendations Regarding Proposed Official Form 27

The Subcommittee met by teleconference and considered the comments that were submitted. Thereafter, the Subcommittee continued its consideration of revisions to the form through a series of email communications in an effort to capture all of the necessary information, keep the form as simple as possible, and limit the length of the form so that necessary calculations would be completed on the same page of the form.

The version of Official Form 27 as approved by the Subcommittee is attached. The Subcommittee recommends that the Form be forwarded to the Standing Committee and the Judicial Conference for approval effective on December 1, 2009, to coincide with the effective date of the amendment to Rule 4008 that requires the use of the form. If approved in the ordinary course of the Rules Enabling Act process, that rule amendment will become effective on December 1, 2009.

B8 (Form 8) (12/09) [2/28/08 DRAFT]

United States Bankruptcy Court

_____ District Of _____

In re _____, Case No. _____
Debtor Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A – Debts secured by property of the estate. (Part A must be fully completed for **EACH** debt which is secured by property of the estate. Attach additional pages if necessary.)

Property No. 1	
Creditor's Name:	**Describe Property Securing Debt**:

Property will be (check one):
____Surrendered ____Retained

If retaining the property, I intend to (check at least one):
____ Redeem the property
____ Reaffirm the debt
____ Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)).

Property is (check one):
____Claimed as exempt ____Not claimed as exempt

Property No. 2 (if necessary)	
Creditor's Name:	**Describe Property Securing Debt**:

Property will be (check one):
____Surrendered ____Retained

If retaining the property, I intend to (check at least one):
____ Redeem the property
____ Reaffirm the debt
____ Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)).

Property is (check one):
____Claimed as exempt ____Not claimed as exempt

PART B – Personal property subject to unexpired leases. (All three columns of Part B must be completed for each unexpired lease. Attach additional pages if necessary.)

Property No. 1		
Lessor's Name:	**Describe Leased Property:**	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES_____ NO _____

Property No. 2 (if necessary)		
Lessor's Name:	**Describe Leased Property:**	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES_____ NO _____

Property No. 3 (if necessary)		
Lessor's Name:	**Describe Leased Property:**	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES_____ NO _____

_____ continuation sheets attached (if any)

I declare under penalty of perjury that the above indicates my intention as to any property of my estate securing a debt and/or personal property subject to an unexpired lease.

Date: _____

_____
Signature of Debtor

_____
Signature of Joint Debtor

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

(Continuation Sheet)

PART A - Continuation

Property No. __	
Creditor's Name:	**Describe Property Securing Debt**:

Property will be (check one):

____Surrendered ____Retained

If retaining the property, I intend to (check at least one):

____ Redeem the property

____ Reaffirm the debt

____ Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)).

Property is (check one):

____Claimed as exempt ____Not claimed as exempt

PART B - Continuation

Property No. __		
Lessor's Name:	**Describe Leased Property:**	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES_____ NO _____

Property No. __		
Lessor's Name:	**Describe Leased Property:**	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): YES_____ NO _____

B27 (Official Form27) (12/09)(2/29/08 Draft)

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____
Chapter ____

REAFFIRMATION AGREEMENT COVER SHEET

This form must be completed in its entirety and filed, with the reaffirmation agreement attached, within the time set under Rule 4008. It may be filed by any party to the reaffirmation agreement.

1. Creditor's Name:_____

2. Amount of the reaffirmed debt:
$_____ on the date of bankruptcy $_____ to be paid under reaffirmation agreement

3. Annual percentage rate of interest: _____% prior to bankruptcy
_____% under reaffirmation agreement (____ Fixed Rate ____ Adjustable Rate)

4. Repayment terms: $_____ per month for _____ months

5. Collateral, if any, securing the debt: Current market value: $_____
Description: _____

6. Is the debt to be reaffirmed alleged to be nondischargeable? ___Yes ___ No
If so, attach a declaration setting forth the basis of the debt and the nondischargeability claim.

Debtor's Schedule I and J Entries

7.A. Total monthly income $_____
from Schedule I, line 16

8.A. Total monthly expenses $_____
from Schedule J, line 18

9.A. Total monthly payments $_____
on reaffirmed debts not
listed on Schedule J

Debtor's Present Income and Expenses
(at time of Reaffirmation Agreement)

7.B. Present monthly income $_____

8.B. Present monthly expenses $_____

9.B. Total monthly payments $_____
on reaffirmed debts not included in
current monthly expenses

10.B. Net present monthly $_____
income (subtract sum of lines 8.B. and 9.B.
from line 7.B. If total is less than zero, put the
number in brackets)

11. Explain with specificity any difference between the income amounts (7.A. and 7.B):_____

12. Explain with specificity any difference between the expense amounts (8.A. and 8.B):_____

Other Information

☐ Check this box if the total on line 10.B. is less than zero. If that number is less than zero, a presumption of undue hardship arises and you must explain with specificity the sources of funds available to the Debtor to make the monthly payments on the reaffirmed debt:_____

☐ Check this box if the debtor was not represented by counsel during the course of negotiating this reaffirmation agreement.

Date: _____

_____
Signature of Debtor

FILER'S CERTIFICATION

I _____ hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet.

_____
Signature

DEBTOR'S CERTIFICATION
[see Fed. R. Bankr. P. 4008(b)]

I certify that any explanation contained on lines 11 or 12 of this form is true and correct.

_____
Signature (Debtor)

7B

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON FORMS

RE: RECOMMENDATION OF DIRECTOR'S FORM CONCERNING § 1328(a) AND § 1328(h) DISCHARGE REQUIREMENTS

DATE: MARCH 2, 2008

During its teleconferences on November 27, 2007, and February 28, 2008, the Subcommittee on Forms considered the advisability of creating a national form addressing a chapter 13 debtor's satisfaction of the requirements for a discharge. Judge Wedoff brought this issue to the attention of the Chair of the Advisory Committee after receiving an inquiry from Bankruptcy Judge Joyce Bihary (N.D. Ga.) as to whether there was any effort underway to create a national form for the domestic support obligation ("DSO") certificate required by § 1328(a). A number of bankruptcy courts have already adopted local forms for the debtor's DSO certification, and many have included this certification in a more comprehensive local form that requires the debtor to certify compliance with some or all of the other requirements for a chapter 13 discharge. The Subcommittee therefore considered not only the development of a national DSO certification form, but also whether there is a need for a more comprehensive national form relating to a chapter 13 debtor's eligibility for a discharge. Based on its consideration of the issue, **the Subcommittee recommends that the Advisory Committee approve the adoption of the attached Director's Procedural Form 283, which addresses both the DSO certification requirement of § 1328(a) and the possible applicability of § 522(q) (and thus § 1328(h)).**

BAPCPA amended § 1328 of the Code to impose several new requirements for the

granting of a chapter 13 discharge. In addition to the completion of payments under the plan, a chapter 13 debtor now must satisfy the following requirements in order to be eligible for a discharge:

- If the debtor is required to pay a DSO, he or she must certify that all such amounts that became due on or before the certification date have been paid (including any amounts due before the petition, to the extent provided for by the plan). § 1328(a).
- The debtor must not have received a discharge in a case filed under chapter 7, 11, or 12 during the 4-year period preceding the order for relief in the current chapter 13 case. § 1328(f)(1).
- The debtor must not have received a discharge in a case filed under chapter 13 during the 2-year period preceding the order for relief in the current chapter 13 case. § 1328(f)(2).
- The debtor must have completed an instructional course on personal financial management after the filing of the petition in the current chapter 13 case, unless the debtor qualifies for an exemption under § 109(h)(4) or the U.S. trustee has determined that there are not an adequate number of approved instructional courses available. § 1328(g).

In addition to these requirements, § 1328(h) provides that the court may not grant a discharge unless "after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge" the court determines that there is not reasonable cause to believe (1) that § 522(q)(1) may apply to the debtor and (2) that any proceeding is pending in which the debtor may be found guilty of a felony as described in § 522(q)(1)(A) or liable for a

debt as described in § 522(q)(1)(B). Section 522(q)(1) limits a debtor's homestead exemption* under state law to no more than $136,875 (originally $125,000) if the court determines that the debtor has committed a felony that under the circumstances demonstrates that the filing of the bankruptcy case was an abuse of the provisions of the Code or determines that the debtor owes a debt arising from the violation of various securities laws, misconduct in a fiduciary capacity, a civil remedy under the RICO statute, or a criminal, intentional, willful, or reckless act causing serious physical injury or death to another person within the preceding 5 years.

A number of bankruptcy courts have recently promulgated local forms to facilitate a streamlined process for the granting of chapter 13 discharges. A review of the local bankruptcy rules and forms for each of the districts reveals that slightly under half of the districts (approximately 40) have already adopted a form (or in a few cases a local rule or administrative order) addressing some aspect of the requirements for a chapter 13 debtor's eligibility for discharge. Although they differ in wording and format, there are three basic types of local forms. Some districts have adopted only a certification form regarding the debtor's satisfaction of any DSOs. Approximately a quarter of the districts that have adopted some type of local form have adopted this DSO-only type of form.

The majority of districts that have adopted a chapter 13 discharge form have adopted a comprehensive one that requires the debtor to certify that all of the eligibility requirements of

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* Section 522(q)(1) refers to property described in § 522(p)(1)(A), (B), (C), and (D). Included in those subparagraphs are the following types of property: real or personal property that the debtor or a dependent uses as a residence, a cooperative that owns property that the debtor or a dependent uses as a residence, a burial plot for the debtor or a dependent, and real or personal property that the debtor or a dependent claims as a homestead. For the sake of brevity, in this memorandum an exemption in any of the listed categories of property will be referred to as a "homestead exemption."

§ 1328 have been satisfied. These forms address not only the satisfaction of any DSOs, but also require certification or a statement concerning the completion of the instructional course (or the filing of Form 23), the absence of any prior discharges in cases filed within the relevant time periods, and the inapplicability of § 522(q)(1) and the absence of any pending proceedings that might trigger § 522(q)(1). Some of these forms expressly provide creditors the opportunity to object to the debtor's certification within a specified period, and they state that a discharge may be granted without a hearing if no objection is filed.

Finally, a few districts have adopted local forms that fall somewhere in between the other two types. These districts require chapter 13 debtors to file a DSO certification and a certification or statement regarding the inapplicability of § 522(q)(1).

The Subcommittee decided to take the latter approach. It proposes a national form that implements § 1328(a)'s requirement that the debtor "certif[y] that all amounts payable under [a DSO] order or . . . statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid." It also determined that the form should include a certification concerning the amount of any homestead exemption claimed by the debtor so that it can be determined whether there is any possibility that § 1328(h) may require a postponement of the entry of a discharge. Only if the debtor has claimed a homestead exemption in an amount exceeding $136,875 is there any possibility that § 1328(h) applies. In a case in which a debtor has claimed a homestead exemption exceeding that amount, additional information will have to be elicited from the debtor in order to determine if the discharge must be delayed. But because the local forms demonstrate that courts have arrived at differing interpretations of what § 1328(h) requires, the Subcommittee

concluded that a national form should not take a position on that substantive issue. Thus the proposed form limits the inquiry to the threshold requirement of homestead exemption amount.

The Subcommittee decided against addressing any of the other chapter 13 requirements in this form. Official Form 23 already requires a certification of the completion of the personal financial management instructional course, and the Subcommittee saw no reason to require the debtor to repeat this certification. With respect to § 1328(f), the pending proposed amendment to Rule 4004(a) would require a creditor to object to discharge on this ground by motion filed no later than 60 days after the first date set for the § 341 meeting of creditors. Insofar as creditors are concerned, therefore, when the debtor seeks a discharge upon completion of the plan, it will be too late to object on the basis of a prior discharge. Although the court could still raise the issue sua sponte, the basis for the Advisory Committee's decision to allow creditors to raise this objection by motion, rather than by adversary proceeding, was that the issue is uncomplicated and the factual basis for this objection is generally revealed by information in the petition. Thus the Subcommittee concluded that this discharge requirement does not require a statement or certification by the debtor at the end of the case.

Because of the significant number of districts that have already adopted local forms addressing some of the § 1328 discharge requirements and the variety of approaches that have been taken, the Subcommittee decided that the promulgation of a Director's Procedural Form, rather than an Official Form, is preferable. It would provide guidance to districts that seek it, while still allowing the districts flexibility to develop forms of a different scope.

The proposed § 1328(a) certification provides two options, either of which satisfies that discharge eligibility requirement. The first choice is applicable to a debtor who had no

outstanding DSO debts at the time of filing and has had no such obligations imposed during the course of the chapter 13 case. The other choice is for a debtor who has been or still is subject to a DSO. That debtor, to be eligible for discharge, must certify that all such amounts dealt with by the plan were paid, as well as any such amounts becoming due since then. A debtor who cannot check either box may not receive a discharge.

[For a debtor who does have a claim for a DSO, § 1302(d)(1)(C) requires the chapter 13 trustee to give written notice to the DSO creditor and a State child support agency of the granting of the debtor's discharge and, among other things, the debtor's last recent known address and the name and last recent known address of the debtor's employer. Although this information is not directly related to the debtor's eligibility for a discharge, the Subcommittee recommends that Form 283 include a request for this information so that the trustee's notice will provide current addresses and employment information.]

Because of the rather convoluted wording of § 1328(h), as well § 522(q)(1) to which it refers, the creation of a certification form addressing those requirements for discharge is more challenging. The complexity of the statutory language also probably explains why districts have taken a variety of approaches concerning the information they ask debtors to certify pursuant to § 1328(h). Ambiguity arises from § 1328(h)'s requirement that the court determine whether "section 522(q)(1) may be applicable to the debtor." Because § 522(q)(1) includes paragraphs (A) and (B), the statute literally requires the court to determine whether the debtor has previously been found guilty of one of the specified crimes or liable for one of the specified debts. Thus, in addition to asking about the amount of the homestead exemption claimed and any pending proceedings, some courts' local forms ask the debtor to certify whether there are

any past felonies or debts of the type specified in § 522(q)(1)(A) and (B). Other courts, however, ask only about the homestead exemption and any pending proceedings that might result in the specified types of convictions or liabilities.

The legislative history of § 1328 and parallel provisions in the other chapters suggests that Congress was concerned only with delaying the entry of a discharge until the conclusion of proceedings that might trigger the applicability of § 522(q)(1). The House Report (H.R. Rep. No. 109-31(I)) explained that this provision would "require the court to withhold the entry of a debtor's discharge order if the court . . . finds that there is reasonable cause to believe that there is a pending proceeding in which the debtor may be found guilty of a felony of the kind described in Bankruptcy Code section 522(q)(1) or liable for a debt of the kind described in Bankruptcy Code section 522(q)(2)." If that was the intent behind § 1328(h), certification regarding already completed proceedings would not be necessary.

Regardless of which reading is correct, the Subcommittee concluded that it was not appropriate for a Director's Form to take a position on this issue. Thus, the Subcommittee recommends that Form 283 only address the threshold issue of whether the debtor has claimed an exemption that exceeds the potential § 522(q) cap of $136,875. Since the answer will be no for debtors in most cases, the form will enable the court in those cases to determine that it is not required to delay entry of the discharge. For the limited number of cases in which the debtor has claimed a homestead exemption exceeding $136,875, the court can proceed with seeking whatever additional information it believes § 1328(h) requires.

B283 (Form 283) (04/08) DRAFT

UNITED STATES BANKRUPTCY COURT

_____ District Of _____

In re _____ **Case No. _____**
Debtor

CHAPTER 13 DEBTOR'S CERTIFICATIONS REGARDING DOMESTIC SUPPORT OBLIGATIONS AND SECTION 522(q)

Part I. Certification Regarding Domestic Support Obligations (check no more than one)

Pursuant to 11 U.S.C. Section 1328(a), I certify that:

☐ I owed no domestic support obligation when I filed my bankruptcy petition, and I have not been required to pay any such obligation since then.

☐ I am or have been required to pay a domestic support obligation. I have paid all such amounts that my chapter 13 plan required me to pay. I have also paid all such amounts that became due between the filing of my bankruptcy petition and today.

[*Part II. If you checked the second box, you must provide the information below.*

My current address: _____

My current employer and my employer's address:_____

_____]

Part III. Certification Regarding Section 522(q) (check no more than one)

Pursuant to 11 U.S.C. Section 1328(h), I certify that:

☐ I have not claimed an exemption pursuant to § 522(b)(3) and state or local law (1) in property that I or a dependent of mine uses as a residence, claims as a homestead, or acquired as a burial plot, as specified in § 522(p)(1), and (2) that exceeds $136,875* in value in the aggregate.

☐ I have claimed an exemption in property pursuant to § 522(b)(3) and state or local law (1) that I or a dependent of mine uses as a residence, claims as a homestead, or acquired as a burial plot, as specified in § 522(p)(1), and (2) that exceeds $136,875* in value in the aggregate.

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

Part IV. Debtor's Signature

I certify under penalty of perjury that the information provided in these certifications is true and correct to the best of my knowledge and belief.

Executed on _____ _____
Date Debtor

INFORMATION

Section 1328(a) of the Bankruptcy Code, 11 U.S.C. § 1328(a), requires that any debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, as defined by section 101(14A) of the Code, certify that all amounts payable under the order or statute that are due on or before the date of the certification have been paid. This certification requirement includes amounts due before the petition was filed, but only to the extent provided for by the plan. The debtor must make the certification after completing the plan payments. The debtor cannot receive a discharge until the certification has been filed.

[Section 1302(d)(1)(C) requires the trustee to inform holders of domestic support obligation claims and State child support enforcement agencies of the granting of the debtor's discharge and, among other things, of the debtor's last recent known address and the last recent known name and address of the debtor's employer. Part II is included to provide these addresses to the trustee for the notification.]

Section 1328(h) of the Bankruptcy Code, 11 U.S.C. § 1328(h), provides that the court may not grant a discharge in a chapter 13 case unless the court, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, finds that there is no reasonable cause to believe that --

- section 522(q)(1) may be applicable to the debtor (or either of the joint debtors); and
- there is pending a proceeding in which the debtor (or either of the joint debtors) may be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B).

In order for § 522(q)(1) to be applicable, the debtor must have claimed an exemption in a homestead, residence, or burial plot pursuant to § 522(b)(3) and state or local law in an amount exceeding $136,875. The debtor's certification in Part III will enable the court to determine whether § 1328(h) has any possible application to the case.

In a joint case, each debtor must file a § 1328(a) certification and a § 1328(h) certification, as described above.

7C

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM SUBCOMMITTEE ON FORMS

RE: MEDICAL INFORMATION ON PROOFS OF CLAIMS

DATE: MARCH 4, 2008

Bankruptcy Judge Colleen Brown (D. Vt.) submitted Comment 06-BK-016 which included a suggestion that the Committee consider amendments to the rules and forms to prevent the disclosure of personal information on proofs of claims and attached documentation provided to support those claims. Judge Brown noted in particular that claims filed by health care providers frequently include information about services and medical tests that essentially disclose the nature of the illness or condition of the patient. She suggests that such claims be subject to a restriction that would limit the claimant to indicating that the claim is for "medical services" and that the rules and forms direct these claimants to redact from these documents any personally identifying information such as social security numbers, and also not to file "any other information of a highly personal nature." She also suggests that the rules establish a procedure to allow the trustee or court to obtain any further necessary information from the claimant if any questions exists as to the nature or amount of the claim.

A significant number of debtors have health care debts. While there is some disagreement over the extent of those claims, it is generally agreed that many debtors owe for medical care, hospitalization, and medicine. As Judge Brown notes, a description of the goods and services provided that support these claims could be unnecessarily embarrassing to the debtor. On the other hand, the creditor may have concerns that if the description of the

transaction is insufficient, the trustee may object to the claim and the creditor will incur additional expense in order to prove the claim. Judge Brown's suggestion goes beyond health care claims and would require any creditor with a claim that is of a "highly personal nature" to file a bare bones proof of claim. However, the Subcommittee on Privacy, Public Access and Appeals concluded that the first way to address the issue should be to see if Official Form 10 or the instructions to the form could be amended so that creditors holding health care claims could be advised to submit only the minimally necessary information. The Advisory Committee concurred.

The Forms Subcommittee met by teleconference to consider the issue. After due deliberation, the Subcommittee concluded that Official Form 10 should be amended. Specifically, paragraphs 2 and 7 of the instructions for the form should be amended, and Box 7 on the front of the form also should be amended to highlight the change in the instructions. Those changes to the form would appear as follows. These amendments are to the version of Official Form 10 that was published for comment in August 2006.

On the front of Official Form 10:

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. *(See instruction 7 and definition of "redacted" on reverse side.)*

On the reverse of Official Form 10:

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal

injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid unnecessary embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

7. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see Instruction 2. Do not send original documents , as attachments may be destroyed after scanning.

UNITED STATES BANKRUPTCY COURT
District of Vermont

CHAMBERS OF
Colleen A. Brown
United States Bankruptcy Judge

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06 - BK-016

February 7, 2007

Hon. Thomas S. Zilly, Chair
Committee on Rules of Practice & Procedure
of the Judicial Conference of the United States

Re: Comments on Bankruptcy Rules 3001, 8003 and 8005, and Official Form B10

Dear Judge Zilly:

I submit these comments with respect to proposed rules dealing with appeals (8003 and 8005), the proof of claim form (B 10) and the corresponding proof of claim rule (3001).

Since the Judicial Conference promulgated the Privacy Policy on Public Access to Electronic Case Files (the "Privacy Policy"), in September 2001, personal identifying data related to court cases has generally been protected from exposure via WebPACER and CM/ECF. However, I believe a large loophole continues to exist in bankruptcy cases, and a substantial amount of highly sensitive data is still publicly available, in attachments to proofs of claim.

Having monitored filings for compliance with the Privacy Policy over the course of the past few years, the staff in our clerk's office has observed that highly personal information is contained on many, if not most, proofs of claim filed by medical offices, health care providers, and hospitals; and that complete social security numbers are frequently contained on supporting documentation for wage claims. Inclusion of this information is understandable, since proofs of claim are typically filed directly by creditors, who likely do not realize that such filings are public records and readily accessible via the internet. Moreover, these individuals are not likely to be familiar with the rules regarding redaction of personal information. Creditors attach copies of invoices as supporting documentation to comply with the instructions on the proof of claim form (Form B10). When a health care provider creditor attaches invoices, however, those invoices may include highly sensitive and personal information, such as specific names of tests, laboratory or surgical procedures, and/or medication administered – the disclosure of which often leaves little doubt as to the nature of the patient's health condition. Hence, in connection with wage claims and medical proofs of claim, bankruptcy courts frequently would prefer to have less information on the attachments.

Second, a related, inverse issue arises when an employee files a proof of the claim for unpaid wages. Although the claim form asks only for the last four digits of the wage claimant's social security number, the trustee actually needs the full social security number when he or she pays the claim. If the wage claimant creditor complies with the directions on Form B10 and includes only the redacted social security number, then the case trustee does not have enough information to pay the claim and comply with his/her tax reporting obligations. Thus, in this instance more information is needed.

As more court users access bankruptcy records via the internet, I suggest that it may be appropriate for the Bankruptcy Rules Committee to include specific provisions in the rules and forms to address proof of claim privacy concerns, specifically in regard to proofs of claim for medical and wage claims. Accordingly, I propose that both Bankruptcy Rule 3001(c) and the Official Form B10 be amended to include language that

(i) specifically prohibits the attachment of any document that discloses personal information, which is defined to include social security numbers, account numbers, and the names of minor children, ***as well as any other information of a highly personal nature***;

(ii) clearly specifies that the supporting documentation need only specify the date of services, the general nature of services (e.g. medical, legal, home repair, etc.), and the amount due as of a particular date; and

(iii) unequivocally places responsibility for redacting confidential or personal data from all supporting documentation upon the filer.

I would further suggest that procedures be formulated so that to the extent the case trustee or court needs further information to supplement the proof of claim, the creditor is so notified and given an opportunity to submit the document in a manner that does not make any personal information publicly available.

Third, I would suggest that the Bankruptcy Rules Committee consider modifying Bankruptcy Rules 8003(b) and 8005 to better coordinate the two prongs of the interlocutory appeals process. As it stands now, a party who wishes to appeal an interlocutory order of the bankruptcy court files both a motion for a stay and a motion for leave to appeal in the bankruptcy court. However, the two motions are adjudicated by different courts. The bankruptcy court enters a determination on the motion for a stay pending appeal, but transmits the motion for leave to appeal to the district court (or bankruptcy appellate panel), to be decided by that court. Generally, the bankruptcy court, being familiar with the case, is in a position to rule expeditiously on the stay motion. By contrast, the district court or BAP is typically not familiar with the case and may need more time to adjudicate the motion for leave to appeal. Therefore, it could easily come to pass that a bankruptcy court would grant a stay pending appeal before the appellate court has granted leave to appeal. This result is procedurally awkward.

My suggestion is to consolidate these two motions in one court, so that the motions could be decided at the same time, using the language currently found in Rule 8005, namely, "A motion . . . .,must ordinarily be presented to the bankruptcy judge in the first instance . . . " If this procedure were adopted, the motions would be decided in tandem and the relief granted or denied on both motions would be coordinated. This would not diminish the authority of the district court over these issues because if the bankruptcy court were to deny the relief, the rules already provide that the movant may appeal the decision to the district court.

Thank you for your consideration of these comments and suggestions. Should you or members of the committee have questions about this letter, I would be happy to address them.

Sincerely,

Colleen A. Brown

B10 (Official Form 10) (12/09)

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____	PROOF OF CLAIM
Name of Debtor:	Case Number:

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):

Name and address where notices should be sent:

Telephone number:

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:_____
(*If known*)

Filed on:_____

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $_____

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: _____
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property:$_____ **Annual Interest Rate**___**%**

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured: $**_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction 7 and definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

Date:

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. **Amount of Claim as of Date Case Filed:**
State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. **Basis for Claim:**
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid unnecessary embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. **Last Four Digits of Any Number by Which Creditor Identifies Debtor:**
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. **Debtor May Have Scheduled Account As:**
Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. **Secured Claim:**
Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. **Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**
If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. **Credits:**
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. **Documents:**
Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:
The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

Claim
A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

7D

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE – SCOTT MYERS

RE: RECOMMENDED DEFINITIONS FOR FORM 10

DATE: FEBRUARY 28, 2008

Revised definitions of "creditor" and "claim" on the back of Form 10

The definitional section on the back of Official Form 10 explains that a "creditor" is "any person, corporation, or other entity to whom the debtor *owed a debt on the date the bankruptcy case was filed.*" (Emphasis added). Prior to the Committee's Jackson Hole meeting, the Forms Subcommittee considered possible revisions to the definition in response to a question from a member of the public who thought the form's definition means that the holder of a claim assigned after the petition date is not a "valid creditor." After considering several variations, the Subcommittee recommended that the definition be changed to more closely follow the statutory definition as follows:

> **"Creditor**
> A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. § 101(10)."

The Committee approved the proposed revision, as well as the Subcommittee's recommendation that the change be held in the bullpen until other changes to the form were needed. The Committee also asked the Subcommittee to propose a similar change for the related definition of "Claim" on the back of Form 10.

The Subcommittee recommends that the definition of "Claim" be revised as set forth below:

> **"Claim**
>
> A claim is a creditor's right to receive payment on a debt owed by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C.§101(5). A claim may be secured or unsecured."

An annotated version of Form 10 is attached. Like the change to "creditor," the proposed change to the definition of "claim" can wait in the bullpen until a more significant change to the form is proposed.

Official Form 10 (12/07)

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____	PROOF OF CLAIM
Name of Debtor:	Case Number:

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):

Name and address where notices should be sent:

Telephone number:

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:_____
(*If known*)

Filed on:_____

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $_____

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: _____
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property:$_____ **Annual Interest Rate**___**%**

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured: $**_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

Date:

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. **Amount of Claim as of Date Case Filed:**
State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. **Basis for Claim:**
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card.

3. **Last Four Digits of Any Number by Which Creditor Identifies Debtor:**
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. **Secured Claim:**
Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. **Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**
If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. **Credits:**
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. **Documents:**
Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:
The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is the person, corporation, or other entity owed a debt by the debtor on the date of the bankruptcy filing.

Claim
A claim is the creditor's right to receive payment on a debt that was owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be part unsecured if the amount of the claim exceeds the valu of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured cla that are paid from the available money or property in bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when t has masked, edited out, or otherwise d information. A creditor should redact last four digits of any social security, i identification, or financial account nu initials of a minor's name and only the person's date of birth.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Creditor
A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. § 101(10).

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communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The

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Claim
A claim is a creditor's right to receive payment on a debt owed by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C.§101(5). A claim may be secured or unsecured.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: SUBCOMMITTEE ON OFFICIAL FORMS

RE: OFFICIAL FORM 9F

DATE: NOVEMBER 23, 2007

The Subcommittee met on November 23, 2007 to consider several matters, one of which was a somewhat technical amendment to Official Form 9F.

Amendments to the various versions of Official Form 9 became effective on December 1, 2007. Included among those were amendments to Form 9F, the Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors, and Deadlines in cases filed under chapter 11 by a corporation or a partnership. The amendments to most versions of Form 9 included the deletion of the language that called for debtors to state their telephone numbers. This deletion is consistent with the Judicial Conference privacy policy and was approved by the Advisory Committee. In the case of Official Form 9F, the deletion was inadvertently overlooked, and the forms still contains that language requesting the debtor's phone number in the box that asks for all of the names used by the debtor in the last eight years. It is the only version of the Official Forms 9 that still requests the debtor's phone number.

The Subcommittee recommends that Official Form 9F be revised to delete the request for the debtor's telephone number.

UNITED STATES BANKRUPTCY COURT_____ **District of**_____

Notice of
Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____(date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter_____on _____(date) and was converted to a case under chapter 11 on_____(date).]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number:
	Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)./Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Attorney for Debtor(s) (name and address):
Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. ( ) P. M. Location:

Deadline to File a Proof of Claim

Proof of Claim must be *received* by the bankruptcy clerk's office by the following deadline:

Notice of deadline will be sent at a later time.

Creditor with a Foreign Address:
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office:	**For the Court:**
	Clerk of the Bankruptcy Court:
Telephone number:	
Hours Open:	Date:

7F

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE – SCOTT MYERS AND JIM WANNAMAKER

RE: "FILING DEADLINES" NOTE ON FORM 23

DATE: FEBRUARY 28, 2008

Mark Diamond, an attorney and the operations manager of the bankruptcy court in the Southern District of New York, noticed an inconsistency with the "Filing Deadlines" note at the bottom of **Official Form 23**. The form, entitled Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management, was amended on December 1, 2007.[1]

Mark noted that the pending amendment to Rule 1007(c) that will go into effect on December 1, 2008, includes a deadline for filing the certificate in a chapter 11 case in which the debtor requests a hardship discharge under section 1141(d)(5)(B) of the Code. Currently, the note at the bottom of Form 23 does not include the same deadline.

Although an individual receiving a hardship discharge in chapter 11 would be rare, to avoid confusion, the note should track the language in the pending rule. The suggested fix conforms to the language of pending Rule 1007(c) by adding a reference to section 1141(d)(5)(B) and removing the words "entry of." As revised, the note would read:

> *Filing Deadlines*: In a chapter 7 case, file within 45 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 11 or 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for ~~entry of~~ a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)

[1] Mark also argues that an individual debtor in chapter 11 should not be required to file OF 23 at all. But the Judicial Conference has already approved the Advisory Committee's decision to require the form be completed by an individual debtor "in ... a chapter 11 case in which § 1141(d)(3) applies ...".

Because this is merely a conforming change, the Subcommittee recommends that it go into effect without publication on December 1, 2008, the same time as the proposed amendment to Rule 1007(c).

B23 (Official Form 23) (12/08)

United States Bankruptcy Court

_____ District Of _____

In re _____, Case No. _____

Debtor

Chapter _____

DEBTOR'S CERTIFICATION OF COMPLETION OF POSTPETITION INSTRUCTIONAL COURSE CONCERNING PERSONAL FINANCIAL MANAGEMENT

Every individual debtor in a chapter 7, chapter 11 in which § 1141(d)(3) applies, or chapter 13 case must file this certification. If a joint petition is filed, each spouse must complete and file a separate certification. Complete one of the following statements and file by the deadline stated below:

☐ I, _____, the debtor in the above-styled case, hereby
(Printed Name of Debtor)
certify that on _____ (Date), I completed an instructional course in personal financial management provided by _____, an approved personal financial
(Name of Provider)
management provider.

Certificate No. (if any):_____.

☐ I, _____, the debtor in the above-styled case, hereby
(Printed Name of Debtor)
certify that no personal financial management course is required because of *[Check the appropriate box.]*:

☐ Incapacity or disability, as defined in 11 U.S.C. § 109(h);

☐ Active military duty in a military combat zone; or

☐ Residence in a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses are not adequate at this time to serve the additional individuals who would otherwise be required to complete such courses.

Signature of Debtor: _____

Date: _____

Instructions: Use this form only to certify whether you completed a course in personal financial management. (Fed. R. Bankr. P. 1007(b)(7).) Do NOT use this form to file the certificate given to you by your prepetition credit counseling provider and do NOT include with the petition when filing your case.

Filing Deadlines: In a chapter 7 case, file within 45 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 11 or 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for ~~entry of~~ a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE – SCOTT MYERS

RE: JANUARY 1, 2008, CHANGES TO FORM 1 and FORMS 22A, 22B, and 22C

DATE: MARCH 3, 2008

After the Jackson Hole meeting last fall, the Advisory Committee approved changes to Forms 1, 22A and 22C by email vote. The proposed changes, described below, were also approved by the Standing Committee and the Executive Committee of the Judicial Conference and went into effect on January 1, 2008.

Form 1

Official Form 1, the Voluntary Petition, was amended to make the Official Form consistent with new Bankruptcy Rule 9037 by requiring that filers redact individual taxpayer identification numbers (ITINs) as well as social security numbers. Other changes in Official Form 1 were effective on December 1, 2007.

Forms 22A, 22B, and 22C

Official Forms 22A and 22C, the means test and current monthly income forms for chapter 7 and chapter 13 cases, were amended to conform to changes in the Internal Revenue Service's national standards and local standards for tax collection. The revised IRS standards were not available at the time of the Jackson Hole meeting, but just prior to the meeting, the Committee learned that proposed changes that would affect Forms 22A and 22C would be implemented by the IRS sometime in the fall of 2007.

The revised IRS standards were incorporated into the two Official Forms 22A and 22C and were approved by the Judicial Conference to go into effect on January 1, 2008, in bankruptcy cases. Pending changes in Official Form 22B, the current monthly income form for individual chapter 11 cases, were deferred to January 1 to reduce possible confusion.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: FORMS SUBCOMMITTEE - JIM WANNAMAKER

RE: CHANGES TO DIRECTOR'S FORMS 200, 254, 255, and 256

DATE: MARCH 5, 2008

Since the Jackson Hole meeting last fall, several of the Director's Procedural Forms have been revised to incorporate changes in the law or the Federal Rules.

Director's Form 200, Required Lists, Schedules, Statements and Fees, was amended in January 2008 to incorporate increases in the United States Trustee's chapter 11 quarterly fees for disbursements in chapter 11 cases, which were included in the Consolidated Appropriations Act of 2008. The list of required filings in a chapter 7 case set out on page 1 of Form 200 was revised in March 2008 to state that all individual debtors in chapter 7, not just individuals with primarily consumer debts, must complete Form 22A.

Director's Forms 254, 255, and 256, Subpoena for Rule 2004 Examination, Subpoena in an Adversary Proceeding, and Subpoena in a Case Under the Bankruptcy Code, respectively, were revised in December 2007 to incorporate the amendments to Civil Rule 45 which took effect on December 1.

Copies of the Director's Forms are posted on the Judiciary's website at http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure.

Item 8 will be an oral report.

Item 9 will be an oral report.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: JEFF MORRIS, REPORTER

RE: SUGGESTION REGARDING CHAPTER 15 PETITIONS

DATE: FEBRUARY 29, 2008

The Advisory Committee received a suggestion from the Hon. Laurel Myerson Isicoff (Bankr. S.D. Fla.) regarding the use of Official Form 1 for the commencement of a case under chapter 15 of the Bankruptcy Code. A copy of her letter is included in the Agenda materials. In a recent case, a trustee in an individual debtor bankruptcy case pending in the United Kingdom initiated a chapter 15 case in Judge Isicoff's court. The debtor had relocated to the United States, and the trustee filed Official Form 1 and properly denominated the individual as the debtor and checked the box identifying the case as one under chapter 15. The trustee intended to take action in the case to obtain and liquidate some of the debtor's jewelry that constituted assets of the estate in the case pending in the United Kingdom.

Judge Isicoff notes that the UK trustee's proper use of Official Form 1 to commence the case creates several problems. First, it creates at the very least the appearance of a "case." Judge Isicoff argues that this is inconsistent with § 1511 of the Code. That section authorizes the foreign representative to initiate a "case" once the foreign case is recognized. Using Form 1 to file a chapter 15 petition creates the appearance of a case.

Judge Isicoff also noted that the foreign representative actually filed a pleading called a "Petition for Recognition" that complied with the requirements of § 1515, but that filing was rejected in the absence of a Form 1 Voluntary Petition to accompany that pleading. She suggests

that using Official Form 1 is inconsistent with §1515. Thus, it creates the additional problem of creating confusion about the papers needed to file a chapter 15 case. Section 1515 would suggest that the case would be commenced by filing something called a Petition for Recognition, but Official Form 1 includes a check box for chapter 15.

In the case before Judge Isicoff, the use of Official Form 1 that contained the individual's name as the debtor created difficulties for the individual. She was unable to use a credit card because the credit reporting agencies report the filing of a petition under the debtor's name. Judge Isicoff concludes that the individual debtor was not a "debtor in a bankruptcy case" because she had not filed a petition or had an involuntary petition filed against her.

I would recommend that the matter be referred to the Subcommittee on Technology and Cross Border Insolvency for further consideration. Certainly, § 1515(a) anticipates the filing by a foreign representative of something called a "Petition for Recognition." Section 1504 also provides that "A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515." The Subcommittee could consider whether these provisions require that a new form be created that would govern the commencement of chapter 15 cases or whether existing Official Form 1 is sufficient, or through amendment could become sufficient, to address the matter.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
51 S.W. FIRST AVENUE
ROOM 1411
MIAMI, FLORIDA 33130

LAUREL MYERSON ISICOFF
US Bankruptcy Judge
(305) 714-1752

November 26, 2007

Peter G. McCabe
Secretary, Committee on Rules of Practice
and Procedure
Washington, D.C. 20544

Re: Chapter 15 an the Use of Official Form 1

Dear Mr. McCabe:

The purpose of this letter is to express my concern regarding the use of Official Form 1 to file a Petition for Recognition pursuant to Chapter 15 of the United States Bankruptcy Code.

Recently a bankruptcy trustee from the United Kingdom filed a Petition for Recognition using the required Official Form 1. The UK Trustee had overseen the U.K. bankruptcy of an individual, Ms. Fielding,[1] who received her discharge in the U.K. proceeding, and then moved to the United States. The U.K. Trustee sought to obtain and liquidate some of Ms. Fielding's jewelry that constituted U.K. estate assets.

Official Form 1, entitled "Voluntary Petition", required that the U.K. Trustee put Ms. Fielding's name as the "Debtor" which, of course, is technically accurate. The consequence of the filing of the "Voluntary Petition" was that when Ms. Fielding sought to use her credit card, the card was declined because of the pending bankruptcy. However, Ms. Fielding had not filed bankruptcy and was not, by virtue of the pending petition for recognition, a debtor in a pending bankruptcy case.

11 U.S.C. §1504, titled "Commencement of Ancillary Case", provides that a chapter 15 case is commenced by the filing of a petition for recognition under 11 U.S.C. §1515. A petition for recognition of a foreign proceeding may only be filed by a foreign representative.

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[1]Pursuant to agreed order, and to remedy the problem I am outlining in this letter, I purged the petition, thus, while the chapter 15 case remains open - Case No. 07-17417 - Official Form 1 no longer appears on the court docket.

11 U.S.C. §1511, entitled "Commencement of Case under Section 301 or 303", provides that a foreign representative may commence an involuntary case of the debtor under 11 U.S.C. §303[2], or a voluntary case of the debtor under 11 U.S.C. §§301 or 302, but only if the petition has been recognized as a foreign main proceeding.

The use of Official Form 1 to file a petition for recognition of a foreign proceeding is, consequently, inconsistent with Chapter 15 of the Bankruptcy Code. A petition for recognition under section 1515 to commence an ancillary case must be accompanied by certain documents and statements that are not relevant to, or necessary for, the commencement of a bankruptcy case under sections 301 or 302. Moreover, the foreign representative's authority to commence a bankruptcy case of the debtor is, as set forth in section 1511, delimited by two alternative conditions precedent, even after recognition is granted. Either the foreign proceeding has been recognized as a main proceeding, whereby the foreign representative would then commence a case (a separate case) under section 301 or 302[3], or the foreign representative would file, and properly serve, an involuntary petition under section 303, which would then require the normal review process prior to entry of an order for relief in the case opened when the involuntary petition was filed.

The use of Official Form 1 for a petition for recognition creates two problems - first, it creates the very problem that Section 1511 was designed to prevent, that is, a U.S. bankruptcy case of a debtor prior to determination by a court that such an act is authorized. Second, it creates confusion regarding the requirements for opening an ancillary case. In the case of Ms. Fielding, the foreign representative properly filed a pleading called "Petition for Recognition" that set forth the statements, and attached the documents, required by 11 U.S.C. §1515. Nonetheless, the foreign representative's petition was refused until, in addition, the foreign representative filed Official Form 1.

I understand that the Rules Committee previously discussed this issue. If my understanding is correct, I would respectfully request the committee reconsider its decision. In any event, I respectfully submit that the required use of Official Form 1 when a petition for recognition is filed should be eliminated.

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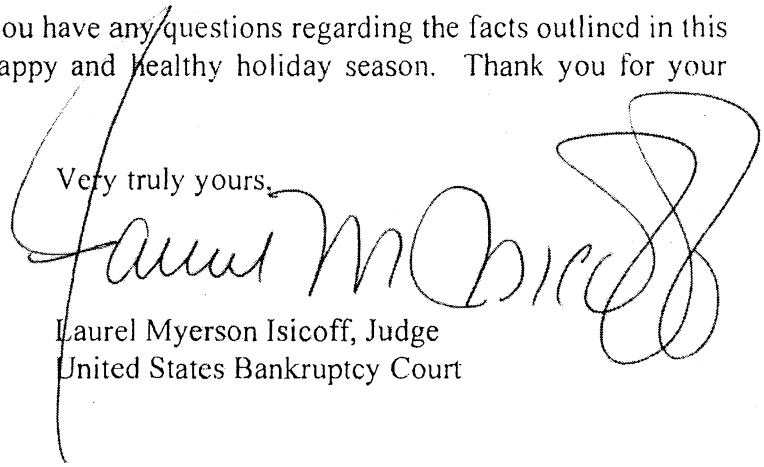
[2]Bankruptcy Rule 1010 appears to have an error as well. Nothing in Chapter 15 requires service of a petition for recognition of a foreign proceeding, but if service is required, there is nothing that supports treatment of a petition for recognition of a foreign main proceeding different than the treatment of a petition for recognition of a foreign non-main proceeding. Any difference only comes into play once the petition is granted. The relevance of Bankruptcy Rule 1010, then, would only apply when the foreign representative, once recognized, filed an involuntary petition against the debtor.

[3]Indeed, it does not appear the foreign representative would necessarily need to file in the same jurisdiction in which the foreign proceeding was recognized. Otherwise the verbiage in section 1511(b) would be superfluous.

Please feel free to contact me if you have any questions regarding the facts outlined in this letter. I hope you and yours have a happy and healthy holiday season. Thank you for your consideration.

Very truly yours,



Laurel Myerson Isicoff, Judge
United States Bankruptcy Court

LMI/em

Item 11 will be an oral report.

JAMES C. DUFF
Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

January 16, 2008

MEMORANDUM

To: Clerks, United States District Courts
Clerks, United States Bankruptcy Courts

From: James C. Duff

RE: ELECTRONIC FORMAT FOR JUDGMENT AND ORDER BOOK AND INDEX **(INFORMATION)**

The transition to electronic files has had a significant impact on a number of operational processes in clerks' offices. Over the past year, we have had several inquiries regarding whether the existence of electronic files eliminated the need for the judgment indices maintained by district and bankruptcy courts.

For decades, in accordance with federal rule, the clerks made a copy of each judgment, originally by handwriting it into a book or notebook, and more recently by placing a copy into a separate file or binder. As federal court records became increasingly automated, many clerks asked whether they are limited to this paper-based method currently described in the Clerks' Manuals. Given the capabilities of present systems for electronic filing, storage, search-and-retrieval, and remote access to court records, clerks no longer need to resort to the outdated manual methods.

This memorandum authorizes clerks of the United States courts to keep their files and indices of civil judgments and orders in electronic form, **using any automated means that the court determines will meet the needs of the users of those records and that the clerk's office can support.** Courts may utilize the Civil Judgment Index program within CM/ECF (which, for bankruptcy courts, will be available in V. 3.2, scheduled to be released in April 2008), or may opt for direct access to the judgments and orders themselves via PACER and/or the public terminals at the courthouse.

This authorization is made pursuant to the following rules: Rule 79(b) of the Federal Rules of Civil Procedure and Rule 5003(c) of the Federal Rules of Bankruptcy Procedure.

The appropriate sections of the *Guide to Judiciary Policies and Procedures* for Volume 4, Clerks Manual, United States District Courts, and Volume 5, Clerks Manual, United States Bankruptcy Courts, will be revised to reflect the policy set forth in this memorandum. If you have any questions, please contact David Scott in the District Court Administration Division at 202-502-1582 or Mary Louise Mitterhoff in the Bankruptcy Court Administration Division at 202-502-1540.

cc: Clerks, United States Courts of Appeals

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: ELIZABETH GIBSON, ASSISTANT REPORTER

RE: EOUST NOTICES OF PROPOSED RULEMAKING

DATE: MARCH 2, 2008

The Executive Office for United States Trustees ("EOUST") has recently published two notices of proposed rulemaking for public comment that may be of interest to the Advisory Committee. One notice concerns a proposed rule regarding uniform forms of trustee final reports in chapter 7, 12, and 13 cases. The other notice of proposed rulemaking addresses the procedures and criteria for the approval of credit counseling agencies.

Uniform Final Report Forms

Section 602 of BAPCPA, codified at 28 U.S.C. § 589(b), requires the Attorney General to issue uniform forms for final reports by chapter 7, chapter 12, and chapter 13 trustees (as well as uniform periodic reports by chapter 11 trustees and debtors in possession). Acting on behalf of the Attorney General, the EOUST on February 4, 2008, published a notice of proposed rulemaking for public comment entitled "Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of Title 11." 73 Fed. Reg. 6447 (to be codified at 28 CFR part 58). A copy of the notice is attached to this memorandum.

In the notice the EOUST states that currently there are over a hundred different final report forms in use throughout the country. In response to BAPCPA's mandate, the EOUST proposes this rule, which would require trustees to utilize nationally uniform final report forms. Such a requirement is intended to facilitate review of a trustee's case administration. The final

report forms will be filed via CM/ECF as "smart forms," which, the notice states, will "assist Congress in compiling data to accurately analyze bankruptcy trends when making policy decisions." Among other things, the uniform reports will reveal the amount of debt scheduled in chapters 7, 12, and 13 bankruptcy cases, the percentage of claims paid to creditors, the amount of debt discharged, and the value of assets abandoned by trustees.

The notice points out that the form required to be filed by chapter 7 trustees in no-asset cases "may have a significant economic impact on chapter 7 trustees" because it requires the trustee to provide information not currently collected. The filing of docket entry "virtual forms" in no-asset cases will no longer be permitted. Instead, the uniform form in a chapter 7 no-asset case will require the trustee to include the following information: duration of the case, assets abandoned, assets exempted, claims scheduled, and claims discharged without payment. The EOUST estimates that completion of such a form should take about 10 minutes of staff time.

The proposed forms and the data schema for completing the reports can be accessed at http://www.usdoj.gov/ust/eo/bapcpa/proposed_rulemaking/index.htm. The public comment period ends on April 4, 2008.

Approval of Credit Counseling Agencies

The other notice of proposed rulemaking concerns "Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees." 73 Fed. Reg. 6062 (Feb. 1, 2008) (to be codified at 28 CFR part 58). A copy of this notice is also attached to this memorandum.

The proposed rule, to be promulgated pursuant to 11 U.S.C. §§ 109(h)(1) and 111, would

supersede the interim rule now in effect and would provide procedures for credit counseling agencies to obtain approval under § 111. The notice points out several changes from the interim rule that are proposed in this rule. Among those changes are the following:

- a fee of $50 or less for credit counseling would be presumed to be reasonable, and prior approval of the U.S. Trustee would be required for a higher fee;
- procedures would be required for confirming the identity of clients receiving counseling by telephone or the Internet; and
- an approved agency would be required to provide services in the "languages of the major population groups served by the agency" and, when it cannot communicate with a client, to use its best efforts to expeditiously direct that person to another approved agency that can provide counseling in the client's language.

The notice states that another change from the interim rule is that the new rule would "preserv[e] clients' rights under 11 U.S.C. § 502(k)." That statutory provision permits the reduction of an unsecured consumer debt by up to 20% under certain circumstances if the creditor refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved credit counseling agency. The proposed rule itself merely states that the agency must disclose to the client before rendering any services "[t]he client's right to negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms set forth in 11 U.S.C. 502(k)." § 58.20 (l)(8).

In addition to establishing the minimum qualifications and requirements for approved credit counseling agencies, the proposed rule also prescribes procedures for seeking and

renewing approval and for seeking review of a denial of approval. The comment period for this rule ends on April 1, 2008.

proposed rule to amend the Customs and Border Protection (CBP) regulations to require both importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the United States by vessel. The proposed rule was published in the **Federal Register** on January 2, 2008, and the comment period was scheduled to expire on March 3, 2008.

DATES: Comments on the proposed rule must be received on or before March 18, 2008.

ADDRESSES: You may submit comments, identified by *docket number*, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2007–0077.
- *Mail:* Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, 1300 Pennsylvania Ave., NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and document number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of the proposed rule.

Docket: For access to the docket to read the notice of proposed rulemaking, background documents, or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Richard Di Nucci, Office of Field Operations, (202) 344–2513.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking

CBP published a notice of proposed rulemaking in the **Federal Register** (73 FR 90) on January 2, 2008, proposing to require both importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the United States by vessel. Under the proposed rule, CBP must receive this information by way of a CBP-approved electronic data interchange system. The proposed regulations are specifically intended to fulfill the requirements of section 203 of the Security and Accountability for Every (SAFE) Port Act of 2006 and section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

The notice of proposed rulemaking invited the public to comment on the proposal. Comments on the proposed rule were requested on or before March 3, 2008.

Extension of Comment Period

In response to the proposed rule published in the **Federal Register**, CBP has received correspondence requesting an extension of the comment period. A decision has been made to grant an extension of 15 days. Comments are now due on or before March 18, 2008.

Dated: January 29, 2008.

Sandra L. Bell,

Executive Director, Regulations & Rulings, Office of International Trade.

[FR Doc. E8–1864 Filed 1–31–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No: EOUST 102]

RIN 1105–AB17

Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees

AGENCY: Executive Office for United States Trustees ("EOUST"), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking ("rule") sets forth proposed procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain approved nonprofit budget and credit counseling agencies satisfy all prerequisites of the United States Code, as implemented under this rule. Under current law every individual debtor shall have received adequate counseling from an approved nonprofit budget and credit counseling agency within 180 days before the date of filing for bankruptcy relief. The current law enumerates mandatory prerequisites and minimum standards applicants seeking to become approved nonprofit budget and credit counseling agencies must meet. Under this rule, United States Trustees will approve applicants for inclusion on publicly available agency lists in one or more federal judicial districts, if an applicant establishes it meets all the requirements of the United States Code, as implemented under this rule. After obtaining such an approval, a nonprofit budget and credit counseling agency shall be authorized to provide credit counseling in a federal judicial district during the time the agency remains approved.

DATES: Submit comments on or before April 1, 2008.

ADDRESSES: Comments on the rule may be submitted via *www.regulations.gov,* by telefax to (202) 305–8536, or by postal mail to Executive Office for United States Trustees ("EOUST"), 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530. To ensure proper handling of comments, please reference "Docket No. EOUST 102" on all written and electronic correspondence.

FOR FURTHER INFORMATION CONTACT: Henry Hobbs, Acting Chief, Credit Counseling & Debtor Education Unit, at (202) 514–4100 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment

may not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph. Comments filed after the end of the comment period may be considered to the extent feasible.

Discussion of Rule

This rule implements those sections of Public Law No. 109–8, 119 Stat. 23, 37, 38 (April 20, 2005) codified at 11 U.S.C. 109(h)(1) and 111. Effective October 17, 2005, an individual may not be a debtor under title 11 of the United States Code unless during the 180-day period preceding the date of filing a bankruptcy petition, the individual receives adequate counseling from an approved nonprofit budget and credit counseling agency. 11 U.S.C. 109(h)(1) and 111. *See also* H.R. Rep. 109–31, pt. 1 at 2 (the Bankruptcy Code "requires debtors to receive credit counseling before they can be eligible for bankruptcy relief so that they will make an informed choice about bankruptcy, its alternatives, and consequences").

Section 111(b) of title 11, United States Code, governs the approval by United States Trustees of nonprofit budget and credit counseling agencies for inclusion under 11 U.S.C. 111(a)(1) on publicly available agency lists in one or more United States district courts. Section 111 of title 11 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become an approved nonprofit budget and credit counseling agency only after the United States Trustee has thoroughly reviewed the applicant's (a) qualifications, and (b) services. 11 U.S.C. 111(b)(1). A United States Trustee has statutory authority to require an applicant to provide information with respect to such review. 11 U.S.C. 111(b)(1).

After completing that thorough review, a United States Trustee may approve a nonprofit budget and credit counseling agency only if the agency establishes that it fully satisfies all requisite standards. 11 U.S.C. 111(b). Among other things, an applicant must establish it will (a) provide qualified counselors, (b) maintain adequate provision for safekeeping and payment of client funds, (c) provide adequate counseling with respect to client credit problems, and (d) deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides. 11 U.S.C. 111(c)(1).

This proposed rule will implement those statutory requirements. By accomplishing that, the rule will help debtors obtain adequate counseling from competent credit counseling agencies, and help safeguard their funds. It also will provide an appropriate mechanism by which entities can apply for approval under section 111 of title 11 to become nonprofit budget and credit counseling agencies, and will enable such applicants to attempt to meet their burden of establishing they should be approved by United States Trustees under 11 U.S.C. 111.

This rule, once final, will supersede the provisions that address credit counseling agencies in EOUST's Interim Final Rule published on July 5, 2006 (71 FR 38076) entitled *Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees* ("Interim Final Rule"). The credit counseling provisions are currently codified at 28 CFR 58.15, 58.16, and 58.17. Due to the necessity of quickly establishing a regulation to govern the credit counseling application process, EOUST promulgated the Interim Final Rule rather than a notice of proposed rulemaking. Based upon experience administering the Interim Final Rule, and upon consideration of comments received regarding the Interim Final Rule, EOUST promulgates this rule as a notice of proposed rulemaking in an effort to maximize public input. EOUST will respond to the comments to the Interim Final Rule and this rule when it publishes the final rule. EOUST will also publish another notice of proposed rulemaking that addresses providers of a financial management instructional course with a RIN number of 1105–AB31.

In an effort to make information more accessible and understandable, several changes to the Interim Final Rule are proposed in this rule, along with other changes to enhance consumer protections. Some of the more significant changes include the following: (1) Adding identification procedures for clients when accessing Internet or telephone counseling sessions; (2) establishing a limit for credit counseling fees to be presumed reasonable; (3) preserving clients' rights under 11 U.S.C. 502(k); (4) requiring agencies to provide additional counseling at no extra cost to clients when a debt repayment plan has been completed or terminated so that clients may file bankruptcy if they so choose; (5) providing guidance on agencies' responsibilities to individuals with limited English proficiency; and (6) requiring appropriate disclosures be made before providing services to clients, such as an agency's fee policy and the prohibition from receiving referral fees.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), The Principles of Regulation. The Department has determined that this rule is a "significant regulatory action" and, accordingly, this rule has been reviewed by the Office of Management and Budget ("OMB").

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the required costs for the submission of an application. Costs considered also include the cost of establishing and maintaining the approved list in each federal judicial district. In an effort to minimize the burden on applicants, the application keeps the number of items on the application to a minimum.

The costs to an applicant will be minimal. The anticipated costs are the photocopying and mailing of the requested records, along with the salaries of the employees who complete the applications. Based upon the available information, experience with the credit counseling industry, and informal communications with credit counseling agencies, it is anticipated that this cost should equal approximately $500 per application for agencies. This cost is not new; it is the same cost that credit counseling agencies incurred when applying under the Interim Final Rule. Public comments regarding the cost to applicants in completing the application are requested.

Applicants that offer debt repayment plans must also obtain a surety bond in the amount of 2% of the agency's disbursements made during the previous 12 months from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee or equal to the average daily balance maintained for the 6 months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to

determine, the states) in which the agency seeks approval from the United States Trustee. In addition, credit counseling agencies that offer debt repayment plans must obtain employee fidelity insurance in a face amount equal to 50% of the surety bond. Credit counseling agencies are entitled to receive a credit for any state bond or employee fidelity insurance already obtained.

Although applicants may charge a fee for providing the credit counseling services in accordance with this rule, agencies must provide credit counseling without regard to a client's ability to pay the fee. Based upon the available information, current practice of many credit counseling agencies, experience with the credit counseling industry, and informal communications with credit counseling agencies, $50 is presumed to be a reasonable fee for credit counseling. The United States Government Accountability Office, after conducting a study on credit counseling, found that $50 was the typical rate charged by credit counseling agencies and that industry observers and consumer advocates considered this amount to be reasonable. Public comments as to the reasonableness of $50 for credit counseling are requested.

The amount presumed to be reasonable for credit counseling fees will be reviewed periodically, but not less than every four years, and the amount presumed to be reasonable will be published by notice in the **Federal Register** and identified on EOUST's Web site. In addition, all applicants must waive the fee if the client demonstrates a lack of ability to pay the fee, which shall be presumed if the client's household current income is less than 150% of the income of the official poverty line as identified by the United States Department of Health and Human Services applicable to a household of the same size.

The number of applicants that will ultimately apply is unknown, although EOUST believes that approximately 300 may ultimately apply to be approved credit counseling agencies. Currently, there are approximately 160 approved agencies. The annual hour burden on agencies is estimated to be 10 hours. This estimate is based on consultations with individuals in the credit counseling industry, and experience with applicants who completed the initial applications. Public comments regarding the annual hour burden on credit counseling agencies in completing the application are requested.

The EOUST consulted with the Federal Trade Commission ("FTC") and with the Internal Revenue Service ("IRS") in drafting this rule and the EOUST does not believe the rule has an adverse effect upon either agency.

The benefits of this rule include the development of standards that increase consumer protections, such as a limit on the presumption of reasonable fees, requirement that agencies provide adequate disclosures concerning agencies' policies, and the preservation of clients' rights under section 502(k). This rule also provides for greater supervision by the United States Trustee to ensure agencies employ proper procedures to safeguard client funds. These benefits justify its costs in complying with Congress' mandate that a list of approved agencies be established. Public Law No. 109–8, § 106(e)(1).

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 to 3520, and assigned OMB control number 1105–0084 for form EOUST–CC1, the *"Application for Approval as a Nonprofit Budget and Credit Counseling Agency."* The Department notes that full notice and comment opportunities were provided to the general public through the Paperwork Reduction Act process, and that the applications and associated requirements were modified to take into account the concerns of those who commented in this process.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This certification is based upon experience in administering the Interim Final Rule where the surety bond and insurance requirements are less than 1% of gross revenue and also less than 1% of total expenditures for the large majority of credit counseling agencies considered to be small businesses.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($100 million). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Privacy Act Statement

Section 111 of title 11, United States Code, authorizes the collection of this information. The primary use of this information is by the United States Trustee to approve nonprofit budget and credit counseling agencies. The United States Trustee will not share this information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. 71 FR 59818, 59827 (Oct. 11, 2006), JUSTICE/UST–005, Credit Counseling and Debtor Education Files and Associated Records.

Public Law 104–134 (April 26, 1996) requires that any person doing business with the federal government furnish a Social Security Number or Tax Identification Number. This is an amendment to section 7701 of title 31, United States Code. Furnishing the Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, part 58 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3); 1202; 1302;1328(g), 28 U.S.C. 509, 510, 586, 589b.

2. Add §§ 58.12, 58.13 and 58.14 to read as follows:

§ 58.12 Definitions.

(a) The following definitions apply to sections 58.12 through and including 58.24 of this part, as well as the applications and other materials agencies submit in an effort to establish they meet the requirements necessary to become an approved nonprofit budget and credit counseling agency.

(b) These terms shall have these meanings:

(1) The term "accreditation" means the accreditation that an accrediting organization bestows upon an agency because the accrediting organization has determined the agency meets or exceeds all the accrediting organization's standards;

(2) The term "accrediting organization" means either an entity that provides accreditation to agencies or provides certification to counselors, provided, however, that an accrediting organization shall:

(i) not be an agency or affiliate of any agency; and

(ii) be deemed acceptable by the United States Trustee;

(3) The term "adequate counseling" means the actual receipt by a client from an approved agency of all counseling services, and all other applicable services, rights, and protections specified in:

(i) 11 U.S.C. 109(h)(1);

(ii) 11 U.S.C. 111; and

(iii) this rule;

(4) The term "affiliate of an agency" includes:

(i) every entity that is an affiliate of the agency, as the term "affiliate" is defined in 11 U.S.C. 101(2), except that the word "agency" shall be substituted for the word "debtor" in 11 U.S.C. 101(2);

(ii) each of an agency's officers and each of an agency's directors; and

(iii) every relative of an agency's officers and every relative of an agency's directors;

(5) The term "agency" and the term "budget and credit counseling agency" shall each mean a nonprofit organization that is applying under this rule for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved agency;

(6) The term "application" means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST–CC1, *Application for Approval as a Nonprofit Budget and Credit Counseling Agency*, as it shall be amended from time to time;

(7) The term "approved agency" means an agency currently approved by a United States Trustee under 11 U.S.C. 111 as an approved nonprofit budget and credit counseling agency eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(8) The term "approved list" means the list of agencies currently approved by a United States Trustee under 11 U.S.C. 111 as currently published on the United States Trustee Program's Internet site on the United States Department of Justice's Internet site;

(9) The term "audited financial statements" means financial reports audited by independent certified public accountants in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants;

(10) The term "certificate" means the certificate identified in 11 U.S.C. 521(b)(1) that an approved agency shall provide to a client after the client completes counseling services;

(11) The term "client" means an individual who seeks, receives or has received counseling services from an approved agency;

(12) The term "counseling services" means all counseling required by 11 U.S.C. 109(h) and 111, and this rule including, without limitation, services that are typically of at least 60 minutes in duration and that shall at a minimum include:

(i) Performing on behalf of, and providing to, each client a written analysis of each client's current financial condition, which analysis shall include a budget analysis, consideration of all alternatives to resolve a client's credit problems, discussion of the factors that caused such financial condition, and identification of all methods by which the client can develop a plan to respond to the financial problems without incurring negative amortization of debt; and

(ii) Providing each client the opportunity to have the agency negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k) or, if the client accepts this option and the agency is unable to provide this service, the agency shall refer the client to another approved agency in the appropriate federal judicial district that provides it;

(13) The term "counselor certification" means certification of a counselor by an accrediting organization because the accrediting organization has determined the counselor meets or exceeds all the accrediting organization's standards for counseling services or related areas, such as personal finance, budgeting, or credit or debt management;

(14) The term "criminal background check" means a report generated by the Federal Bureau of Investigation disclosing the entire criminal history record, if any, of the counselor for whom the criminal background check is sought. Whenever the Federal Bureau of Investigation does not have access to, or provides, less than the entire state criminal history record of the counselor, then the term "criminal background check" shall also include the entire state criminal history record, if any, of every state law enforcement agency where the counselor has resided for any part of the immediately preceding five years. If a criminal background check is not available from the Federal Bureau of Investigation and is not authorized by state law in the residential state of the employee, the agency shall instead obtain at least every 5 years a sworn statement from each counselor attesting to whether the counselor has been convicted of a felony, or a crime involving fraud, dishonesty, or false statements;

(15) The term "debt repayment plan" means any written document suggested, drafted, or reviewed by an approved agency that either proposes or implements any mechanism by which a client would make payments to any creditor or creditors if, during the time any such payments are being made, that creditor or those creditors would forbear from collecting or otherwise enforcing their claim or claims against the client; provided, however, that any such written document shall not constitute a debt repayment plan if the client would incur a negative amortization of debt under it;

(16) The term "Director" means the person designated or acting as the Director of the Executive Office for United States Trustees;

(17) The term "entity" shall have the meaning given that term in 11 U.S.C. 101(15);

(18) The term "fair share" means payments by a creditor to an approved agency for administering a debt repayment plan;

(19) The terms "fee" and "fee policy" each mean the aggregate of all fees, contributions, and payments an approved agency charges clients for providing counseling services; "fee policy" shall also mean the objective criteria the agency uses in determining whether to waive or reduce any fee, contribution, or payment;

(20) The term "final decision" means the decision issued by the Director that reviews the United States Trustee's decision either to deny an agency's application or to remove an agency from the approved list;

(21) The term "financial benefit" means any interest equated with money or its equivalent, including, but not limited to, stock, bonds, other investments, income, goods, services, or receivables;

(22) The term "governmental unit" shall have the meaning given that term in 11 U.S.C. 101(27);

(23) The term "independent contractor" means a person or entity who provides any good or service to an approved agency other than as an employee and as to whom the approved agency does not:

(i) Direct or control the means or methods of delivery of the service or goods being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(24) The term "languages offered" means every language other than English in which an approved agency provides counseling services;

(25) The term "legal advice" shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(26) The term "limited English proficiency" means, alternatively:

(i) An inability to speak, read, write, or understand the English language; or

(ii) The use primarily of a language other than English in a person's daily affairs;

(27) The term "locator" means any entity that assists a prospective client find an approved agency or agencies for the purpose of receiving counseling services, unless such entity is the approved agency proposing to provide counseling services to the prospective client;

(28) The term "material change" means, alternatively, any change:

(i) In the name, structure, principal contact, management, staffing, physical location, counseling services, fee policy, or method of delivery of an approved agency; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement an agency or approved agency previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(29) The term "median family income" shall have the meaning given that term in 11 U.S.C. 101(39A);

(30) The term "method of delivery" means one or more of the 3 methods by which an approved agency can provide some component of counseling services to its clients, including:

(i) "in person" delivery, which applies when a client primarily receives counseling services at a physical location with a credit counselor physically present in that location, and with the credit counselor providing oral and/or written communication to the client at the facility;

(ii) "telephone" delivery, which applies when a client primarily receives counseling services by telephone; and

(iii) "Internet" delivery, which applies when a client primarily receives counseling services through an Internet website;

(31) The term "nonprofit" means, alternatively:

(i) An entity validly organized as a not-for-profit entity under applicable state or federal law, if that entity operates as a not-for-profit entity in full compliance with all applicable state and federal law; or

(ii) A qualifying governmental unit;

(32) The term "notice" in 28 CFR 58.24 means the written communication from the United States Trustee to an agency that its application to become an approved agency has been denied or to an approved agency that it is being removed from the approved list;

(33) The term "qualifying government unit" means any governmental unit that, were it not a governmental unit, would qualify for tax-exempt status under 26 U.S.C. 501(c)(3), or would qualify as a nonprofit entity under applicable state law;

(34) The term "referral fees" means money or any other valuable consideration paid or transferred between an approved agency and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way encouraging any client or potential client to receive counseling services from the approved agency; provided, however, that "referral fees" shall not include fees paid to:

(i) The agency under a fair share agreement; or

(ii) Any locator;

(35) The term "relative" shall have the meaning given that term in 11 U.S.C. 101(45);

(36) The term "request for review" means the written communication from an agency to the Director seeking review of the United States Trustee's decision either to deny the agency's application or to remove the agency from the approved list;

(37) The term "state" means state, commonwealth, district, or territory of the United States;

(38) The term "tax waiver" means a document sufficient to permit the Internal Revenue Service to release directly to the United States Trustee information about an agency;

(39) The term "trust account" means an account with a federally insured depository institution that is separated and segregated from operating accounts, which an approved agency shall maintain in its fiduciary capacity for the purpose of receiving and holding client funds entrusted to the approved agency; and

(40) The term "United States Trustee" means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this rule.

§ 58.13 Procedures all agencies shall follow when applying to become approved agencies.

(a) An agency applying to become an approved agency shall obtain an application, including appendices, from the United States Trustee.

(b) The agency shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The agency shall submit the original of the completed application, including completed appendices and the required supporting documents, and one additional copy of those, to the United States Trustee at the address specified on the application form.

(d) The application shall be signed by an agency representative who is authorized under applicable law to sign on behalf of the applying agency.

(e) The signed application, completed appendices, and required supporting documents shall be accompanied by a writing, signed by the signatory of the application and executed on behalf of the signatory and the agency, certifying the application does not:

(1) Falsify, conceal, or cover up by any trick, scheme or device a material fact;

(2) Make any materially false, fictitious, or fraudulent statement or representation; or

(3) Make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

(f) The United States Trustee shall not consider an application that:

(1) Is incomplete;

(2) Fails to include the completed appendices or all of the required supporting documents; or

(3) Is not accompanied by the certification identified in the preceding subsection.

(g) The United States Trustee shall not consider an application on behalf of an agency if:

(1) It is submitted by any entity other than the agency; or

(2) Either the application or the accompanying certification is executed by any entity other than an agency representative who is authorized under applicable law to sign on behalf of the agency.

(h) By the act of submitting an application, an agency consents to the release and disclosure of its name and contact information on the approved list should its application be approved.

§ 58.14 Automatic expiration of agencies' status as approved agencies.

(a) Except as provided in 28 CFR 58.15(c), if an approved agency was not an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an approved agency shall cease to be an approved agency 6 months from the date on which it was approved unless the United States Trustee approves an additional 1-year period.

(b) Except as provided in 28 CFR 58.15(c), if an approved agency was an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an agency shall cease to be an approved agency 1 year from the date on which it was last approved to be an approved agency unless the United States Trustee approves an additional 1-year period.

3. Sections 58.15 through 58.17 are revised to read as follows.

§ 58.15 Procedures all approved agencies shall follow when applying for approval to act as an approved agency for an additional 1-year period.

(a) To be considered for approval to act as an approved agency for an additional 1-year term, an approved agency shall reapply by complying with all the requirements specified for agencies under 11 U.S.C. 109(h)(1) and 111, and under this rule.

(b) Such an agency shall apply no later than 45 days prior to the expiration of its six-month probationary period or annual period in order to be considered for approval for an additional 1-year period, unless a written extension is granted by the United States Trustee.

(c) An approved agency that has complied with all prerequisites for applying to act as an approved agency for an additional 1-year period may continue to operate as an approved agency while its application is under review by the United States Trustee, so long as either the application for an additional 1-year period was timely submitted, or an agency receives a written extension from the United States Trustee.

§ 58.16 Renewal for an additional 1-year period.

If an approved agency's application for an additional 1-year period is approved, such renewal period shall begin to run from the later of:

(a) The day after the expiration date of the immediately preceding approval period; or

(b) The actual date of approval of such renewal by the United States Trustee.

§ 58.17 Mandatory duty of approved agencies to notify United States Trustees of material changes.

(a) An approved agency shall immediately notify the United States Trustee in writing of any material change.

(b) An approved agency shall immediately notify the United States Trustee in writing of any failure by the approved agency to comply with any standard or requirement specified in 11 U.S.C. 109(h) or 111, this rule, or the terms under which the United States Trustee approved it to act as an approved agency.

(c) An approved agency shall immediately notify the United States Trustee in writing of any of the following events:

(1) Notification by the Internal Revenue Service or by a state or local taxing authority that the approved agency has been selected for audit or examination regarding its tax-exempt status, or any notification of a compliance check by the Internal Revenue Service or by a state or local taxing authority;

(2) Revocation or termination of the approved agency's tax-exempt status by any governmental unit or by any judicial officer;

(3) Cessation of business by the approved agency or by any office of the agency, or withdrawal from any federal judicial district(s) where the approved agency is approved;

(4) Any investigation of, or any administrative or judicial action brought against, the approved agency by any governmental unit;

(5) Termination or cancellation of any surety bond or fidelity insurance;

(6) Any administrative or judicial action brought by any entity that seeks recovery against a surety bond or fidelity insurance;

(7) Any action by a governmental unit or a court to suspend or revoke the approved agency's articles of incorporation, or any license held by the approved agency, or any authorization necessary to engage in business;

(8) A suspension, or action to suspend, any accreditation held by the approved agency, or any withdrawal by the approved agency of any application for accreditation, or any denial of any application of the approved agency for accreditation;

(9) A change in the approved agency's nonprofit status under any applicable law; and

(10) Any change in the banks or financial institutions used by the agency.

(d) An agency shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved agency is pending before the United States Trustee.

(e) An approved agency whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

4. Sections 58.18 through 58.24 are added to read as follows:

§ 58.18 Mandatory duty of approved agencies to obtain prior permission from the United States Trustee before taking certain actions.

(a) By accepting the designation to act as an approved agency, an agency agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) Cancellation or change in amount of the surety bond or employee fidelity bond or insurance;

(2) The engagement of an independent contractor to provide counseling

services or to have access to, possession of, or control over client funds;

(3) Any increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's fee policy;

(4) Expansion into additional federal judicial districts;

(5) Any changes to the method of delivery the approved agency employs to provide counseling services; or

(6) Any changes in the approved agency's counseling services.

(b) An agency applying to become an approved agency shall also obtain approval from the United States Trustee before taking any action specified in paragraph (a) of this section. It shall do so by submitting an amended application. The agency's amended application shall be accompanied by a contemporaneously executed writing, signed by the signatory of the application, that makes the certifications specified in 28 CFR 58.13(e).

(c) An approved agency shall not transfer or assign its United States Trustee approval to act as an approved agency.

§ 58.19 Criteria agencies shall satisfy to become and remain approved agencies.

(a) To become an approved agency, an agency must affirmatively establish, to the satisfaction of the United States Trustee, that the agency at the time of approval:

(1) Satisfies every requirement of this rule; and

(2) Provides adequate counseling to its clients.

(b) To remain an approved agency, an approved agency shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved agency:

(1) Has satisfied every requirement of this rule;

(2) Has provided adequate counseling to its clients; and

(3) Would continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

§ 58.20 Minimum qualifications agencies shall meet to become and remain approved agencies.

To meet the minimum qualifications set forth in 28 CFR 58.19, and in addition to the other requirements set forth in this rule, agencies and approved agencies shall comply with paragraphs (a) through (p) of this section on a continuing basis:

(a) *Compliance with all laws.* An agency shall comply with all applicable laws and regulations of the United States and each state in which the agency provides counseling services including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on Legal Advice.* An agency shall not provide legal advice.

(c) *Structure and organization.* An agency shall:

(1) Be lawfully organized and operated as a nonprofit entity; and

(2) Have a board of directors the majority of which:

(i) are not relatives;

(ii) are not employed by such agency; and

(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency.

(d) *Ethical standards.* An agency shall:

(1) Not engage in any conduct or transaction, other than counseling services, that generates a direct or indirect financial benefit for any member of the board of directors or trustees, officer, supervisor, or any relative thereof;

(2) Ensure no member of the board of directors or trustees, officer, or supervisor receives any commissions, incentives, bonuses, or benefits (monetary or non-monetary) of any kind that are directly or indirectly based on the financial or legal decisions any client or potential client makes after requesting counseling services;

(3) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 11 U.S.C. 586(a)(1) or (b) for any Federal judicial district where the agency is providing or is applying to provide counseling services, a federal judge in any Federal judicial district where the agency is providing or is applying to provide counseling services, a Federal court employee in any Federal judicial district where the agency is providing or is applying to provide counseling services, or a certified public accountant that audits the agency's trust account;

(4) Not enter into any referral agreement or receive any financial benefit that involves the agency paying to or receiving from any entity or person referral fees for the referral of clients to or by the agency, except payments:

(i) Under a fair share agreement; or

(ii) To any locator;

(5) Not enter into agreements involving counseling services that create a conflict of interest; and

(6) Not provide counseling services to a client with whom the agency has a lender-borrower relationship.

(e) *Use of credit counselors.* An agency shall have a credit counselor provide the counseling services to each of the agency's clients. The credit counselor shall interact with the client regarding the accuracy of the information obtained from the client and the alternatives available to the client for dealing with his or her current financial situation, including the plan developed to address such financial situation.

(f) *Credit counselor training, certification and experience.* An agency shall:

(1) Use only counselors who possess adequate experience providing credit counseling, which shall mean that each counselor either:

(i) Holds a counselor certification and who have complied with all continuing education requirements necessary to maintain their counselor certification; or

(ii) Has successfully completed a course of study and worked a minimum of 6 months in a related area such as personal finance, budgeting, or credit or debt management. A course of study shall include training in counseling skills, personal finance, budgeting, or credit or debt management. A counselor shall also receive annual continuing education in the areas of counseling skills, personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing credit counseling, which shall mean that, at a minimum, the agency shall either:

(i) Have experience in providing credit counseling for the 2 years immediately preceding the relevant application date; or

(ii) For each office providing counseling services, employ at least one supervisor who has met the qualifications in paragraph (f)(2)(i) of this section for no less than 2 of the 5 years preceding the relevant application date; and

(3) If offering any component of counseling services by a telephone or Internet method of delivery, use only counselors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such counseling services by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the counseling services is the client, and to determine whether the client has completely received counseling services.

(g) *No variation in services.* An agency shall ensure that the type and quality of services do not vary based on a client's decision whether to obtain a certificate in lieu of other options that may or may not be suggested by the agency.

(h) *Use of the telephone and the Internet to deliver a component of client services.* An agency shall:

(1) Not provide any client diminished counseling services because the client receives any portion of those counseling services by telephone or Internet;

(2) Confirm the identity of the client before receiving counseling services by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the client and assigning an individual access code, user ID, or password at the time of enrollment; and

(ii) Requiring the client to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the counseling services.

(i) *Services to hearing and hearing-impaired clients and potential clients.* An agency shall furnish toll-free telephone numbers for both hearing and hearing-impaired clients and potential clients whenever telephone communication is required. The agency shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired clients or potential clients.

(j) *Language services to clients and potential clients.* An agency shall communicate, in writing and orally, with clients and potential clients in the languages of the major population groups served by the agency. The agency shall provide or arrange for bilingual personnel, interpreters, or the use of communication technology, as needed, in such languages. The agency shall inform any client or potential client with limited English proficiency of the languages offered in providing counseling services. Whenever an agency cannot provide counseling services to a client or a potential client due to a person's limited English proficiency, the agency shall employ its best efforts to expeditiously direct such person to one or more approved agencies that can provide counseling services in the language of the client or potential client's choice.

(k) *Services to clients and potential clients with special needs.* An agency that provides any portion of its counseling in person shall comply with all federal, state and local laws governing facility accessibility. An agency shall also provide or arrange for communication assistance for clients or potential clients with special needs who have difficulty making their service needs known.

(l) *Mandatory disclosures to clients and potential clients.* Prior to providing any information to or obtaining any information from a client or potential client, and prior to rendering any counseling service, an agency shall disclose:

(1) The agency's fee policy;

(2) The agency's policies enabling clients to obtain counseling services for free or at reduced rates based upon the client's lack of ability to pay;

(3) The agency's funding sources;

(4) The counselors' qualifications;

(5) The potential impacts on credit reports of all alternatives the agency may discuss with the client;

(6) The agency's policy prohibiting it from paying or receiving referral fees for the referral of clients to or by the agency, except:

(i) Under a fair share agreement; or

(ii) To any locator;

(7) The agency's obligation to provide a certificate to the client promptly upon the completion of counseling services;

(8) The client's right to negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k);

(9) The fact that the agency might disclose client information to the United States Trustee in connection with the United States Trustee's oversight of the agency, or during the investigation of complaints, during on-site visits, or during quality of service reviews;

(10) The fact that the United States Trustee has reviewed only the agency's counseling services, and the fact that the United States Trustee has neither reviewed nor approved any other services the agency provides to clients; and

(11) The fact that a client will receive a certificate only if the client completes counseling services.

(m) *Complaint Procedures.* An agency shall employ complaint procedures that adequately respond to clients' concerns.

(n) *Background checks.* An agency shall:

(1) Conduct a criminal background check at least every 5 years for each person providing credit counseling, and

(2) Not employ anyone as a counselor who has been convicted of any felony, or any crime involving fraud, dishonesty, or false statements, unless the United States Trustee determines circumstances warrant a waiver of this prohibition against employment.

(o) *Agency records.* An agency shall prepare and retain records that enable the United States Trustee to evaluate whether the agency is providing adequate counseling and acting in compliance with all applicable laws and this rule. All records, including documents bearing original signatures, shall be maintained in either hard copy form or electronically in a format widely available commercially. Records that the agency shall prepare and retain for a minimum of two years, and permit review by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the agency remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the applicable periods specified in this paragraph;

(3) Annual audited financial statements, including the audited balance sheet, statement of income and retained earnings, and statement of changes in financial condition;

(4) Books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including without limitation, copies of all correspondence with or on behalf of the client, including the contract between the agency and the client and any amendments thereto;

(5) Records concerning the delivery of services to clients and potential clients with limited English proficiency and special needs, and to hearing-impaired clients and potential clients, including records:

(i) Of the number of such clients;

(ii) Of which languages are offered;

(iii) Detailing the agency's best efforts to provide services to such clients and potential clients; and

(iv) Supporting any justification if the agency did not provide services to such clients or potential clients;

(6) Records concerning the delivery of counseling services to clients for free or at reduced rates based upon the client's lack of ability to pay, including records of the number of such clients and the extent to which the agency voluntarily waived all or part of its fees under 28 CFR 58.21(c);

(7) Records of complaints and the agency's responses thereto;

(8) Records that enable the agency to verify the authenticity of certificates their clients file in bankruptcy cases; and

(9) Records that enable the agency to issue replacement certificates.

(p) *Additional minimum requirements.* An agency shall:

(1) Provide records to the United States Trustee upon request;

(2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the agency's qualifications to be an approved agency;

(3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;

(4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the credit counseling or bankruptcy process;

(5) Not exclude any client or creditor from a debt repayment plan because the creditor declines to make a fair share contribution to the agency;

(6) Take no action that would limit, inhibit, or prevent a client from bringing an action or claim for damages against an agency under any applicable law, including but not limited to 11 U.S.C. 111(g)(2);

(7) Refer clients and prospective clients for counseling services only to agencies that have been approved by a United States Trustee to provide such services;

(8) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in appendix A to the application;

(9) Not disclose or provide to a credit reporting agency any information concerning whether a client has received or sought instruction concerning credit counseling or personal financial management from an agency;

(10) Not expose the client to commercial advertising as part of or during the client's receipt of any counseling services, and never market or sell financial products or services during the counseling session; provided, however, this provision does not prohibit an agency from generally discussing all available financial products and services;

(11) Not sell information about any client or potential client to any third party without the client or potential client's prior written permission; and

(12) If the agency is tax-exempt, submit a completed and signed tax waiver permitting and directing the Internal Revenue Service to provide the United States Trustee with access to the Internal Revenue Service's files relating to the agency.

§ 58.21 Additional minimum requirements to become and remain approved agencies relating to fees.

(a) If a fee for, or relating to, credit counseling services is charged by an agency, such fee shall be reasonable:

(1) A fee of $50 or less for credit counseling services is presumed to be reasonable and an agency need not obtain prior approval of the United States Trustee to charge such a fee;

(2) A fee exceeding $50 for credit counseling services is not presumed to be reasonable and an agency must obtain prior approval from the United States Trustee to charge such a fee. The agency bears the burden of establishing that its proposed fee is reasonable. At a minimum, the agency must demonstrate that its cost for delivering such services justify the fee; and

(3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section periodically, but not less than every 4 years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto shall be published in the **Federal Register**.

(b) An agency shall waive the fee whenever a client demonstrates a lack of ability to pay the fee. A client shall be deemed to have demonstrated a lack of ability to pay the fee if the client's household current income is less than 150% of the income of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) as identified in the Poverty Guidelines updated periodically in the **Federal Register** by the United States Department of Health and Human Services applicable to a family or household of the size involved in the fee decision.

(c) Notwithstanding the requirements of paragraph (b) of this section, an agency may also waive fees based upon other considerations, including, but not limited to:

(1) The client's net worth;

(2) The percentage of the client's income from government assistance programs;

(3) Whether the client is receiving pro bono legal services in connection with a filed or anticipated bankruptcy case; or

(4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the client and his or her spouse, when multiplied times 12, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) An agency shall not link a client or potential client's purchase of counseling services to the purchase of any other service offered by the agency.

§ 58.22 Additional minimum requirements to become and remain approved agencies relating to certificates.

(a) An approved agency shall deliver a certificate only to the client who took and completed the counseling services, except that an approved agency shall instead deliver a certificate to the attorney of a client who took and completed counseling services if the client specifically requests that in writing.

(b) An approved agency shall attach to the certificate:

(1) The client's debt repayment plan (if any); and

(2) If the counselor determines a viable alternative to bankruptcy is available to the client to resolve his or her credit problems, the client's budget analysis.

(c) An approved agency shall deliver a certificate to a client no later than one business day after the client completed counseling services.

(d) If an approved agency provides other financial counseling in addition to counseling services, and such other financial counseling satisfies the requirements for counseling services specified in 11 U.S.C. 109(h) and 111, and this rule, a person completing such other financial counseling is a client and the approved agency shall deliver a certificate to the client no later than one business day after the client's request. The approved agency shall not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with paragraph (g) of this section.

(e) An approved agency shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee.

(f) An approved agency shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.

(g) An approved agency shall not charge a separate fee for the issuance of a certificate or replacement certificate, unless:

(1) The approved agency has disclosed such fee in writing before any counseling services are provided and before any payment is made by the client;

(2) The approved agency obtains the written consent of the client before the client commences receiving counseling services; and

(3) Such fee is reasonable and otherwise complies with the waiver requirements of 28 CFR 58.21.

(h) An approved agency shall issue a certificate to each client who completes counseling services. Spouses receiving counseling services jointly shall each receive a certificate.

(i) An approved agency shall issue a replacement certificate to a client who requests one.

(j) An approved agency shall not file certificates with the court.

(k) Only an authorized officer, supervisor or employee of an approved agency shall issue a certificate, and an approved agency shall not transfer or delegate authority to issue certificates to any other entity.

(l) An approved agency shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(m) An approved agency shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (k) of this section, which signature shall be either:

(1) An original signature; or

(2) In a format approved for electronic filing with the court (most typically in the form /s/ name of counselor); however, whenever a certificate is prepared for filing electronically with the court, a certificate with the counselor's original signature shall also be provided to the client.

(n) An approved agency shall affix to the certificate the exact name under which the approved agency is incorporated or organized.

(o) An approved agency shall identify on the certificate:

(1) The specific Federal judicial district requested by the client;

(2) Whether counseling services were provided in person, by telephone or via the Internet;

(3) The date on which counseling services were completed by the client; and

(4) The name of the counselor that provided the counseling services.

(p) An approved agency shall affix the client's full, accurate name to the certificate. If the counseling services are obtained by a client through a duly authorized representative, the certificate shall also set forth the name of the legal representative and legal capacity of that representative.

(q) If an individual enters into a debt repayment plan after completing credit counseling, upon the client's request after the completion or termination of the debt repayment plan, the approved agency shall:

(1) Provide such additional credit counseling as is necessary at such time to comply with the requirements specified in 11 U.S.C. 109(h) and 111, and this rule, including reviewing the client's current financial condition and counseling the client regarding the alternatives to resolve the client's credit problems;

(2) Deliver a certificate to the client no later than one business day after the client completed such additional counseling; and

(3) Not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with paragraph (g) of this section.

§ 58.23 Additional financial requirements and bonding and insurance requirements for agencies offering debt repayment plans.

If an agency offers debt repayment plans, an agency shall possess adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan, and provide for the safekeeping of client funds, which shall include:

(a) Depositing all client funds into a deposit account, held in trust, at a federally insured depository institution. Each such trust account shall be established in a fiduciary capacity and shall be in full compliance with federal law such that each client's funds shall be protected by federal deposit insurance up to the maximum amount allowable by federal law.

(b) Keeping and maintaining books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including without limitation, all of the following:

(1) Separate files for each client's account that include copies of all correspondence with or on behalf of the client, including:

(i) All agreements with all entities, including the contract between the agency and the client and any amendments thereto;

(ii) The analysis of the client's budget;

(iii) Correspondence between the agency and the client's creditors;

(iv) The notice given to creditors of any debt repayment plan; and

(v) All written statements of account provided to the client and subsidiary ledgers concerning any debt repayment plan;

(2) A trust account general ledger reflecting all deposits to and disbursements from all trust accounts, which shall be kept current at all times;

(3) A reconciliation of the trust accounts, prepared at least once a month; and

(4) An operating account general ledger reflecting all of the agency's financial transactions involving the agency's operating account, which shall be kept current at least on a monthly basis.

(c) Allowing an independent certified public accounting firm to audit the trust accounts annually in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and any Statement of Work prepared by the United States Trustee, which audit shall include:

(1) A report of all trust account activity including:

(i) The balance of each trust account at the beginning and end of the period;

(ii) The total of all receipts from clients and disbursements to creditors during the reporting period;

(iii) The total of all disbursements to the agency; and

(iv) The reconciliation of each trust account;

(2) A report of all exceptions (*e.g.*, discrepancies, irregularities, and errors) found, regardless of materiality; and

(3) An evaluation of the agency's trust account internal controls and its computer operations to determine whether it provides a reasonable assurance that the trust funds are safeguarded against loss from unauthorized use or disposition.

(d) Obtaining a surety bond payable to the United States, as follows:

(1) Subject to the minimum amount of $5,000, the amount of such surety bond shall be the lesser of:

(i) 2% of the agency's disbursements made during the previous 12 months from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee; or

(ii) Equal to the average daily balance maintained for the 6 months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee;

(2) The agency may receive an offset or credit against the surety bond amount determined under paragraph (d)(1) of this section if:

(i) The agency has previously obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of

credit in compliance with the licensing requirements of the state in which the agency seeks approval from the United States Trustee;

(ii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the agency;

(iii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, is written in favor of the state or the appropriate state agency; and

(iv) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit; or

(B) The surety bond amount determined under paragraph (d)(1) of this section;

(3) If an agency has contracted with an independent contractor to administer any part of its debt repayment plans:

(i) Except as provided in paragraphs (d)(3)(ii) and (iii) of this section, the independent contractor shall:

(A) Be an approved agency; or

(B) If the independent contractor is not an approved agency, then the independent contractor shall:

(*1*) Be specifically covered under the agency's surety bond required under paragraph (d)(1) of this section; or

(*2*) Have a surety bond that meets the requirements of paragraph (d)(1) of this section; and

(C) Agree in writing to allow the United States Trustee to audit the independent contractor's trust accounts for the debt repayment plans administered on behalf of the agency and to review the independent contractor's internal controls and administrative procedures;

(ii) If the independent contractor holds funds for transmission for 5 days or less, then the amount of the required surety bond under paragraph (d)(3)(i)(B) of this section shall be $500,000;

(iii) If the independent contractor performs only electronic fund transfers on the agency's behalf, then the independent contractor need not satisfy the requirements of paragraph (d)(3)(i) of this section during such time as the independent contractor is authorized by the National Automated Clearing House Association to participate in the Automated Clearing House system.

(e) Obtaining either adequate employee bonding or fidelity insurance, as follows:

(1) Subject to the minimum amount set forth below, the amount of such bonding or fidelity insurance shall be 50% of the surety bond amount calculated under paragraph (d)(1) of this section, prior to any offset or credit that the agency may receive under paragraph (d)(2) of this section; provided, however, that at a minimum, the employee bond or fidelity insurance must be $5,000;

(2) An agency may receive an offset or credit against the employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section if:

(i) The agency has previously obtained an employee bond or fidelity insurance in compliance with the requirements of a state in which the agency seeks approval from the United States Trustee; and

(ii) The deductible does not exceed a reasonable amount considering the financial resources of the agency; and

(iii) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such employee bond or fidelity insurance; or

(B) The employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section.

§ 58.24 Procedures for obtaining final agency action on United States Trustees' decisions to deny agencies' applications and to remove approved agencies from the approved list.

(a) The United States Trustee shall remove an approved agency from the approved list whenever an approved agency requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved agency from the approved list, and thereby terminate the approved agency's authorization to provide counseling services, at any time.

(c) The United States Trustee may issue a decision to deny an agency's application or remove an agency from the approved list whenever the United States Trustee determines that the agency has failed to comply with the standards or requirements specified in 11 U.S.C.§ 109(h) or 111, this rule, or the terms under which the United States Trustee designated it to act as an approved agency, including but not limited to finding any of the following:

(1) The agency is not employing adequate procedures for safekeeping or paying client funds, which results in a loss to a client;

(2) The agency's surety bond has been canceled;

(3) Any entity has revoked the agency's nonprofit status, even if that revocation is subject to further administrative or judicial litigation, review or appeal;

(4) Any entity has suspended or revoked the agency's license to do business in any jurisdiction; or

(5) Any United States district court has removed the agency under 11 U.S.C. 111(e).

(d) If the Internal Revenue Service revokes an agency's tax exempt status, the United States Trustee shall promptly commence an investigation to determine whether any of the factors set forth in paragraphs (c)(1) through (5) of this section exist.

(e) The United States Trustee shall provide to the agency in writing a notice of any decision either to:

(1) Deny the agency's application; or

(2) Remove the agency from the approved list.

(f) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the agency copies of any such documents that were not supplied to the United States Trustee by the agency. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(g) Except as provided in paragraph (i) of this section, the notice shall advise the agency that the denial or removal decision shall become final agency action, and unreviewable, unless the agency submits in writing a request for review by the Director no later than 20 calendar days from the date of the notice to the agency.

(h) Except as provided in paragraph (i) of this section, the decision to deny an agency's application or remove an agency from the approved list shall take effect upon:

(1) The expiration of the agency's time to seek review from the Director, if the agency fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final written decision, if the agency timely seeks such review.

(i) The United States Trustee may provide that a decision to remove an agency from the approved list is effective immediately and deny the agency the right to provide counseling services whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) through (5) of this section.

(j) An agency's request for review shall be in writing and shall fully describe why the agency disagrees with the denial or removal decision, and shall be accompanied by all documents and materials the agency wants the Director to consider in reviewing the denial or removal decision. The agency shall send the original and one copy of the request for review, including all accompanying documents and

materials, to the Office of the Director by overnight courier, for delivery the next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 20 calendar days from the date of the notice to the agency.

(k) The United States Trustee shall have 30 calendar days from the date of the agency's request for review to submit to the Director a written response regarding the matters raised in the agency's request for review. The United States Trustee shall provide a copy of this response to the agency by overnight courier, for delivery the next business day.

(l) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(m) In reviewing the decision to deny an agency's application or remove an agency from the approved list, the Director shall determine:

(1) Whether the denial or removal decision is supported by the record; and

(2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(n) Except as provided in paragraph (o) of this section, the Director shall issue a written final decision no later than 60 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time or the Director extends the deadline. The Director's final decision on the agency's request for review shall constitute final agency action.

(o) Whenever the United States Trustee provides under paragraph (i) of this section that a decision to remove an agency from the approved list is effective immediately, the Director shall issue a written decision no later than 15 calender days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time, which decision shall:

(1) Be limited to deciding whether the determination that the removal decision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the agency should be removed from the approved list; after issuing the decision, the Director shall issue a written final decision by the deadline set forth in paragraph (n) of this section.

(p) In reaching a decision under paragraphs (n) and (o) of this section, the Director may specify a person to act as a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(q) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

(r) When a decision to remove an agency from the approved list takes effect, the agency shall:

(1) Immediately cease providing counseling services to clients and shall not agree to provide counseling services to prospective clients;

(2) No later than 3 business days after the date of removal, issue all certificates to all clients who completed counseling services prior to the agency's removal from the approved list; and

(3) No later than 3 business days after the date of removal, return all fees to clients and prospective clients who had paid for counseling services, but had not completely received them.

(s) An agency must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: January 18, 2008.

Clifford J. White III,

Director, Executive Office for United States Trustees.

[FR Doc. E8–1451 Filed 1–31–08; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

[Docket ID: MMS–2007–OMM–0064]

RIN 1010–AD44

Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS proposes to amend its regulations for oil and gas leases on the Outer Continental Shelf to implement a mandate in the Gulf of Mexico Energy Security Act of 2006. This proposed rule would (1) provide a credit to lessees who relinquish certain eligible leases in the Gulf of Mexico; (2) define eligible leases as those within 125 miles of the Florida coast in the Eastern Planning Area and certain leases within 100 miles of the Florida coast in the Central Planning Area; and (3) allow lessees to use the credits in lieu of monetary payment for either a lease bonus bid or royalty due on oil and gas production from most other leases in the Gulf of Mexico or to transfer the credits to other Gulf of Mexico lessees for their use.

DATES: Submit comments by April 1, 2008. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this proposed rule by March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, at (703) 787–1536.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD44 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Select "Minerals Management Service" from the agency drop-down menu, then click "submit." In the Docket ID column, select MMS–2007–OMM–0064 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link. All comments will be posted to the docket.
- *Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention:* Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference "Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida, 1010–AD44" in your comments and include your name and return address.
- *Send comments on the information collection in this rule to:* Interior Desk Officer 1010–AD44, Office of Management and Budget; 202–395–6566 (fax); e-mail: *oira_docket@omb.eop.gov.* Please also send a copy to MMS.

SUPPLEMENTARY INFORMATION:

Background and Summary of the Proposed Rule

Congress passed, and on December 20, 2006, the President signed, the Gulf of Mexico Energy Security Act of 2006 (GOMESA), Public Law No. 109–432.

Proposed Rules

Federal Register
Vol. 73, No. 23
Monday, February 4, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No: EOUST 101]

RIN 1105–AB29

Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of Title 11

AGENCY: Executive Office for United States Trustees (EOUST), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice, through its component, EOUST, is issuing this notice of proposed rulemaking (rule) pursuant to Section 602 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The BAPCPA requires the Department to issue rules requiring uniform forms for final reports (Uniform Forms) by trustees in cases under chapters 7, 12, and 13 of title 11. The BAPCPA requires the rule to strike the best achievable practical balance between: the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; economy, simplicity, and lack of undue burden on persons with a duty to file these reports; and appropriate privacy concerns and safeguards.

DATES: Submit comments on or before April 4, 2008.

ADDRESSES: Comments on the rule may be submitted via *www.regulations.gov*, by telefax to (202) 307–2397, or by postal mail to Executive Office for United States Trustees ("EOUST"), 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530. To ensure proper handling of comments, please reference "Docket No. EOUST 101" on all written and electronic correspondence.

FOR FURTHER INFORMATION CONTACT: Roberta A. DeAngelis, Acting General Counsel, or Larry Wahlquist, Office of General Counsel, at (202) 307–1399 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov*. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Discussion of Rule

The administration of all chapter 7, 12, and 13 bankruptcy cases is entrusted to private persons who are trustees under the supervision and oversight of a regional United States Trustee. As distinguished from trustees, United States Trustees are employees of the Department of Justice.

In every case, a trustee must file with the court and submit to the United States Trustee a final report and final account of his or her case administration. The United States Trustee reviews these reports and they are then filed with the court.

While the trustee final report forms currently used across the country essentially serve the same purpose and convey the same information, the format of the forms and required attachments, and even the names of the forms, can be different. In fact, there are over a hundred different versions of these forms in use throughout the country. With the passage of BAPCPA, Congress directed the Attorney General to draft rules creating nationally uniform forms for trustee final reports. The Attorney General delegated this authority to the Director, Executive Office for United States Trustees. In response to this congressional mandate, the Director publishes this rule, which requires trustees to utilize nationally uniform final report forms rather than the local forms currently in effect. This rule does not impose requirements on the general public; it affects only trustees who are supervised by United States Trustees.

UST Forms 102–7–TFR, 102–7–NFR, 102–7–TDR, 102–7–NDR, 102–12–FR–S, 102–13–FR–S, 102–12–FR–C, and 102–13–FR–C are the final report Uniform Forms required by this rule. The information required by these forms is set forth in proposed section 58.7 in the amendatory text below. These Uniform Forms will facilitate the review of a trustee's case administration, which will assist in maintaining the public's trust in the bankruptcy system. In addition, these reports, once filed in a case, will be available to the general public at the office of the clerk of the United States Bankruptcy Court where a case is pending during the hours established by the bankruptcy court clerk. Members of the public should contact individual United States Bankruptcy Courts to obtain information about the policies and procedures for inspection of final reports filed in any particular case. Final reports in cases are also available through the Internet by accessing the Electronic Case Filing System under PACER at *http://www.pacer.psc.uscourts.gov*.

These Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a "smart form." A smart form is a document that

is data enabled. When it is saved into the industry standard Portable Document Format (PDF), stored data tags are then available for extraction and searching. This is contrary to a form that is not data-enabled, where the PDF is simply an image of the form and data is not uniformly available for searching. The data-enabled form builds upon the existing Adobe PDF/A standard (Version 1.4). Specifically, the standard incorporates the use of XMP metadata or Acroform field and value (F/V) tags within an Adobe PDF document. The current data schema (DTD) is found on *www.usdoj.gov/ust.* Trustees may obtain these "smart form" Uniform Forms from their vendor of trustee case management software. Members of the public may obtain blank Uniform Forms from each United States Trustee field office and from the United States Trustee Program Web site at *http://www.usdoj.gov/ust.*

The usage of these Uniform Forms will accomplish Congress' mandate to develop nationally uniform forms for trustee final reports as directed in the BAPCPA. Instead of many different versions of trustee final reports, trustees throughout the country will use the same eight forms. This will greatly assist consumers in being able to understand the administration of bankruptcy cases, especially when a consumer is located in a different region from where the bankruptcy case is located. The usage of these Uniform Forms will also assist Congress in compiling data to accurately analyze bankruptcy trends when making policy decisions.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), The Principles of Regulation. The Department has determined that this rule is a "significant regulatory action" and, accordingly, this rule has been reviewed by the Office of Management and Budget ("OMB").

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the time incurred by private trustees to complete the Uniform Forms. Since most of the information in the chapter 7 Uniform Forms is already collected in most districts, the additional time required to collect the requisite information and to complete the Uniform Forms should be minimal.[1] An exception may be UST Form 102–7–NDR, which asks for information not presently collected in any district for no-asset cases. The cost of this form is addressed in the Regulatory Flexibility Act section.

In addition, the Uniform Forms will be added to the trustee case management software utilized by chapter 7 trustees. This software is provided to chapter 7 trustees by various banks free of charge in exchange for trustees depositing estate funds in these banks. For chapter 12 and chapter 13 trustees, it is anticipated that an increase in costs will be incurred due to the usage of these chapters 12 and 13 Uniform Forms. However, any associated cost will be an approved administrative expense of a standing trustee's trust operation.[2]

It is estimated that the cost to the government for developing these Uniform Forms is approximately $20,000. The estimated cost to develop a system to store information extracted from these forms, and to analyze the data, is approximately $650,000. Over the next several years, the EOUST anticipates utilizing base resources available for information technology to meet the costs associated with developing the Uniform Forms and a system to store the information extracted from the forms. There will be no additional cost to the government. In fact, this rule will reduce the costs to the government of compiling the information submitted by private trustees. Since the Uniform Forms will be data enabled, the current system of manually compiling case closing information will be replaced by a less time intensive automated system.

The benefits of this rule include establishing national uniformity in the final reports submitted by trustees, which will enable Congress, and the general public, to obtain more detailed information regarding bankruptcy cases nationally. This rule will enable Congress and the public to identify, among other things, the amount of debt scheduled in bankruptcy cases, the percentage of claims paid to creditors, the amount of debt discharged, and the value of assets abandoned by trustees.

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and certifies that none of the Uniform Forms, except for 102–7–NDR, will have a significant economic impact on a substantial number of small entities. This rule will affect only approximately 1,400 trustees. In addition, trustees already submit to the court essentially the same information as that required by this rule though formats vary in judicial districts. This rule simply creates uniform forms for all trustees to use throughout the country rather than local court forms.

For chapter 12 and chapter 13 trustees, it is estimated that there will be an increase in costs in the amount of approximately $7.00 per final report. However, this is less than 1% of chapters 12 and 13 trustees' total operating expenses. Chapters 12 and 13 standing trustees allocate this cost toward an annual budget, which means trustees deduct this cost from funds disbursed from debtors' estates to creditors. Thus, the chapters 12 and 13 Uniform Forms will not have a significant economic impact upon standing trustees.[3] Public comments regarding the economic impact of the Uniform Forms upon trustees are requested.

It is anticipated that UST Form 102–7–NDR may have a significant economic impact upon chapter 7 trustees because this form asks for information not presently collected in any district for no-asset cases. Accordingly, EOUST has prepared the following initial Regulatory Flexibility Act analysis.

A typical chapter 7 trustee may close as many as 500 no asset cases each year. The current practice allows trustees to file a docket entry "virtual form" for no asset cases, which enables a trustee to quickly complete the process on-line without having to complete a separate form and upload it to the court's electronic filing system. Additionally, a trustee may file many such virtual forms simultaneously in batch mode format.

[1] It is estimated that completion of the chapter 7 Uniform Forms, other than UST Form 102–7–NDR, will take approximately the same amount of time as the current chapter 7 final reports. Therefore, there should not be an appreciable difference in costs to complete the chapter 7 Uniform Forms as compared to current chapter 7 final report forms.

[2] Please see the Regulatory Flexibility Act section for an explanation of the chapters 12 and 13 Uniform Forms costs.

[3] Chapters 12 and 13 case trustees closed less than .001% of chapters 12 and 13 cases in fiscal year 2007.

With the introduction of the UST Form 102–7–NDR form, the current practice of filing virtual forms for no-asset cases via the court's electronic filing system will no longer be an option.

It is estimated that it will take approximately ten minutes of staff time to collect and input the information required by UST Form 102–7–NDR. A typical staff assistant earns approximately $25 per hour, which means a trustee could incur an additional $2,100 a year in increased costs. However, EOUST is currently exploring alternatives with the Administrative Office of the United States Courts to enhance the transmission of electronic data collected by the courts to EOUST. These include alternatives that would reduce or eliminate the need for trustees to manually enter the information for UST Form 102–7–NDR, which will reduce much of the increased costs mentioned above for this form.[4] In addition, EOUST has requested the Administrative Office of the United States Courts to update their electronic filing system to allow trustees to file multiple UST Form 102–7–NDR forms at once to reduce the burden on trustees and on the court. EOUST specifically invites comments from the public suggesting other methods of reducing or eliminating any additional costs associated with completing the UST Form 102–7–NDR.

Paperwork Reduction Act

These forms are associated with an open bankruptcy case. Therefore, the exemption under 5 CFR 1320.4(a)(2) applies.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act ($123 million in 2005, adjusted annually for inflation). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

[4] The enhanced data transmission contemplated by EOUST would also reduce the increased costs for chapters 12 and 13 trustees in completing the Uniform Forms.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Privacy Act Statement

28 U.S.C. 589b authorizes the collection of the information in the final reports. As part of the trustee's reporting to the court, the United States Trustee, and creditors concerning the trustee's administration of the bankruptcy estate, the United States Trustee will review the information contained in these reports. The United States Trustee will not share the information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. See 71 FR 59818, 59822 (Oct. 11, 2006), JUSTICE/UST–002, "Bankruptcy Trustee Oversight Records." Providing this information is mandatory under 11 U.S.C. 704.

List of Subjects in 28 CFR Part 58

Bankruptcy, Trusts and trustees.

For the reasons set forth in the preamble, 28 CFR part 58 is proposed to be amended as set forth below:

PART 58—[AMENDED]

1. The authority citation for part 58 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

2. Add section 58.7 to read as follows:

§ 58.7 Procedures for completing uniform forms of trustee final reports in cases filed under chapters 7, 12, and 13 of the Bankruptcy Code.

(a) *UST Form 102–7–TFR, Chapter 7 Trustee's Final Report.* A chapter 7 trustee must complete UST Form 102–7–TFR final report (TFR) before the case may be closed. This report must be submitted to the United States Trustee after liquidating the estate's assets, but before making distribution to creditors, and before filing it with the United States Bankruptcy Court. Pursuant to 28 U.S.C. 589b(d), the TFR must contain the following:

(1) Summary of the trustee's case administration;

(2) Copies of the estate's financial records;

(3) List of allowed claims;

(4) Fees and administrative expenses;

(5) Proposed dividend distribution to creditors; and

(6) Trustee's certification under penalty of perjury that all assets have been liquidated or properly accounted for, and that funds of the estate are available for distribution.

(b) *UST Form 102–7–NFR Chapter 7 Trustee's Notice of Trustee's Final Report.* After the TFR has been reviewed by the United States Trustee and filed with the United States Bankruptcy Court, if the net proceeds realized in an estate exceed $1,500, UST Form 102–7–NFR (NFR) must be sent to all creditors as the notice required under Fed. R. Bankr. P. 2002(f). The NFR must show the receipts, approved disbursements, and any balance identified on the TFR, as well as the information required in the TFR's Exhibit D. In addition, the NFR must identify the procedures for objecting to any fee application or to the TFR.

(c) *UST Form 102–7–TDR Chapter 7 Trustee's Final Account, Certification The Estate Has Been Fully Administered and Application of Trustee To Be Discharged.* After distributing all estate funds, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court the trustee's final account, UST Form 102–7–TDR (TDR). The TDR must contain the trustee's certification that the estate has been fully administered and the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the TDR must also include the following:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Claims asserted;

(6) Claims allowed; and,

(7) Distributions to claimants and claims discharged without payment, in each case by appropriate category.

(d) *UST Form 102–7–NDR Chapter 7 Trustee's Report of No Distribution.* In cases where there is no distribution of funds the case trustee must submit to the United States Trustee and file with the United States Bankruptcy Court UST Form 102–7–NDR (NDR). The NDR must contain the trustee's certification, under penalty of perjury, that the estate has

been fully administered, that the trustee has neither received nor disbursed any property or money on account of the estate except exempt property to the debtor, and that there is no property available for distribution over and above that exempted by law. In addition, the NDR must set forth the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the NDR must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Claims asserted;

(5) Claims scheduled; and,

(6) Claims discharged without payment.

(e) *UST Form 102–12–FR–S, Chapter 12 Standing Trustee's Final Report and Account and UST Form 102–13–FR–S, Chapter 13 Standing Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a standing trustee has been appointed, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 102–12–FR–S for chapter 12 cases or UST Form 102–13–FR–S for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification that the estate has been fully administered if not converted to another chapter and a request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;

(6) Claims asserted;

(7) Claims allowed;

(8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;

(9) Date of confirmation of the plan;

(10) Date of each modification thereto; and,

(11) Defaults by the debtor in performance under the plan.

(f) *UST Form 102–12–FR–C, Chapter 12 Case Trustee's Final Report and Account, and UST Form 102–13–FR–C, Chapter 13 Case Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a case trustee has been appointed, the trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 102–12–FR–C for chapter 12 cases, or UST Form 102–13–FR–C for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification, submitted under penalty of perjury, that the estate has been fully administered if not converted to another chapter and the trustee's request to be discharged from further duties as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

(1) The length of time the case was pending;

(2) Assets abandoned;

(3) Assets exempted;

(4) Receipts and disbursements of the estate;

(5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;

(6) Claims asserted;

(7) Claims allowed;

(8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;

(9) Date of confirmation of the plan;

(10) Date of each modification thereto; and,

(11) Defaults by the debtor in performance under the plan.

(g) *Mandatory Usage of Uniform Forms.* The Uniform Forms associated with this rule must be utilized by trustees when completing their final reports and final accounts. All trustees serving in districts where a United States Trustee is serving must use the Uniform Forms in the administration of their cases, in the same manner, and with the same content, as set forth in this rule:

(1) All Uniform Forms may be electronically or mechanically reproduced so long as all the content and the form remain consistent with the Uniform Forms as they are posted on EOUST's Web site;

(2) The Uniform Forms shall be filed via the United States Bankruptcy Court's Case Management/Electronic Case Filing System (CM/ECF) as a "smart form" meaning the forms are data enabled.

Dated: January 18, 2008.

Clifford J. White III,

Director, Executive Office for United States Trustees.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Overview of Uniform Forms

Form Title

UST Form 102–7–TFR—Chapter 7 Trustee's Final Report

UST Form 102–7–NFR—Chapter 7 Trustee's Notice Of Trustee's Final Report And Application For Compensation

UST Form 102–7–TDR—Chapter 7 Trustee's Final Account, Certification That The Estate Has Been Fully Administered And Application To Be Discharged

UST Form 102–7–NDR—Chapter 7 Trustee's Report Of No Distribution

UST Form 102–12–FR–S—Chapter 12 Standing Trustee's Final Report And Account

UST Form 102–13–FR–S—Chapter 13 Standing Trustee's Final Report And Account

UST Form 102–12–FR–C—Chapter 12 Case Trustee's Final Report And Account

UST Form 102–13–FR–C—Chapter 13 Case Trustee's Final Report And Account

Before a bankruptcy case may be closed, a chapter 7 trustee must make a final report and final account of the administration of cases in which the trustee liquidates non-exempt assets of debtors. To begin the case closing process with the new Uniform Forms, the chapter 7 trustee will prepare and submit UST Form 102–7–TFR (TFR) to the United States Trustee who reviews the report prior to it being filed with the United States Bankruptcy Court. The trustee prepares and submits this TFR after completing the liquidation of the assets, but before making distributions to creditors. The TFR contains a summary of the trustee's case administration, copies of the estate financial records, a list of allowed claims, fees and administrative expenses, and a proposed dividend distribution to creditors. The trustee certifies under penalty of perjury that all assets have been liquidated or properly accounted for, and that funds of the estate are available for distribution. After the TFR has been reviewed by the United States Trustee and filed with the United States Bankruptcy Court, if the net proceeds realized in an estate exceed $1,500, a notice required under Fed. R. Bankr. P. 2002(f) is sent to all creditors with a summary of the TFR final report. This notice is UST Form 102–7–NFR.

After distribution of all estate funds, a trustee submits to the United States Trustee the trustee's final account, UST Form 102–7–TDR (TDR), which is the last report in the chapter 7 case. This TDR contains the length of time the case was pending, assets abandoned, assets exempted, receipts and disbursements of the estate, claims asserted, claims allowed, and distributions to claimants and claims discharged without payment. The TDR also contains the trustee's certification that the estate has been fully administered and the trustee's request to be discharged as trustee.

In cases in which there is no distribution of funds, no asset cases, the case trustee prepares and files with the United States Bankruptcy Court UST Form 102–7–NDR, which is entitled the Report of No Distribution (NDR). UST Form 102–7–NDR contains the trustee's certification, under

penalty of perjury, that the estate has been fully administered, that the trustee has neither received nor disbursed any property or money on account of the estate except exempt property to the debtor, that there is no property available for distribution over and above that exempted by law, and the trustee's request to be discharged as trustee. The NDR will also include information concerning the length of time the case was pending, assets abandoned, assets exempted, claims asserted, claims scheduled, and claims discharged without payment.

After the final distribution to creditors in a chapter 12 or 13 case in which a standing trustee has been appointed, the trustee will file with the United States Bankruptcy Court UST Form 102–12–FR–S for chapter 12 cases or UST Form 102–13–FR–S for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee includes a certification that the estate has been fully administered if not converted to another chapter and contains the trustee's request to be discharged as trustee. These forms also include the information required for the TDR as well as the date of confirmation of the chapter 12 or 13 plan, date of each modification, and defaults by the debtor in performance under the plan, if applicable. A standing trustee is appointed by the United States Trustee under 28 U.S.C. 586 and may administer more than one chapter 13 or chapter 12 case, as opposed to a case trustee that is appointed under 11 U.S.C. 1302 or 11 U.S.C. 1202 and may administer only the one case to which the trustee is appointed.

After the final distribution to creditors in a chapter 12 or 13 case in which a case trustee has been appointed, the trustee will file with the United States Bankruptcy Court either UST Form 102–12–FR–C for chapter 12 cases, or UST Form 102–13–FR–C for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee includes a certification, submitted under penalty of perjury, that the estate has been fully administered if not converted to another chapter and the trustee's request to be discharged from further duties as trustee. In addition, the forms contain the same information as that required for chapters 12 and 13 standing trustees.

[FR Doc. E8–1450 Filed 2–1–08; 8:45 am]

BILLING CODE 4410–40–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA–R05–OAR–2007–1085; FRL–8519–2]

Approval and Promulgation of State Implementation Plans; Ohio: Proposed Approval of Revised Oxides of Nitrogen (NO_X), Phase II, and Revised NO_X Trading Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Ohio State Implementation Plan (SIP) submitted by letter on June 16, 2005. This revision addresses the requirements of EPA's NO_X SIP Call which requires further reductions in NO_X emissions based on cost-effective control measures for large internal combustion engines. The revision also addresses some revisions to the State's NO_X SIP Call trading program. EPA is proposing to determine that the Ohio SIP revision satisfies the requirements for Phase II of the NO_X SIP Call and the NO_X SIP Call trading program because, when implemented, these will meet Ohio's emission reduction requirements under Phase II of the NO_X SIP Call.

DATES: Comments must be received on or before March 5, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1085, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* "EPA–R05–OAR–2007–1085", John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery or Courier:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084, *paskevicz.john@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a non-controversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, EPA will withdraw the direct final rule and will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives meaningful adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: January 11, 2008.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. E8–1799 Filed 2–1–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 400, 405, 410, 412, 413, 414, 488, and 494

[CMS–3818–RCN]

RIN 0938–AG82

Medicare and Medicaid Programs; Conditions for Coverage for End Stage Renal Disease Facilities—Extension of Timeline for Publication of Final Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Extension of timeline for publication of final rule.

SUMMARY: This notice announces an extension of the timeline for publication of the "Medicare and Medicaid Programs; Conditions for Coverage for End Stage Renal Disease Facilities" final rule. This notice is issued in accordance with section 1871(a)(3)(B) of the Social Security Act (the Act), which requires that a notice be published in the **Federal Register** if a final regulation, due to exceptional circumstances, will take longer to publish than 3 years after the publication date of the proposed rule. In this case, the complexity of the rule and scope of public comments warrants the extension of the timeline for publication.

November 30, 2007

Re: Federal Rule of Bankruptcy Procedure 2019

Mr. Peter G. McCabe
Secretary
Committee on Rules of Practice
and Procedure of the Judicial
Conference of the United States
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear Mr. McCabe:

The Loan Syndications and Trading Association ("LSTA") and the Securities Industry and Financial Markets Association ("SIFMA") submit that Federal Rule of Bankruptcy Procedure 2019 should be repealed, because it does not sensibly implement Federal bankruptcy law, has become obsolete due to changes in the nature of chapter 11 cases, and adversely affects, with no compensating benefit, the interests of key participants in the chapter 11 process.

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1. Who Are the LSTA and SIFMA?

LSTA and SIFMA are two large not-for-profit organizations that promote sound practices and advocate effective policies in relation to the commercial loan markets and securities markets. On the issue of Rule 2019, LSTA and SIFMA have submitted jointly amicus briefs in four different chapter 11 cases in 2007 alone.[1]

LSTA is a not-for-profit organization that undertakes a wide variety of activities to foster the development of policies and market practices designed to promote just and equitable principles for transactions among institutional investors engaged in buying and selling commercial loans.[2] Through its activities, the LSTA seeks to encourage cooperation and coordination with firms facilitating transactions in loans and related claims. The LSTA was formed by a small group of debt traders in an effort to develop standard settlement and operational procedures, market practices, and other mechanisms to more efficiently trade the increasing volume of both high-quality and distressed bank debt. The LSTA has become the principal advocate for the commercial loan asset market participants with the goal of promoting greater transparency, regularity and confidence among all market participants. LSTA membership provides member firms with the opportunity to participate in the decision-making process that ultimately establishes market practices, develops standard documentation related to loan transactions and strengthens and influences the direction of financial market infrastructure. The LSTA currently has over 250 members, including the

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1 Those briefs, in the LeNature, Musicland, Northwest Airlines and Scotia Development cases, can be accessed at SIFMA's website (www.sifma.org) under the "Regulatory/Legal" tab.

2 All information concerning the LSTA comes from http://www.lsta.org.

leading broker-dealers, commercial banks, investment banks, mutual funds, hedge funds, fund managers, insurance companies and other major institutional investors worldwide.

The Securities Industry and Financial Markets Association, also a not-for-profit organization ("SIFMA"), brings together the shared interests of more that 605 securities firms, banks and asset managers.[3] SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. In pursuit of this mission, SIFMA provides its members with a network of access and forward-looking services as well as educational resources for the professionals in the financial services industry and the investors whom they serve. Among its goals for 2007, SIFMA is seeking to encourage retirement savings and investment, promote effective and efficient regulation, and facilitate more open, competitive and efficient global capital markets. By accomplishing these goals, SIFMA hopes to earn, inspire and uphold the public's trust in the financial industry and the markets. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington, D.C, and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

2. LSTA and SIFMA Urge the Committee to Recommend the Repeal of Rule 2019

Pursuant to their respective missions and having the benefit of substantial consultation with their respective constituencies, both the LSTA and SIFMA oppose Federal Rule of Bankruptcy Procedure 2019 in its current form. Rule 2019 requires certain

[3] All information concerning the SIFMA comes from http://www.sifma.org.

disclosures from "unofficial" or "*ad hoc*" committees and their members (and only from those entities). Specifically, Rule 2019 requires that:

> [I]n a... chapter 11 reorganization case, except ["official" committees], every... committee representing more than one creditor or equity security holder... shall file a verified statement setting forth:
>
> (1) the name and address of the creditor or equity security holder;
>
> (2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition;
>
> (3) a recital of the pertinent facts and circumstances in connection with the employment of the... committee... [and] the names of the entity or entities at whose instance, directly or indirectly... the committee was organized or agreed to act; and
>
> (4) with reference to the time... the organization or formation of the committee... the amounts of claims or interests owned by... the members of the committee or the indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof.[4]

Earlier this year, in the *Northwest Airlines* bankruptcy case,[5] the bankruptcy court required eleven (11) members of an *ad hoc* committee of equity security holders (the "Ad Hoc Committee") to disclose the information required by Rule 2019—notably, the amount paid for the securities. The ruling came in response to the debtor's motion to compel the disclosure, which was itself a response to the Ad Hoc Committee's efforts to have an official equity-holders' committee appointed to challenge the debtor's self-valuation and plan of reorganization strategy to eliminate the equity holders' status in the company.

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4 Fed. R. Bankr. P. 2019(a).

5 *In re Northwest Airlines Corp.*, 363 B.R. 701 (Bankr. S.D.N.Y. 2007).

There was no evidence that the Ad Hoc Committee's efforts violated any statute or were undertaken in bad faith.

Since *Northwest Airlines*, at least three other cases have generated litigation over Rule 2019 – *Le Nature, Mirant and Scotia Development*. In the first two, the litigation was compromised without ruling. In *Scotia Development,* the court found, on the specific facts of the dispute, that the rule did not apply to the investors against whom the debtor was litigating. LSTA and SIFMA submitted joint *amicus* briefs in each of those cases (except *Mirant*) in support of the investors who were the targets of the litigation. LSTA and SIFMA do not concede that *Northwest Airlines* correctly interpreted Rule 2019, but, in light of the failure of any subsequent case to generate a contrary precedential ruling, have concluded that *ad hoc* litigation about the application of the Rule will not provide a forum in which the soundness of the Rule itself can be properly debated, and have determined, therefore, to seek repeal of the Rule.

There are four important public policy reasons why Rule 2019 should not be maintained in its current form.

First, Rule 2019 actually has very little utility to the sound administration of chapter 11 cases. The disclosures it requires are unlikely to provide information that could assist the court or any other party in applying bankruptcy law properly or in reaching a successful disposition of the case.

Second, in the rare instance where Rule 2019 might provide relevant information, that information is already readily attainable through tried-and-true discovery methods; the Rule is, at best, redundant.

Third, Rule 2019 irrationally and inefficiently singles out parties in interest who choose to form *ad hoc* committees, an efficient mechanism for participating in cases that ought to be encouraged, not penalized.

Fourth, by encouraging satellite disputes and discouraging active, efficient participation, Rule 2019 has the potential to affect the debtor's reorganization negatively.

In light of these reasons, Rule 2019 should be repealed in favor of reliance on traditional discovery.

3. Rule 2019 Does Not Perform any Vital Functions

Rule 2019 has very little utility in the chapter 11 process. The disclosures it requires will rarely add relevant information to the bankruptcy reorganization process.

The most troublesome provision of the Rule to credit market participants is subsection (a)(4), which requires that each *ad hoc* committee member disclose the price at which it acquired claims against, or equity in the debtor and when it acquired such claim or interest. But it has long been established that information about when a claim was purchased, or for how much, has no legal relevance to the claim holder's rights under the Code or non-bankruptcy law, or to the amount the claim holder may recover in the case.

An examination of several Code provisions supports that proposition. First, Section 1122(a) calls for claims and interests to be classified with other claims or interests that are "substantially similar." Second, Section 1123(a)(4) requires that a plan must provide the same treatment for each claim or interest in a particular class.[6] Third, Section 1129(a)(8)

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[6] This provision is crucial because it reflects one of the most important policies of the Code, which is equality of distribution among claim and interest holders. *See Begier v. IRS*, 496 U.S. 53, 54 (1990) ("Equality of distribution among creditors is a central policy of the Bankruptcy Code"); H.R. Rep. No. 595, 95th Cong., 1st Sess. 178 (1977) (A "prime bankruptcy policy" is "equality of distribution

requires that each class of claims or interests accept the plan (by the required majorities specified in Section 1126) in order for it to be confirmed.[7]

Courts have consistently rejected classification and treatment schemes that are based on the price that an individual creditor may have paid for its claim. For example, in *Fairfield Executive Associates*, the district court explicitly rejected the debtor's attempt to classify a secured creditor's deficiency claim separately from other general unsecured claims on the ground that the secured creditor had purchased the claim at a discount.[8] The debtor argued that, because the creditor knew the loan was in default when it purchased the loan and the creditor paid less than the collateral for the loan was worth, the creditor did not expect at the time of purchase, and should not expect, to recover the face value on the loan.[9] Holding that a creditor's motivation for investing is an irrelevant basis for classification, the *Fairfield* court quoted from a 1946 opinion of the Third Circuit that "*the price paid for a claim does not affect the amount of the creditor's claim, or the creditor's voting power.*"[10]

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among creditors of the debtor."); 5 Collier on Bankruptcy ¶ 547.01, at 547-10 & n.8 (15th ed. Rev. 2007).

7 Under Sections 1129(a)(8) and 1129(b), a plan may alternatively be "crammed down" on a dissenting class of claims or interests if certain requirements are met. Among the most important "cramdown" requirements is that the plan either provides for full satisfaction of the claims in the dissenting class, or eliminates the recoveries of those in classes, if any, junior to the dissenting class. Because the "cramdown" option is analyzed on a class-by-class basis, its existence does not alter the analysis set forth in the text and we omit further references to it solely for simplicity's sake.

8 161 B.R. 595, 602-603 (D.N.J. 1993).

9 *Id.*

10 *Id.* (emphasis added) (citing *In re Pittsburgh Rys. Co.*, 159 F.2d 630, 632-33 (3d Cir. 1946) ("In the absence of fraud, the prices which security holders pay for their securities do not affect the measure of their participation under the plan of reorganization."), *cert. denied*, 331 U.S. 819, 67 S.Ct. 1309, 91 L.Ed. 1837 (1947)).

Similarly, in *Hillside Park Apts., L.P.*, the bankruptcy court rejected a debtor's attempt to classify a secured creditor's deficiency claim separately from trade creditors on the ground that the secured creditor purchased the note and deed of trust for substantially less than the full amount of the claim—*i.e.*, less than the full market value of the property.[11] The debtor argued that, since the secured creditor "did not in fact expend the sums that make up its deficiency claim, [the secured creditor] does not have the concerns of a normal creditor in recovering the deficiency sum."[12] The court flatly rejected that argument.[13] Specifically, the court held that *the price paid* for the note and the deed of trust was "irrelevant" and that the purchaser of a secured claim has the same interest in getting paid on its claim as do other unsecured creditors.[14] Therefore, the court rejected the debtor's attempt to offer the deficiency claim holder and the trade creditors different treatment under the plan.[15] Clearly, the fact that the creditor purchased the claim at a discount could not lawfully support a disparity of treatment.[16] It follows, then, that information about the amount paid and the other details of that purchase – the principal kind of information required under Rule 2019 – was legally irrelevant to the court's application of the law.

A claim or interest holder's recovery in a chapter 11 case is contingent upon two legal principles: first, the debtor's obligation under the debt or equity instrument; and

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11 205 B.R. 177, 188 (Bankr. W.D.Mo. 1997).

12 *Id.*

13 *Id.* at 189. The debtor proposed a 90% distribution to the trade creditors for their claims and a 1% distribution to the secured-creditor on its deficiency claim. *Id.*

14 205 B.R. 177, 188 (Bankr. W.D.Mo. 1997).

15 *Id.* at 189.

16 *Id.*

second, the claim's classification and ranking under the reorganization plan, as governed by the Bankruptcy Code.[17] That information is obtainable entirely by reference to the plan and the terms of the relevant debt contract or equity instrument (*e.g.*, a bond indenture or stock certificate). Even if a debtor were aware that two different holders of a particular class of its debt had acquired such debt at significantly different prices, or at different times (*e.g.*, following a default under a bond indenture), it has to classify and treat them in similar fashion to comply with Sections 1122 and 1123(a)(4). The disclosures required under Rule 2019 will not assist the debtor in doing that. Therefore, insofar as Rule 2019 requires the disclosure of such surplus information, such disclosure is, as a matter of law, irrelevant when applying the Code properly.

In similarly pointless fashion, Rule 2019(a)(3) requires that each *ad hoc* committee member disclose all employment arrangements made by the committee (*e.g.*, counsel's compensation). Clearly, under the Code, an *ad hoc* committee member's financial arrangements with its counsel or other representatives are irrelevant to determining that creditor or equity holder's rights under the Code or the outcome of the bankruptcy case.

4. There are Alternative and More Efficient Means to Obtain the Information Required by the Rule

Even in the rare case where the information required to be disclosed under Rule 2019 might be relevant to the chapter 11 case, the same information is readily obtainable through traditional discovery. To obtain information about what a particular creditor or interest holder paid for a certain claim or interest, or any other information

[17] *Amici* Brief for the Securities Industry and Financial Markets Ass'n, *et al.* *In re Scotia Development LLC, et al.* (No. 07-20027) at 4.

required to be disclosed under Rule 2019, traditional discovery under the Federal Rules of Civil Procedure, as incorporated into the Federal Rules of Bankruptcy Procedure[18] (the "Federal Rules"), has proven to be perfectly effective. On the other hand, to the extent that information such as the price at which claims are trading in general is valuable to the debtor's reorganization process, that information is readily obtainable from numerous sources every trading day. Finally, Federal Rule of Bankruptcy Procedure 2004 also empowers a court to order any needed investigation, including, for example, information related to the arrangements between *ad hoc* committee members and their counsel or representative.

(a) Prices Paid By Specific Holders

In the case where a chapter 11 debtor needs to know the price that a particular holder paid for its claims or equity interests, or the time when such claim or interest was acquired, routine discovery is quite sufficient to obtain that information. For example, in the *Papercraft* bankruptcy case, the bankruptcy court found that an insider of the debtor secretly purchased claims at a discount, voted those claims to block the debtor's plan, coerced the debtor to file another plan, and consequently delayed the final disposition of the case.[19] The court sanctioned the insider's conduct by limiting the insider's recovery to the amount it paid for the claims, without interest.[20] Because the insider was not a "committee," Rule

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18 *See* Fed. R. Bankr. P. 7026, 7037 and 9014.

19 *In re Papercraft Corporation*, 187 B.R. 486 (Bankr. W.D.Pa. 1995), *rev'd and remanded*, 211 B.R. 813 (W.D.Pa. 1997), *aff'd and remanded*, 160 F.3d 982 (3d Cir. 1998), *on remand*, 247 B.R. 625, 629-30 (Bankr. W.D.Pa. 2000).

20 *Id.*

2019 was inapplicable. Yet, the debtor was able to uncover all the details regarding the insider's claim purchases without resort to Rule 2019.

In the *Mirant* bankruptcy case, the court appointed an examiner to investigate a distressed debt purchasing firm that allegedly used misleading documents to purchase trade claims from creditors at a fraction of their market value without the creditors' informed consent.[21] The examiner brought an adversary proceeding. The examiner requested that the court, pursuant to its authority under Section 105, "expunge" each trade-claim purchase and "restor[e] each purported [purchased] claim to the creditor originally holding such claim."[22] Completely independent of Rule 2019, the examiner was able to compile evidence about the firm's purchases (*i.e.*, the purchase prices and the timing of the purchases) in order to prove that the firm's scheme was in violation of the Code. The *Fairfield Executive Associates* and *Hillside Park Apts.* cases described in Part 3 also prove that Rule 2019 is unnecessary to uncover claim purchase price and related details.

Traditional discovery bears two very significant differences from Rule 2019. First, under the Federal Rules, discovery is limited to what is relevant.[23] By requiring relevance, the Federal Rules ensure that the time and expense of disclosure about one's business is not imposed pointlessly. Rule 2019 does not afford claim holders even the minimal protection of the relevance standard. Second, under the Federal Rules, the data produced in discovery are not automatically placed in the public docket for the world to

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21 *See* Complaint, *Snyder v. DSA*, No. 03-46590 (Bankr. N.D.Tex. Oct. 25, 2005).

22 *Id.*

23 *See* Fed. R. Civ. P. 26 ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party... .").

view over the Internet. Conversely, Rule 2019 requires the publication of such data in a filing which is then posted on the court's electronic docket.

Remitting participants in bankruptcy cases to traditional discovery is an entirely reasonable and appropriate substitute for Rule 2019. For example, in the *Northwest Airlines* case, the debtor argued that disclosure was required to "test the credibility of the positions being taken into court" by the ad hoc committee.[24] The "credibility" of a position in a bankruptcy case can be adequately tested through traditional discovery and cross-examination, both of which are governed by relevance standards. Because traditional tools of discovery and cross-examination have repeatedly proved sufficient to "test credibility" in other settings (including in the bankruptcy context, as shown by the *Mirant* and *Papercraft* cases), reliance on them upon repeal of Rule 2019 will cause no harm. On the contrary, Rule 2019 presently requires disclosure without regard to relevance, and then publication of the disclosure in the Court's dockets and PACER.

Similarly, in the rare instance where the Bankruptcy Code provides that a party in interest's subjective state of mind is relevant — such as upon a motion under Section 1126(e) to designate an entity's acceptance or rejection of a plan, an inquiry into good faith of a proponent of a creditor plan under Section 1129(a)(3), or an examination of the adequacy of a creditor plan proponent's disclosure statement — traditional discovery fully equips courts to compel the information described by Rule 2019.

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[24] Jordan Siev, et al., *Heightened Rule 2019 Disclosure Obligations for Committee Members after Decisions in* Northwest Airlines *and* Owens Corning, ANDERSON KILL & OLICK, PC: PUBLIC COMPANIES & CLAIMS TRADING COMMITTEE, ABI COMMITTEE NEWS, April 2007, *available at* http://www.andersonkill.com/webpdfext/CommitteeNewsletter.pdf.

(b) Purchase Prices in General

In addition to having the legal tools to compel disclosure of a particular investor's holdings, a debtor also has sufficient resources to obtain general information about the prices at which its claims or equity securities may be trading. Specifically, the debtor's financial personnel or outside financial advisors can (and do) contact trading desks and market makers who routinely make markets in distressed debt. Even easier, numerous print publications and electronic services like Bloomberg report daily on the prices being quoted for distressed debt, just as the Wall Street Journal publishes quotes for instruments being traded in other capital markets. (Some recent examples are attached as Exhibit A). Through those sources, the debtor can easily determine the price at which its debt may be trading on any given trading day, including past trading days. Because that market is sufficiently well developed and its quotations are readily accessible, the debtor is in a position to evaluate the prices being paid for its debt generally without need for Rule 2019.

(c) Rule 2004

We know of no case in which the information described in Rule 2019 was considered relevant, yet was not obtainable by means of traditional discovery. However, in the hypothetical instance when a debtor or some other party in interest might need information about a particular person's prior transactions in the debtor's debt or equity securities, yet, the Federal Rules' traditional discovery methods were for some reason unavailing, Federal Rule of Bankruptcy Procedure 2004 empowers the court to order an investigation of the matter.[25] But, in contrast with Rule 2019, the court has discretion under

[25] On motion of any party in interest, the court may order the examination of any entity.... The examination of an entity under this rule... may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to

Rule 2004 to deny the request if it is irrelevant and to balance the interests of the target of the request.

5. The Rule Irrationally and Inefficiently Singles Out Holders Who Choose to Form *Ad Hoc* Committees

If the information required by Rule 2019 were truly important to bankruptcy reorganizations, it would be required of all active participants and not merely those who form *ad hoc* committees. Rule 2019 in its current form is therefore irrational because it only requires such purportedly important information from *ad hoc* committee members. The primary explanation for this lies in bankruptcy history which varies dramatically from present bankruptcy practices. In light of that disparity, the Rule is irrational, because it is under-inclusive and does not apply to investors who are not members of *ad hoc* committees but who may nonetheless pursue the same strategies the Rule ostensibly deters.

At the same time, the Rule is also inefficient because, as we show below, the truth of the matter is that Rule 2019 and the information disclosed pursuant to it are being used nowadays principally as weapons to deter *ad hoc* committee members from taking positions in court opposed to the debtor's strategies. Thus, the Rule 2019 tends to create pointless satellite litigation and unproductive rhetorical sideshows. In addition, if compulsory disclosure under the Rule deters distressed investors from forming *ad hoc* committees, the efficiencies created by *ad hoc* committee representation may be eliminated.

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any matter which may affect the administration of the debtor's estate... and any other matter relevant to the case or to the formulation of a plan.

Fed. R. Bankr. P. 2004(a)-(b).

(a) History of Rule 2019

In the early twentieth century, "protective committees" were organized by insider groups dominated by debtors and institutional investors "who would solicit smaller investors to enter into a deposit agreement whereby the smaller investors would deposit their securities with the committee and delegate to the committee the responsibility of negotiating with the debtor."[26] These committees often took advantage of small public investors rather than fairly representing their interests, while using the deposited securities to gain influence in support of their own initiatives.[27] The predecessor of Rule 2019 was adopted in reaction to those practices, to protect small investors. It did so by requiring the "disclosure of 'personnel and activities of those acting in a representative activity' in order to foster fair and equitable plans free from deception and overreaching."[28] In a 1937 Securities and Exchange Commission Report, future Supreme Court Justice Douglas stated that the predecessor Rule "is designed to ensure that the 'inside group' does not manipulate a pre-petition committee to 'secure a dominant position in the reorganization' and capture the 'emoluments of control.'"[29]

While that oversight was and is certainly important to protect small holders, the function of *ad hoc* committees in modern bankruptcy reorganizations is dramatically

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26 Brian S. Herman and James M. Millerman, *Ad Hoc Attack*, THEDEAL.COM: JUDGMENT CALL, May 25, 2007, http://www.thedeal.com/servlet/ContentServer?pagename=TheDeal/TDDArticle/TDStandardArticle&bn=NULL&c=TDDArticle&cid=1179177764565.

27 *Id.*

28 *Id.* (citing *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Committee*, 321 B.R. 147, 166 (D. N.J. 2005).

29 *Baron & Budd, P.C. v. Unsecured Asbestos Claimants Committee*, 321 B.R. 147, 166 (D.N.J. 2005).

distinguishable from pre-Code reorganizations. Most notably, distressed investors no longer "sneak" into bankruptcy cases such that potential committee members require warning and specifics about their fellow investors' holdings. Today, the buying and selling of distressed claims is the rule rather than the exception, particularly with respect to large public debtors. Distressed investors are often among the largest claim holders in chapter 11 cases.[30] In addition, the *ad hoc* committees those players create do not solicit public investors in any way and do not claim to represent the interests of other investors. As a function of these differences, there is no longer any rational relationship between the original purposes of Rule 2019 and the current practices.

(b) The Rule is Under-inclusive

To the extent that Rule 2019 provides the court and the debtor with an understanding of the motives of participants in the process, it is under-inclusive, because it does not require disclosures from all participants, just from *ad hoc* committees. Therefore, if transparency truly allows the court and the debtor to "root out" investors who act in bad faith or to uncover conflicts of interest between committee members and their representatives, then the Rule should apply *equally* to all participants in a bankruptcy case and not just to members of *ad hoc* committees. For example, in the *Papercraft* and *Mirant* cases, the wrongdoers were individual creditors, not *ad hoc* committees or members thereof. Thus, Rule 2019 is under-inclusive because it does not adduce disclosure from a suspect investor — distressed or not — unless the investor has joined a committee.

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30 Paul M. Goldschmid, More Phoenix than Vulture: *The Case for Distressed Investor Presence in the Bankruptcy Reorganization Process*, 2005 COLUMBIA BUS. L. REV. 191, 200 (2005).

Rule 2019 in its current form also explicitly exempts official creditors' and equity security holders' committees ("Official Committees") from its disclosure requirements. At the same time, there is no federal rule analogous to Rule 2019 that requires the court to compel disclosure from members of Official Committees concerning their holdings of the debtor's claims or stock. More important to a comparison with Rule 2019, there is no rule or provision that requires that any such information obtained from Official Committees be published in the publicly accessible court docket. While Official Committees are identified to the court in a Notice of Appointment, such notice only contains the name and contact information for each committee member—*not* the amounts such member paid for the claim or interest, or when the claim or interest was obtained. Since Official Committees are representative, as a matter of law, of their constituency, whereas "*ad hoc*" committees typically disclaim any representative role, it calls into question any defense of Rule 2019 based on fear of distressed claim holders dominating representative bodies. Rather, it is completely irrational to hold non-representative "*ad hoc*" committees to greater disclosure requirements than are imposed on members of Official Committees.

(c) Rule 2019 is Being Used as an Offensive Weapon against Activist Investors

In addition to being irrational, Rule 2019 in its current form is inefficient because it allows debtors to use the disclosure requirements as an offensive weapon to deter distressed investors from taking activist positions in chapter cases.[31] This creates inefficiencies because bankruptcy courts already have effective means independent of Rule

[31] Jordan Siev, et al., *Heightened Rule 2019 Disclosure Obligations for Committee Members after Decisions in* Northwest Airlines *and* Owens Corning, ANDERSON KILL & OLICK, PC: PUBLIC COMPANIES & CLAIMS TRADING COMMITTEE, ABI COMMITTEE NEWS, April 2007, *available at* http://www.andersonkill.com/webpdfext/CommitteeNewsletter.pdf.

2019 to investigate and punish misconduct by participants. Conversely, collateral disputes over Rule 2019 disclosures in the absence of misconduct distract from the main issues in the case, compounding the inefficiency.

There are numerous examples of debtors using Rule 2019 as an offensive weapon to curb distressed-investor activity. It is important to stress that, in those cases, while the distressed investors' actions were certainly activist, and designed to protect their own economic interests, they cannot remotely be considered to have been illegal or unreasonably aggressive.[32]

For example, in the *Northwest Airlines* case, the debtor sought to compel Rule 2019 disclosures in response to the *ad hoc* committee's efforts to have an official equity committee appointed to represent all stockholders.[33] It is difficult to argue that the *ad hoc* committee was working to the detriment of small public stockholders in seeking appointment of an official committee to represent all stockholders.

In a different context, in the *Le Nature's* bankruptcy case, a debtor's bank agent brought an adversary proceeding to compel various distressed investors to make disclosures under Rule 2019.[34] In the *Le Nature's* case, observers have theorized that the

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32 In *Fairfield Executive Associates*, the court held that a distressed claim holder's express representation that it would not vote for any plan does constitute bad faith. 161 B.R. 595 at 603. The court, citing a 1993 Third Circuit case, noted that a creditor typically votes according to its economic interest. *Id.* (citing *John Hancock Mutual Life Ins. Co. v. Route 37 Business Park Associates*, 987 F.2d 154, 161 (3d Cir. 1993). The court concluded that "Section 1126(e) does not require a creditor to have an interest in seeing the debtor reorganize." 161 B.R. at 603.

33 Paul D. Leake and Mark G. Douglas, *Ad Hoc Committee Disclosure Requirements – A Bitter Pill to Swallow for Distressed Investors*, JONES DAY, PUBLICATIONS (May/June 2007), *available at* http://www.jonesday.com/pubs/pubs_detail.aspx?pubID=S4311.

34 Dealflowmedia.com, The Secured Debt Wire: Ruling Expected in August on Wachovia's Motion to Liquidate Le-Nature's, June 29, 2007, http://www.dealflowmedia.com.

move was meant to pressure the distressed investors not to sue the bank agent for some of the debtor's losses that were allegedly due to the bank agent's conduct.[35]

In *Mirant*, a group of investors who had purchased claims against the debtor were appealing a bankruptcy court order approving a settlement by the debtor in which another creditor received a claim worth over $500,000,000 after the company had emerged from bankruptcy. While the matter was on appeal (*i.e.*, when the bankruptcy court no longer had jurisdiction over the controversy), a successor to the debtor moved the bankruptcy court for an order that the appellants comply with Rule 2019. After oral argument, the bankruptcy judge took the matter under advisement and, within a few weeks, the appellants agreed to drop the appeal.[36]

Simply seeking relief that is statutorily authorized should not expose *ad hoc* committees to disclosure requirements. However, Rule 2019 does not give bankruptcy judges the discretion to consider, let alone weigh, the context of the case or the motives of the parties seeking disclosure in adjudicating Rule 2019 disputes.

The only recent instance in which a bankruptcy judge denied a Rule 2019 request was in *In re Scotia Development LLC*, where the judge concluded that the target of the motion, a self-styled "ad hoc noteholder group" that was opposing many of the debtor's motions was not "a committee" within the meaning of Rule 2019.[37] While the outcome was

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35 *Id.*

36 *See* Motion of New Mirant Entities to Compel Certain Holders of Class 3 Claims to Comply with Rule 2019 of the Federal Rules of Bankruptcy Procedure, *In re Mirant Corp.*, Case No 03-46590 (Bankr. N.D.Tx. May 16, 2007); "Mirant to Complete Settlement with Pepco," Press Release of Mirant Corporation, August 7, 2007 (www.mirant.com).

37 Order Denying Scotia Pacific Company LLC's Motion For An Order Compelling The Ad Hoc Noteholder Group To Fully Comply With Bankruptcy Rule 2019 By Filing A Complete and Proper

clearly correct, the very brief, unpublished and fact-specific ruling has no precedential value. Moreover, the "group" was forced to incur substantial expenses to defeat the motion, which relied heavily on the *Northwest Airlines* precedent discussed herein.

(d) Ad Hoc Committees Facilitate a More Efficient Reorganization

Deterring *ad hoc* committee formation and participation can only decrease the efficiency of a bankruptcy case. In court, if numerous parties-in-interest choose to participate via a single *ad hoc* committee, proceedings will run much more efficiently than if they had appeared individually. Representation by an *ad hoc* committee also allows claim and interest holders to spread the costs of participating in the bankruptcy case. For many distressed investors, the costs of participating in a chapter 11 case can significantly diminish their returns on already risky investments. In an attempt to reduce these costs, it is economically prudent to employ single legal counsel to negotiate and institute legal process on their behalf. From the perspective of the estate, collective action avoids unnecessary delays and duplication of efforts in responding to, or negotiating with, the creditors.[38] By eliminating inefficiencies, the estate is better able to retain its value, which will be passed on to the debtor's creditors and equity holders if the debtor successfully emerges from bankruptcy.

The efficiency that results from *ad hoc* committee participation is exactly what Congress envisioned in the Rules Enabling Act[39] when it authorized the federal

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Verified Statement Disclosing Its Membership and Their Interests, *In re Scotia Development LLC*, Case No. 07-20027(Bankr. S.D. Tex. Apr 18 2007).

38 Brief for Securities Industry and Financial Markets Ass'n. *et al.* as *Amici Curiae* Supporting the Noteholders Group at 11, *In re Scotia Development LLC, et al.* (No. 07-20027).

39 28 U.S.C. §§ 2071-2077.

judiciary to draft the rules of federal practice. Federal Rule of Bankruptcy Procedure 1001 states that the "rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding." Therefore, in the event that any of the Rules no longer serve these purposes, or conflicts with a stated policy of the Code, the rule must be repealed.

Rule 2019 cannot be said "to secure the just, speedy, and inexpensive determination of every case and proceeding" if it inhibits or penalizes collective action. In addition, by making it less likely that debt and equity holders with common interests will band together, Rule 2019 cannot be said to reflect and enhance the policies embodied in the Code—the most important of which is to solve complex business problems through *collective* action, negotiation, and compromise.[40]

6. Rule 2019 Can Deter Distressed Investors and Harm the Reorganization Process

If Rule 2019 remains in its current form, it will also negatively affect the debtor's reorganization and the interests of certain debt and equity holders.

First, revealing the purchase price and the time of acquisition of *ad hoc* committee members' holdings can have a potentially counterproductive effect. Theoretically, arming a debtor with the information about prices paid by the creditors with whom the debtor is negotiating its reorganization plan might enable the debtor to negotiate more effectively with those creditors to the benefit of the debtor's equity holders. But buyers of distressed debt are sophisticated investors. They know that they are entitled to a

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[40] Posting of Bob Rasmussen to The University of Chicago Law School Faculty Blog, *Hedge Funds and Collective* Action, http://uchicagolaw.typepad.com/faculty/2006/06/hedge_funds_and.html (June 1, 2006, 2:51 PM).

full payout of the claims they hold regardless of the price paid for them, as courts have held for decades. *See* Part 3, *supra*. Therefore, it is naïve to think that those creditors would gullibly take a low-ball price that is marginally above their acquisition price. Thus, if a particularly stubborn debtor actually tried to ground its reorganization plans on its knowledge of investors' purchase prices, it would likely waste everyone's time and money because the plan would have little probability of acceptance.

Secondly, the reorganization process would also be negatively affected if distressed investors were to forgo investing in distressed companies altogether to avoid constantly having to disclose their investment positions. As a threshold matter, distressed investors have an interest in the confidentiality of their investment positions because of the nature of their investment strategies. Notably, distressed investors such as hedge funds employ aggressive and complex investment strategies that often include a combination of diversification, leverage, long, short and derivative positions. The effectiveness of these strategies is dependent on the recognition of trends, inefficiencies, and valuations of the market that *have not been recognized* by other investors. Therefore, public disclosure of a hedge fund's investment positions could compromise a fund's ability to execute its own strategy and provide incremental value to its investors. Specifically, competitor funds will be able to access an *ad hoc* committee's Rule 2019 statement quickly and economically through electronic filing systems.[41] With that access, competitors will be better able to

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[41] Jordan Siev, et al., *Heightened Rule 2019 Disclosure Obligations for Committee Members after Decisions in* Northwest Airlines *and* Owens Corning, ANDERSON KILL & OLICK, PC: PUBLIC COMPANIES & CLAIMS TRADING COMMITTEE, ABI COMMITTEE NEWS, April 2007, *available at* http://www.andersonkill.com/webpdfext/CommitteeNewsletter.pdf.

reconstruct the unique trading systems developed by the fund that was forced to disclose.[42] In addition, knowledge of a particular long or short position could allow a competitor fund with a significant market presence to trade in a manner that could move the market in a direction adverse to the fund that was forced to disclose. Furthermore, in the long term, if hedge funds are required to disclose their investment strategies, their incentive to innovate and take risks will decrease.[43] In addition, an exodus of distressed investors from the market of distressed securities would likely lead to a decrease in liquidity for the debt and equity of bankrupt companies, which would be detrimental to the original security holders. Liquidity is crucial because it allows pre-petition/pre-insolvency security holders to easily "cash out" of the bankruptcy process. Even banks and large institutional investors often do not want to participate in lengthy bankruptcy proceedings.[44] Other pre-petition security holders may choose to sell the securities at a loss for tax purposes.[45] Others may be subject to regulatory accounting requirements or fund restrictions that do not allow them to carry defaulted bonds.[46] Finally, many pre-petition security holders "purchased the claims on margin and owe debts of [their] own and, therefore, need to sell the claim to provide [their] own

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42 Nicholas F. Kajon, *Northwest Rulings May Chill Hedge Fund Participation in Chapter 11 Cases*, STEVENS & LEE PC: BANKRUPTCY CLIENT ALERT, March 16, 2007, *available at* http://www.stevenslee.com/news/bankruptcy/Northwest_Ruling_0307.pdf.

43 Kenneth Rogoff, *The Hedge Fund Hegemon*, PROJECT SYNDICATE, *available at* http://www.project-syndicate.org/commentary/rogoff28.

44 The Journal of the Business Law Society, *Hedge Funds Active in Bankruptcy Proceedings*, September 27, 2006, http://iblsjournal.typepad.com/illinois_business_law_soc/2006/09/not_your_usual_.html.

45 Paul M. Goldschmid, *More Phoenix than Vulture: The Case for Distressed Investor Presence in the Bankruptcy Reorganization Process*, 2005 COLUMBIA BUS. L. REV. 191, 206 (2005).

46 *Id.* at 206-07.

creditors with cash."[47] Thus, it is clear that many investors, for many different reasons, wish to exit the bankruptcy process or desire to cash out of their investments as soon as possible. Without distressed-investor participation, non-distressed investors will be unable to rid themselves of unwanted securities and will suffer a loss in the time value of money by losing the ability to cash-out and reinvest elsewhere.

Conclusion: An Appropriate Framework

For the reasons stated above, Rule 2019 should not be maintained in its current form because it does not provide any useful information, is unnecessary to support a modern administration of the Code, is inefficient because it is both over- and under-inclusive, and is potentially counterproductive to the reorganization process. Discovery under the Federal Rules is not only less burdensome to those forced to disclose, but it is more than adequate for those isolated cases when the *information* required by Rule 2019 may be helpful to the administration of the case, such as to investigate and punish investor misconduct.

Multiple courts have permitted *in camera* disclosure as a middle ground between full mandatory disclosure and complete confidentiality. Under Section 107(b) of the Code, bankruptcy courts are authorized to "protect any entity with respect to a trade secret or confidential research, development, or commercial information." However, in making the decision to protect information, a court is also required to consider Section 107(a), which states that all papers filed in a bankruptcy case, including Rule 2019 disclosures, "are public records and open to examination by an entity at reasonable times without charge." However, because Section 107(a) begins with the modifier, "Except as

[47] *Id.*

provided in subsection (b)," the language of the Code implies that there are times when transparency must yield to confidentiality. In the *Owens Corning* bankruptcy case, for example, the bankruptcy court employed this exact solution, which it found to "adequately balance the creditors' privacy interests with the public's competing interests in full disclosure."[48] In addition, the *Owens Corning* court noted that a showing by the requesting party that such disclosure is both "necessary" and "relevant" will not "violate anybody's substantial rights."[49]

Therefore, given the availability of an existing, more efficient, more equitable, and less intrusive alternative, Rule 2019 in its current form should be repealed. Courts and other parties in interest will retain the broad power to investigate and discover facts under Rule 2004 and Federal Rules 7026 – 7037.

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48 Jordan Siev, et al., *Heightened Rule 2019 Disclosure Obligations for Committee Members after Decisions in* Northwest Airlines *and* Owens Corning, ANDERSON KILL & OLICK, PC: PUBLIC COMPANIES & CLAIMS TRADING COMMITTEE, ABI COMMITTEE NEWS, April 2007, *available at* http://www.andersonkill.com/webpdfext/CommitteeNewsletter.pdf (referring to Transcript of Argument on all Delaware Asbestos Cases Regarding 2019, *In re Owens Corning, et al.*, No. 00-3837, (Bankr. D.Del. Oct. 6, 2004) at 55 (order allowing counsel representing more than one creditor or equity security holder to file the 2019 statements under seal)); *see In re Mirant Corp., et al.*, No. 03-46590, (Bankr. N.D.Tex. May 24, 2005) (authorizing the members of an *ad hoc* committee to file under seal only the proprietary information contained in their Rule disclosures).

49 *Id.*

We would be pleased to discuss this subject further with the Reporter for the Committee. Please contact our counsel in this matter, whose contact information appears below.

Very truly yours,

SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION

By: _____
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THE LOAN SYNDICATION AND TRADING ASSOCIATION

By: _____
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GRAB Corp **DIS**

HELP FOR DISTRESSED DEBT

Search DIS <HELP> for: Page 4 / 5

Distressed Debt Screen

Once you enter DIS <GO>, the Distressed Debt screen appears, where you can display a list of all bonds that traded at a yield of at least 1000 basis points above the benchmark government debt on the Trade Reporting And Compliance Engine (TRACE) in the last five business days. The number of corresponding bonds appears in the top left corner of the screen. The following fields appear:

Issuer:
The name of the issuer of the bond.

Coupon:
The bond's coupon.

Maturity:
The bond's maturity date.

Price:
The most-recent trade price for the bond.

Australia 61 2 9777 8600 Brazil 5511 3048 4500 Europe 44 20 7330 7500 Germany 49 69 920410
Hong Kong 852 2977 6000 Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2007 Bloomberg L.P.
G517-98-3 17-Sep-07 15:43:14

GRAB

EquityDIS

Export to Excel 158 Bonds Found (TRACE Pricing from prev. day close) US Distressed Debt

Issuer	Coupon	Maturity	Price	Yield	Sprd to Bench	Amt Out
1) TOUSA INC	10.375	07/01/12	4.125	239.296	23591.8	185M
2) TOUSA INC	7.500	01/15/15	4.125	173.296	16935.9	200M
3) TOUSA INC	7.500	03/15/11	6.125	164.862	14746.1	125M
4) TEMBEC INDUSTRIES INC	8.625	06/30/09	44.250	74.311	7108.5	350M
5) MUZAK LLC/MUZAK FINANCE	9.875	03/15/09	53.000	70.737	6765.9	115M
6) TOUSA INC	9.000	07/01/10	36.500	60.640	5755.0	100M
7) POPE & TALBOT	8.375	06/01/13	18.600	60.409	5699.9	75M
8) TOUSA INC	9.000	07/01/10	37.000	59.891	5688.1	200M
9) MAAX CORP	9.750	06/15/12	29.875	50.260	4686.3	150M
10) TEMBEC INDUSTRIES INC	8.500	02/01/11	38.000	48.905	4490.1	500M
11) POPE & TALBOT	8.375	06/01/13	25.625	47.388	4390.0	60M
12) STANDARD PACIFIC CORP	9.250	04/15/12	34.250	44.688	4129.3	150M
13) TEKNI-PLEX INC	12.750	06/15/10	54.500	44.421	4122.6	315M
14) VERTIS INC	10.875	06/15/09	66.000	43.477	4031.6	350M
15) PROPEX FABRICS INC	10.000	12/01/12	37.100	40.041	3663.7	150M
16) KIMBALL HILL INC	10.500	12/15/12	38.000	40.001	3659.3	203M
17) STANDARD PACIFIC CORP	5.125	04/01/09	68.500	37.255	3410.0	150M
18) TEMBEC INDUSTRIES INC	7.750	03/15/12	38.750	37.549	3364.5	350M
19) VICORP RESTAURNTS INC	10.500	04/15/11	58.500	31.215	2821.9	127M
20) BUFFETS INC	12.500	11/01/14	47.500	31.584	2821.6	293M

Australia 61 2 9777 8600 Brazil 5511 3048 4500 Europe 44 20 7330 7500 Germany 49 69 920410 Hong Kong 852 2977 6000
Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2007 Bloomberg Finance L.P.

Homebuilder Stocks Seem Enticing, But Where's The Cash?

By Michael Corkery

With home sales slowing to a crawl and buyers unable to qualify for mortgages, some home builders are struggling to keep their operations going.

Already, Levitt Corp.'s **Levitt & Sons** unit has filed for bankruptcy-court protection, and a second builder, Tousa Inc., said it is considering several "in and out of court restructuring and reorganization" options, including a possible Chapter 11 filing. While those small Florida-based builders were partly crippled by company-specific issues, the make-or-break matter for most builders — and for those who may be enticed by their cheap stock prices — is the ability to generate cash to service debt and to pay for the construction of new homes. Such liquidity risks could trap investors.

"Liquidity is the No. 1 concern for builders, and rightly so," says Nishu Sood, an analyst at Deutsche Bank. "It's a matter of survival," he says of the many builders that borrowed heavily for the land they stockpiled during the housing boom.

For months, builders have been slashing prices to move houses and generate cash. But in recent weeks, Sood says, the new-home market in some regions is behaving like there already is a broad economic recession. "In some communities, builders can't give away homes," he says. "They will end up with fewer tools to come up with cash."

Amid the distress, investors may be tempted to go bargain hunting. According to UBS, the home builders are trading on average near 40% of their tangible book value, which is typically a rough estimation of what the company would be worth if liquidated. That makes them appear extremely inexpensive.

One red flag: Some builders have violated, or are close to violating, credit agreements with their banks. Until now, the banks have been willing to relax their rules to avoid technical defaults. But their patience could be wearing thin for some builders as the housing market deteriorates.

WCI Communities Inc., which focuses on high-rise condominium towers in coastal Florida, is currently testing the banks' patience. The company recently violated an "interest coverage" test, which requires a minimum ratio of earnings before interest, taxes, depreciation and amortization to the interest it owes on its debt, says Andrew Brausa, a debt analyst at Banc of America Securities.

WCI received a waiver until Dec. 7 and has negotiated with its banks for more breathing room. James Dietz, WCI's chief financial officer, says the banks are close to signing off on a new agreement. "We believe we can generate sufficient cash to pay debt service and all our obligations," says Dietz.

WCI may have little leverage to assuage its lenders. As the condo market falters, WCI's cash-flow projections for this year have eroded to between $210 million and $460 million from an earlier range of $530 million to $730 million. The company is expecting to generate significant cash by completing a large condo project, One Bal Harbour, near Miami. But some analysts fear more home buyers will walk away from that project than the company expects amid falling property values.

WCI has to pay about $120 million to service the interest on its debt next year, which it will be able to do if cash flow doesn't dip further. But that isn't certain given the direction of sales in the Florida condo market. The company has about $200 million left to draw on its credit line, Dietz says.

continued on page 10

Active Bonds

Active Bankrupt Bond Price Indications

The following table of bankrupt companies' bonds shows recent price indications for the issues listed.

Issuer	Description	Latest Session	Previous Session	Chg.
Calpine Corp.	7.75% Nts-9	100.50	100.50	....
Dana Corp.	5.85% Nts-15	71.25	71.75	-0.500
Delphi	6.55% Nts-06	68.50	68.25	0.250
Dura Automotive	8.625% Nts-12	28.00	28.00	....
Movie Gallery	11% Nts-12	17.00	17.25	-0.250
Sea Containers Ltd.	10.5% Nts-12	61.00	61.50	-0.500
Solutia	11.25% Nts-09	99.63	99.63	....
Solutia	7.375% Nts-27	96.75	97.00	-0.250
Stelco Inc.	FLT% Nts-16	108.75	108.75	....

Source: The High Yield Advantage, 617.261.9700, advantagedata.com

Composite high yield bond price indications are compiled from various market sources, some of which may make a market in or have financial interest in the issues for which prices are provided. PRICES ARE INDICATIVE ONLY. The information contained herein does not represent a solicitation to sell or buy the underlying issues. Dow Jones shall not be held liable for any reason for any errors or omissions, delays or inaccuracies in the indications or any decision made in reliance upon the indications. Dow Jones shall not be liable to any person for any loss of business revenues or lost profits or for any indirect, special, consequential or exemplary damages whatsoever, whether in contract, tort or otherwise, arising in connection with the indications, even if Dow Jones has been advised of the possibility of such damages. Dow Jones makes no warranty whatsoever, express or implied, including specifically any warranty of merchantability or fitness for a particular purpose with respect to the indications and specifically disclaims any such warranty.

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Date: 8 June 2007
Analyst: Howard Tang; 1-212-686-6559; howard.tang@debtwire.com

DEBTWIRE NORTH AMERICA

Movie Gallery

USA, Consumer Retail — Distressed

CREDIT RATING	Caa1 (Moody's) B- (S&P)	TOTAL DEBT	USD 1.1bn	TOTAL ASSETS	USD 1.14bn

DEBT STRUCTURE (in USD m):

Category	Amount Out	Interest %	Price (6/8/07)
Senior Unsecured Notes '12	322	11	81.94
Revolver	0	LIBOR + 2.5	N/A
First Lien Term Loan	600	LIBOR + 3.5	99.15
Second Lien Term Loan	175	LIBOR + 6.5	97.4
Other	3	N/A	N/A

DEBT MATURITIES (in USD m):

2007	2008	2009	2010	2011	Thereafter
3	-	-	-	-	1097

Financial Covenants (2007 credit facility):

- Maximum leverage ratio of 6.75x throughout FY07.
- Maximum Secured leverage ratio of 4.75x throughout FY07.
- Interest Coverage Ratio cannot be less than 1.4 throughout FY07.

SUMMARY FINANCIALS:

in USD m	1Q 07	1Q 06	2006	2005[1]
Revenues	648	694	2542	1967
EBITDA	57	113	210	139
Interest	27	30	120	69
EBITDA/Interest	2.11	3.77	1.75	2.01
Cash	27	33	33	135
Total assets	1136	1153	1153	1385
Equity	-251	-236	-236	-213
Total debt	1100	1092	1092	1161
Debt/EBITDA	7.17[2]	5.2	5.2	8.35
EBITDA	57	113	210	139
Interest	27	30	120	69
CAPEX	1	9	20	58
Available for Debt	29	74	70	12

1. Recognizes the consolidated results of Movie Gallery and Hollywood for the period subsequent to our merger on April 27, 2005.
2. TTM EBITDA = USD 153.384m

CREDITORS & BONDHOLDERS:

Goldman Sachs Credit Partners — Lead Arranger/Lender
Wachovia Bank— Lender
CT Investment Mgmt Group Inc—Bondholder
Putnam Investment Management—Bondholder
Wellington Management Co LLP—Bondholder

OFFICERS & DIRECTORS:

Name (Position)	Name (Position)
J.T. Malugen (Chairman, CEO)	S Page Todd (EVP, GC)
Thomas D Johnson Jr (EVP, CFO)	Keith A Cousins (EVP, CDO)
Jeffrey S Stubbs (EVP, COO)	H Harrison Parrish (VC, SVP)

ADVISORY ENGAGEMENTS:

Firm	Capacity	Date
Alvarez & Marsal	Financial Advisor	2007
Merrill Lynch	Financial Advisor	2007
Peter Solomon	Financial Advisor	2007

BUSINESS: Headquartered in Alabama, Movie Gallery has grown considerably since its initial public offering in 1994. Traded on the NASDAQ, the Company is the second largest specialty home video retailer in the US. Movie Gallery rents out and sells DVDs, videocassettes and video games through approximately 4,590 retail stores throughout North America. The recent acquisition of Hollywood Entertainment on 27 April 2005 almost doubled the number of locations of Movie Gallery and added the Hollywood and Game Crazy brands to the Company's existing branches.

SOURCES OF DISTRESS:

- **Hollywood Acquisition Financing:** Prior to the acquisition of Hollywood Entertainment, Movie Gallery had negligible debt obligations in its capital structure. Post acquisition, the company added over USD 1bn in long-term notes, credit facilities, and acquired liabilities to its balance sheet.
- **Deteriorating Business Fundamentals:** Movie Gallery is being besieged by a number of lower cost options that is rapidly changing the fundamentals of the movie rental business. Consumers are quickly shifting their preference to online mail order options such as the Netflix service and Blockbuster's online rental service. Late to the game, Movie Gallery has begun to explore other alternatives for providing movie rentals. Recently, the company has acquired MovieBeam, a service which provides digital delivery of movie rentals, and has begun testing movie rental kiosks in select locations. How effective these new delivery platforms will be, is yet to be known as the company still needs to roll them out with some significance.

PROFITABILITY (1Q 07 vs. 1Q 06): Movie Gallery has shown little improvement in its profitability from last period. Total revenues fell by 6.72% driven mainly by reduced rental revenues of 10.41% on a YOY comparison. The bright spot in their results was a surge in product sales of 10.26% from 1Q 06 to 1Q 07. The company's gross margins have been somewhat resilient dropping only 138 bps YOY to 60.1% from 1Q 06. Movie's operating income fell by 50.2% reflecting the drop in total revenues and the increased cost of product sales. EBITDA for 1Q 07 demonstrated a similar drop from 1Q 06 of 49.56% despite the elimination of one-time non-recurring charges. Management continues to rationalize costs and generate cash flow through the shuttering of unprofitable stores and sub-leasing. During 1Q 07 the company closed 54 underperforming stores recognizing USD 0.9m relating to these closures. The operational restructuring has achieved little success as operating margins continue to deteriorate; YOY, margins fell by 453 bps to 5.19% in 1Q 07.

MAJOR RESTRUCTURING INITIATIVES:

- **March '07 Refinancing:** Movie Gallery refinanced its April 2005, USD 900m senior secured credit facility. The new facility consists of USD 100m revolver, USD 25m first lien synthetic letter of credit facility, USD 600m first lien term loan and USD 175m second lien term loan. The second lien term loan is a PIK, allowing the company to defer cash interest payments for a time.
- **Lease Restructuring Initiatives:** The company has entered into a management agreement with Excess Space Retail Services to pursue subleasing opportunities at 2,200 store locations. Movie expects that retail partners from this initiative will occupy an approx. average of 2,500 square feet at each location. In a separate agreement, Movie is working with Hilco Real Estate to restructure leases at 1,100 store locations.

LIQUIDITY: The Company's liquidity position is bolstered by USD 27.3m in cash and cash equivalents and USD 100m availability on its revolver. Cash provided by operations improved significantly on a YOY basis; for 1Q 07 the company generated USD 16.78m from operations as opposed to a deficit of USD 20.6m in 1Q 06. No major debt repayments are due for several years. The company's interest and lease expenses are the major drain on the company's cash position amounting to USD 485m for 2007. Management expects that the company's capital expenditures for fiscal 2007 to be USD 38m which would go to fund store openings, maintenance on the existing store base and other strategic investments.

Est. liquidity as of 1 April 2007 — USD 127.3m

USD 27.3m	Cash and Cash Equivalents
USD 100m	Revolver Availability

Est. one year capital requirements as of 1 April 2007 — USD 147m

USD 38m	Capital Expenditures
USD 109m	Interest payments on First & Second Lien, Senior Notes, and Capital Leases; reduced by Hedge agreement

LCD News

December 03, 2007

Deal Dossier

Movie Gallery (2nd Lien 3/07)

Related News

- Movie Gallery debt falls amid market weakness, sector woes (11/16/07)
- As defaults loom, accounts eye recovery values, ratings (10/24/07)
- Movie Gallery LCDS auction sets price at 91.5 (10/23/07)
- Movie Gallery DIP allocates; LCDS auction set for Tuesday (10/19/07)
- Movie Gallery shops $150M DIP loan to existing lender group (10/16/07)
- Movie Gallery files for Ch. 11, hands 2nd-lien lender key stake (10/16/07)

All Related News

Related Deals

- Movie Gallery (DIP 11/07)
- Movie Gallery (RC 3/07)
- Movie Gallery (TL 3/07)
- Movie Gallery (Add-on 10/05)
- Movie Gallery (4/05)
- Movie Gallery (12/98)
- Movie Gallery (HY 5/05)

headlines only GO

Some distressed credits off lows, but general trend lower

New York, Nov. 27 (LCD) - Several distressed credits have bounced from rec though the general trend over the past few weeks has been broadly negative.

Movie Gallery first-lien bank debt rebounded from lows in the mid-70s touche today, gaining to 77/79, compared to 80/82 yesterday. The lower levels were investor distaste for credits exposed to consumer and retail trends. Markets in company's second-lien debt were scarce, sources said.

Bonds backing stronger rival **Blockbuster** (9% notes due 2012) traded at 84/ one point lower since early last week, for a total drop of six points in one mont Blockbuster stock has tumbled 32% since the company reported a 6% fall in t revenue and losses of $0.20 per share, compared to losses of $0.15 per shar same quarter one year ago. Blockbuster shares traded at $3.60 today, up 1.7

Another credit exposed to reduced consumer spending, restaurant chain oper **Buffets**, remains under pressure. The company's term debt continued to fall, today, higher than bids at 85.5 in recent days but compared to 88.25/89.75 ea week. The company's 12.5% notes due 2014 have steadied at 46/47 in anticip restructuring, sources said.

Housing credits remain in focus as negative headlines for the sector continue.

WCI Communities revolving debt was at 91/93 today, unchanged with levels ago, sources said. WCI 9.125% notes due 2012 traded at 60 today, steady wi week, but down 10 points over two weeks. WCI 6.625% notes due 2015 ease today, to 54/55, for a 14-point drop this month.

Realogy's institutional strip changed hands today in an 87/88 context, compa 86.5/87.5 on Nov. 21. Realogy bonds have ticked steadily lower in recent wee company's 12.375% subordinated notes due 2017 fell three points today, to 6 compared to 68/70 three weeks ago. Realogy 10.5% notes due 2014 slid two today, to 71/73, from an 80 context three weeks ago, sources said.

ResCap term debt benefited from news that the company moved to strengthe metrics and stave off bankruptcy by tendering for $750 million of bonds. The c term loan due 2008 traded today in an 85/86 context, compared to 72/73 earl Over the same time ResCap bonds have climbed 10 points. - *Abby Latour*

abigail_latour@standardandpoors.com

Printer Friendly Format

Published: 27 Nov 2007 - 18:43 GMT

Standard & Poor's LCD news, analysis and data covering the leveraged and secondary loan mar high-yield bonds, is available on www.lcdcomps.com. For more information or to subscribe to LC Marc Auerbach at 212-438-2703. Info: www.lcdcomps.com

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Section 5 of H.R. 3609, as reported by the House Judiciary Committee, would add a new §1322(c)(3) to Chapter 13, making unenforceable any "fee, cost, or charge that arises from a security interest that is secured by the debtor's principal residence and that is incurred while the case is pending" unless "the holder of such claim files with the court notice of such fee, cost, or charge before the earlier of — (i) 1 year after the fee, cost, or charge is incurred; or (ii) 60 days before the closing of the case."

The time limitation for the required notice — that it be given within one year of the date a fee or charge is incurred and at least 60 days before the closing of the case — presents a serious technical problem: mortgagees would often have no idea when the case will close, since there is no fixed time for case closing, and they would often be unable to give the required notice even if they did know the closing date in advance. For example, if a Chapter 13 debtor made a late payment just before case closing, the only way to give the required notice of the resulting late fee would be for the mortgagee to move to reopen the case for that purpose. This would (1) generate additional attorney fees and costs for the parties, (2) create a new period in which the case was pending and for which it would therefore be necessary to give notice of accrued fees, and (3) effectively extend the notice period well beyond the original case closing.

These difficulties can be eliminated by replacing the one-year and 60-day limitations with a provision requiring "timely" notice. Such notice could be defined initially by court orders and local rules, and ultimately by the Federal Rules of Bankruptcy Procedure.

The following language in place of proposed §1322(c)(3)(A) would allow the courts and the Bankruptcy Rules to address the problem:

....

(3) the holder of such claim files with the court timely notice of such fee, cost or charge; and ....

Item 16 will be distributed separately.

Item 17 will be an oral report.

The proposed rules amendments currently in the “Bull Pen” are addressed above.

Item 19 will be an oral report.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: EUGENE WEDOFF

RE: USE OF IRS MANUAL IN DETERMINING TOTAL NUMBER OF PERSONS ALLOWED FOR NATIONAL STANDARD EXPENSE CALCULATIONS

DATE: MARCH 6, 2008

In our last revisions to the means test forms, we determined to use "household" rather than "family" size in determining the applicable median income (see Line 14 of Form 22A), so as to conform with the language of 11 U.S.C. § 707(b)(7). We also determined to base the IRS National Standard deduction for "food, clothing and other items" on "household" rather than "family" size (see Line 19A of Form 22A). I'm not sure that either "household" or "family"—without a limitation—produces the right result here.

In applying the National Standards, the Internal Revenue Manual (5.15.1.7) states the following:

> Generally, the total number of persons allowed for national standard expenses should be the same as those allowed as dependents on the taxpayer's current year income tax return. Verify exemptions claimed on taxpayer's income tax return meet the dependency requirements of the IRC. There may be reasonable exceptions. Fully document the reasons for any exceptions. For example, foster children or children for whom adoption is pending.

Our usual practice has been to follow the Manual's application of the expense deductions unless the statute provides for a different application. For the National Standards, there is no statutory directive different from the IRS's method of application, and using either family or household size, without a limitation to dependents, can produce genuinely anomalous results. For example, consider a 20 year-old debtor who lives in his parents' home, with three younger

siblings. Since the debtor claims none of the other family members as dependents, the Internal Revenue Manual would accord him the deduction for a "family" of one, currently $270. But our forms provide the debtor with a deduction based on a household of six—a current deduction of $1,523.

There is a similar issue with respect to the local standard for housing ownership expenses, although this is not addressed by the Internal Revenue Manual.