THE FINANCIAL SERVICES ROUNDTABLE

Impacting Policy. Impacting People.

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05-BR-032

Mr. Peter G. McCabe
Secretary, Committee on Rules of Practice and Procedure
Thurgood Marshall Federal Judiciary Building
Washington, DC 20544

Dear Mr. McCabe:

As the Judicial Conference begins considering final rules to implement the provisions of Pubic Law 109-8, the Financial Services Roundtable ("Roundtable") submits the following brief comments to highlight issues of importance to our members. The Financial Services Roundtable represents 100 of the largest financial services companies providing banking, insurance, and investment products and services to the American consumer. The Roundtable has also submitted comprehensive comments with a coalition of other financial services trade associations.

There are several areas of particular concern to the Roundtable:

- the final rules should delete the requirement that creditor motions to dismiss be filed "with particularity," a high burden on creditors with no statutory basis;

- the final rules should require that debtors file a certificate that they completed post-petition education, thus closing possible loophole for dishonest debtors to evade this important educational requirement;

- the new rules and forms should require debtor attorneys to attest, under oath, to the accuracy of a debtor's schedules and statements; as provided for in PL 109-8;

- the means-test form should be amended to prevent debtors who own homes from claiming an amount for housing expenses in excess of actual mortgage payments.

Interim Rule 1017 implements the amendments to § 707(b) that permit creditors to move to dismiss chapter 7 consumer cases. The rule requires that a motion filed under § 707(b)(3) state with particularity the circumstances that present the alleged abuse. This particularity requirement has no statutory basis. To the extent that the purpose of this rule is to protect consumers, it should be noted that Congress has already imposed sanctions on abusive creditor motions. Thus, this requirement is unnecessary and should be deleted.

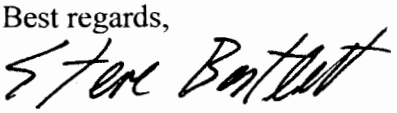
Interim Rule 4006 implements the new law's requirement that debtors complete a course in personal financial management as a condition of a discharge. However, there is no requirement that the debtor file a certificate or offer proof of completion. The final rule should require such documentation.

Under PL 109-8, the signature of an attorney on a bankruptcy pleading constitutes a representation by the attorney that the debtor has performed a reasonable investigation to determine that the facts provided are true. Thus far, no specific rule change or form amendments have been made to implement this explicit statutory mandate. The Committee should specifically amend the rules and forms to implement the attorney signature provision in PL 109-8.

As provided for in the statute, in calculating the ability to repay debts, the new law allows a debtor to deduct the allowances provided in the IRS standards for housing. The new law also provides that such expenses may not include any payment for a mortgage. However, the forms authorize the debtor to deduct the greater of the debtor's mortgage payment or the IRS amount. The forms should be amended to make clear - as Congress intended - that debtors calculating repayment capacity who own houses may not deduct a housing allowance greater than the actual mortgage payment.

Thank you for considering the views of the Roundtable.

Best regards,



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