

**SUMMARY OF COMMENTS ON THE INTERIM RULES AND
OFFICIAL FORMS ADOPTED OR PROMULGATED TO
IMPLEMENT PUBLIC LAW NO. 109-8**

<u>Comment #</u>	<u>Commentator</u>	<u>Comment/Committee Action</u>
05-BR-001	Sen. Grassley	The proposed rules fail to require debtors to submit a certificate of completion of the financial management course, they do not require the debtor's attorney to make certifications required by the amendments, and they should not require motions under § 707(b) to state with particularity the grounds for the motion. <i>Reply sent to Sen. Grassley and distributed to Committee.</i>
05-BR-002	Prof. Neustadter	Suggests that the provisions of § 707(b) require that every debtor complete the full means test form rather than exempt those persons below the state median income level from the expense side of the calculation. <i>Committee considered the issue and concluded that the determination that a debtor's income is below the state median satisfies the statutory requirement.</i>
05-BR-003	Mr. Barnes	Suggests that Schedule D be amended to include a line setting out the total unsecured claims. <i>No action taken by Committee. Schedule D does not ask for a total of unsecured claims.</i>
05-BR-004	Mr. Dunn	Was the word "or" on line 79 incorrectly stricken from Proposed Rule 1007(c)? <i>This was corrected in the revisions adopted at the Santa Fe meeting.</i>
05-BR-005	Ms. Crawford	Questions the means test form as to the potential for double counting of housing expenses and mortgage payments. <i>Revised Official Form addresses the issue.</i>

05-BR-006	Judge McManus	Error in the Committee Note to Official Form 5 in the cross reference to the Code section governing the patient care ombudsman. <i>Cross reference error corrected.</i>
05-BR-007	Mr. Karl	Comments relate to treatment of ERISA claims in chapter 11 cases. <i>Comment unrelated to the bankruptcy amendments and Interim Rules.</i>
05-BR-008	Mr. Yerbich	Comment suggests that the forms should instruct the user of the form to include the name of a parent or guardian whenever a minor is listed on the form. <i>No change recommended for form. Instructions direct that minor's name not be used consistent with the Bankruptcy Amendments.</i>
05-BR-009	Mr. Barnes	Suggests deleting "plus 1" from the signature line on Official Form 6. <i>The "plus 1" reference is necessary to include the Sheet listing the information collected for the statistical collection purposes of the Administrative Office. Individual debtors have to complete one more sheet than other debtors.</i>
05-BR-010	Mr. Barnes	Suggests deleting reference on Schedule F to deduction of value of collateral because the Schedule deals only with unsecured claims. <i>Schedule F was corrected and that phrase was deleted from the Form.</i>
05-BR-011	Judge Grant	<ol style="list-style-type: none"> <li data-bbox="760 1333 1435 1522">1. There is an inconsistency between Interim Rule 4003(b)(2) and existing Rule 1009(a). The existing rule does not appear to allow an amendment to the schedule of exemptions, but the Interim Rule assumes such amendments are possible. <li data-bbox="760 1522 1435 1671">2. Reaffirmations must be filed within 30 days after the discharge, but the new amendments to the Code require that the agreement be filed prior to the discharge. <p data-bbox="760 1703 1435 1814"><i>1. Interim Rule 4003 has been slightly revised to clarify the time for filing objections to exemptions when a case is reopened. There may still be a need</i></p>

to consider whether existing Rule 1009(a) should be revised.

2. The inconsistency will not arise because the proposed amendment to Rule 4003 was withdrawn so that the conflict with the Code would not arise.

05-BR-012	Judge Markell	<p>How can the interim rules which are not promulgated under the Rules Enabling Act override the existing rules?</p> <p><i>The Interim Rules do not override the existing rules because the existing rules themselves are effectively repealed to the extent that they conflict with the Bankruptcy Code, as amended. Consequently, the Interim Rules are consistent with the remaining effective Bankruptcy Rules.</i></p>
05-BR-013	Mr. Hong	<p>Interim Rule 1007(c) conflicts with amended § 521(i)(1) which sets a 45 day limit for filing schedules, etc.</p> <p><i>The Interim Rule does not conflict in that it sets a shorter time within which to file the schedules, etc. The statute provides that the case is automatically dismissed if the debtor fails to file all of the required materials within 45 days of the filing of the petition.</i></p>
05-BR-014	Mr. Redden	<p>The Committee Notes and Interim Rules contain references to “health care” ombudsmen, and the reference should be to “patient care” ombudsmen.</p> <p><i>References corrected to “patient care” ombudsman.</i></p>
05-BR-015	Judge Mund	<p>Petition should have a box to designate the debtor as a “small business debtor”.</p> <p><i>Petition form includes a check box for small business debtors.</i></p>
05-BR-016	Judge Nugent	<p>No comments on specific rules.</p>
05-BR-017	Mr. Diamond	<p>Rule 8001(f)(2) questions whether the rule properly identifies matters being appealed.</p> <p><i>Interim Rule 8001(f)(2) was revised at the Santa Fe meeting to clarify the applicability of the rule to appeals of both final and interlocutory matters.</i></p>

05-BR-018

Prof. Culhane
& White

Means test form for chapter 7 cases (B22A) should include a debtor's spouse's income only in joint cases. Deductions for "Other Necessary Expenses" should be expanded to allow the debtor to list any necessary expense even if not listed in the Internal Revenue Manual as a category of such expenses. The form also should not require the debtor to forgo legal arguments through the operation of a check box system that makes the debtor state that the case is an abuse.

The form was changed to permit greater flexibility for the debtor to complete the form without making admissions as to the legal effect of the information set out on the form.

05-BR-019

Mr. Yerbich

Interim Rule 4008(b)(1)(b) should not provide an opportunity for debtors to state that documentation of a social security number does not exist. Same is true with regard to tax returns or tax transcripts. Instead of saying that the debtor can state that a documentation of a tax return does not exist, the rule should require that the debtor file a copy of the return or give the reason why no return was filed with the IRS.

The comment actually applies to Interim Rule 4002(b) rather than Rule 4008. The rule was not changed regarding social security numbers because a debtor who does not have a social security number could not comply with the rule if it were changed as suggested. For example, an alien may not have a social security number but may file a bankruptcy petition. As to the tax returns, the language adopted by the Interim Rule ("statement that such documentation does not exist") should accomplish the goal of the suggestion. If the debtor did not file a return, he or she would have to so state to comply with the Interim Rule.

05-020

Mr. Bernstein

The NBC asserts that the means test form is not neutral and should not require debtors to admit legal conclusions to which they disagree. The comment suggests that the form improperly forecloses

arguments regarding the allowance of other necessary expenses as well as the inclusion or exclusion of a non-debtor spouse's income in the calculation of the means test. They also assert that the form improperly limits the debtor's ability to deduct mortgage payments.

The form was revised at the Santa Fe meeting to address the issues of the other necessary expenses and the non-debtor spouse's income. The Committee rejected the suggestion that the mortgage payments can be deducted when the amount was already included in the housing expense allowed by the IRS standards.

05-BR-021

Mr. Yerbich

Form 22C does not include a method for computing disposable income in chapter 13 cases where the debtor's income is less than the applicable state median income. He suggests amending line 23 of the form and adding a check box in line 56 to identify specific cases as proceeding under § 1325(b)(3).

The form has been changed in a manner that includes this information in Part II of the form.

05-BR-022

Mr Rogovy

Director's Form B200 states that individual debtors must use Official Form 8 (Chapter 7 Individual Debtor's Statement of Intention) in cases under chapters 11, 12, and 13.

The B200 Form on the website does not include an instruction to individual debtors in the other chapters to file an Official Form 8.