

NEW PRIVACY RULES EFFECTIVE DECEMBER 1, 2003

Amendments to Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms, designed to protect the privacy of debtors and other parties in bankruptcy cases, take effect December 1, 2003.

The privacy amendments, which were proposed by the Advisory Committee on Bankruptcy Rules and approved by the Judicial Conference, are consistent with the Judicial Conference's September 2001 policy on Privacy and Public Access to Electronic Case Files.

Key provisions of the changes to the rules and forms include the following:

- The Voluntary Petition (Official Form 1) will contain only the last four digits of individual debtor's Social Security Numbers.
- Amendments to Rule 1007 will require debtor to *submit* a verified statement containing the full nine-digit number. This form, Statement of Social Security Number (Official Form 21), will *not* be filed in the case or become a part of the case file available to the public at the court or over the Internet
- The clerk will include the debtor's full Social Security Number in the copy of the meeting of creditors notice (Official Form 9) sent to creditors, the debtor, the trustee, and the United States trustee or bankruptcy administrator. The copy of the section 341 notice included in the court case file, however, will contain only the last four digits of the Social Security Number.
- The Proof of Claim (Official Form 10) will require a wage creditor to disclose only the last four digits of the creditor's Social Security Number.
- The schedules of assets and liabilities (Official Form 6) will state that the debtor is only required to list the last four digits of account numbers, but that the full numbers are useful to the trustee and creditors and may be provided if the debtor chooses to do so.
- The Caption (Full) (Official Form 16A) will be amended to include only the last four digits of the debtor's Social Security Number. Accordingly, notices other than the 341 notice will either include the last four digits or none, provided the Caption (Short Title) (Official Form 16B) is used.

Bankruptcy cases filed electronically as part of the case opening in CM/ECF (Case Management/Electronic Case Files) or a part of the automated Case Upload process must include the full Social Security Number in the data submitted, and any PDF should only display the last four digits. The debtor's attorney is required to retain the signed copy of the Statement of Social Security Number, Form B21 for five (5) years according to the provision of General

Order 24. Bankruptcy petitions filed in paper form must include a signed paper copy of the Statement of Social Security Number, Official Form 21.

CM/ECF (Case Management/Electronic Case Files), PACER (Public Access to Electronic Records) and VCIS (Voice Case Information System) will be revised so that the CM/ECF system stores the full nine-digit Social Security Number submitted by the debtor but only the last four digits will be displayed on the public terminals in the clerk's office, PACER, and VCIS.

Filers, not the Clerk of Court, are responsible for redacting Social Security Numbers and other personal identifiers such as dates of birth, financial account numbers, and names of minor children in documents—including petitions, schedules, statements, proofs of claim, and attachments—they file with the court. Because pre-existing financial documents which include personal identifiers may be filed as attachments to court papers, filers are responsible for redacting these documents and other attachments appropriately. The documents may be furnished to opposing counsel and not filed unless there is a dispute concerning the document.

PRIVACY IMPLEMENTATION FREQUENTLY ASKED QUESTIONS

Q1. With the new privacy rules requiring redacting of a debtor's Social Security Number (SSN), how will creditors and other parties get the full number?

A1: The 341 meeting notice will provide recipients - the debtor, creditors, case trustee, and the US Trustee or bankruptcy administrator - with the debtor's full SSN. Through a new dual noticing procedure to be implemented by the BNC, the file copy of that notice - returned to the court by the BNC with the certificate of service - will show the redacted number.

Q2. How will the UST be alerted to the amendment? By the docket event used to file the change?

A2: As with all public docket events, the UST will receive an electronic notice of the docket entry. The interface data download will provide the debtor's amended Social Security Number.

Q3. What happens when the clerk's office discovers that it made a typographical error in entering the debtor's SSN in CM/ECF, and the wrong number was included in the 341 notice sent to creditors, the trustee, and the United States trustee or bankruptcy administrator?

A3: The clerk will give notice of the error and include the correct SSN.

Q4. If the debtor amends the full SSN later in the case, how would creditors or other parties receive the new number?

- A4. *After the debtor electronically files a request for Social Security Number Modification in order to comply with Rule 1007(f) and the privacy policy, Rule 1009 (a) requires that the debtor give creditors notice of the amendment, and section 342©) of the Bankruptcy Code requires that the debtor include his or her Social Security Number in the notice.*
- Q5. When the trustee is paying a tax claim or tax withholding, will the IRS accept a name and a 4-digit SSN, or would it require all 9 digits of the taxpayer's SSN with the payment?
- A5. *The IRS expects the trustee/DIP to continue to furnish full SSN's with tax payments and tax withholdings. One IRS concern is getting SSN's along with the debtor's names and payment amounts when a chapter 13 trustee makes a monthly payment for a large number of debtors. Both the trustee and the IRS will get the debtor's full SSN on the 341 notice.*
- Q6. Will Official Form 21, Statement of Social Security Number be kept in the case file?
- A6. *If the case is filed electronically this form should be retained by the debtor's attorney. If the case is filed in paper format, Official Form 21 will be kept by the court in a file separate from ECF.*
- Q7. What happens if petition software vendors don't update their programs by December 1 or if attorneys do not purchase and install the updated software by then?
- A7. *After March 1, 2004, failure of an attorney to comply with the privacy rules and General Order 24 may result in the Court entering an Order to Show Cause.*