

Bankruptcy Rule Amendments to Protect Privacy Require Changes in Ch. 7 Trustee Procedures

By Donald F. Walton, Acting General Counsel and
Mark Redmiles, Civil Enforcement Co-Coordinator

Over the past several years the alarming rise in identity theft, arising in part from the growing amount of personal data on individuals that is now available electronically through public sources, has prompted the federal courts to examine whether Social Security numbers should be omitted from certain publicly filed documents. One result of this examination is the amendment of Bankruptcy Rules 1005, 1007, and 2002, and the creation of Official Form 21, all of which took effect December 1, 2003. These rule changes require the United States Trustees and the Chapter 7 trustees to change certain procedures relating to debtor identification.

The changes in the Bankruptcy Rules and Official Form are as follows:

- Rule 1005 was amended to implement the Judicial Conference's privacy policy limiting disclosure of a debtor's full Social Security number (SSN) on bankruptcy petitions to only the last four digits.
- Rule 1007(f) was amended to require the debtor to "submit" a verified statement of his or her full SSN with the petition.
- New Official Form 21, which implements amended Rule 1007, requires the debtor to "submit" a statement under penalty of perjury setting forth the debtor's full SSN. Because the form is submitted but not "filed" in the case, it will not become part of the official court record or the electronic case record accessible through the Internet.
- Rule 2002(a)(1) was amended to require the Bankruptcy Clerk to include the debtor's full SSN on the Section 341 meeting notice that is sent to creditors, the U.S. Trustee, and the case trustee, but not on the Section 341 meeting notice that becomes part of the court record.

Verification Procedures

Because a debtor's full SSN will no longer be in the public court record, certain procedures for verifying a debtor's identity must be adjusted. Under the amended Rules, U.S. Trustees and Chapter 7 trustees will receive the full SSN on the Section 341 meeting notice electronically, by mail, or by fax. The petition will contain only the last four digits, however, so during the Section 341 meeting the trustee must have access to each debtor's Section 341 meeting notice to compare it with the proof of identification and SSN presented by the debtor while under oath.

Trustees should follow their customary procedures for asking debtors to identify themselves for the record and for examining debtors' documents. A trustee should not orally recite full SSNs on the tape, because members of the public may be present or may subsequently request a copy of the Section 341 meeting tape or transcript. Instead, the trustee should state on the record that the Social Security number listed on the Section 341 meeting notice was compared with the proof of identification

and SSN presented by the debtor, and that the listed number is either accurate or inaccurate. The trustee could also have the debtor affirm on the record that the SSN contained on the Section 341 meeting notice is the debtor's SSN. The debtor should not recite his or her SSN while making this affirmation.

Correction Procedures

Any mistake in an SSN should be corrected by instructing the debtor to submit an amended verified statement (Official Form 21) with the correct full SSN to the Bankruptcy Clerk, with notice of the correct number to all creditors, the U.S. Trustee, and the Chapter 7 trustee. The debtor should also be instructed to file with the Bankruptcy Court a truncated or redacted copy of the notice of the correct number, showing only the last four digits of the SSN, and a certificate of service. Only when a mistake occurs in the last four digits that appear on the petition should the trustee direct the debtor to file an amended petition and to notice all parties with a file-stamped copy of the amended petition.

Further, in the case of an incorrect SSN the trustee should complete the "Notice to United States Trustee of Debtor Identity Problem" (Notice) as a contemporaneous document that contains the correct and incorrect SSNs. The trustee should also follow the usual procedures for continuing the meeting and submitting to the U.S. Trustee's office a copy of the Notice on which has been indicated the SSN problem and what action needs to be taken. The Notice form should be amended, however, to indicate when the debtor needs to submit an amended Official Form 21 and (for reasons described below) to delete any reference to a notice to credit reporting agencies.

Another change in our procedures involves the notice to creditor reporting agencies. Before December 1, 2003, a trustee who found an SSN error on the petition instructed the debtor to send a "Notice of Correction of Social Security Number" to the three credit reporting agencies, with a file-stamped copy of the amended petition. This procedure was implemented to help innocent third parties whose credit reports may be affected by a bankruptcy filing. The amendments to the Bankruptcy Rules, however, limit access to full SSNs in bankruptcy cases to parties in interest who receive the Section 341 meeting notice. Therefore, credit reporting agencies and other non-parties will not receive the meeting notice that contains the full SSN, nor will they be able to obtain the full SSN on PACER.

Unless the last four digits of the debtor's SSN are incorrect, there is generally no need for Chapter 7 trustees to require or instruct debtors to send a notice to the credit reporting agencies with the correct full SSN. When appropriate, Chapter 7 trustees can seek a court order, which requires the debtor to give notice to the credit reporting agencies. Moreover, creditors may provide debtors' full SSNs and bankruptcy case information to the credit reporting agencies, and debtors may want to provide the credit reporting agencies with a Notice of Correction of SSN to ensure that debt discharge will appear on their credit file with the correct SSN.

If you have any questions about these procedural changes, please feel free to contact your U.S. Trustee district office. We will monitor these new procedures to ensure they carry out the requirements of the amended rules in a manner that is most effective and least burdensome for Chapter 7 trustees and U.S. Trustee staff.