

Amendments to Federal Rules of Bankruptcy Procedure—Rule 3001 Changes

The Federal Rules of Bankruptcy Procedure have been amended, with the amendments to go into effect December 1, 2011. Under the Rules Enabling Act, the amendments automatically become effective on December 1, 2011 unless Congress takes affirmative action to stop them from going into effect. *See* 28 U.S.C. § 2075. In this case, it is not currently expected that Congress will modify or otherwise prevent the rule changes from taking effect.

Bankruptcy Rule 3001 generally governs the filing of proofs of claims. It has been amended as Bankruptcy Rule 3001(c)(2)(A) through (D) to require certain additional information to be provided with proofs of claim filed in consumer (individual) bankruptcy cases as follows:

- (1) When a creditor seeks amounts in addition to principal, the creditor must now provide a statement with the proof of claim that itemizes the interest, fees, expenses, or other charges incurred before the petition was filed.
- (2) If the creditor claims a security interest in debtor's property, the creditor must include a statement with the proof of claim that states the amount necessary to cure any default as of the date of the petition.
- (3) If the creditor fails to provide this information, the court, after notice and hearing may (i) prevent the creditor from presenting the information as evidence in any contested matter or adversary proceeding or (ii) award other appropriate relief, including attorneys' fees caused by the failure.

In addition, the official proof of claim form also changes effective December 1, 2011. In looking at the changes to the proof of claim form, the new form contains certain modifications:

- (1) it allows a creditor to use a uniform claim identifier, if desired, to facilitate automated receipt, distribution, and posting of payments made by means of electronic funds transfers by Chapter 13 Trustees;
- (2) it clarifies that the annual interest rate for secured claims is the rate applicable when the bankruptcy was filed;
- (3) it clarifies that the underlying agreements, not mere summaries, must be included with the proof of claim;
- (4) it provides a more strongly worded declaration that filer is filing under penalty of perjury and that the information "is true and correct to the best of my knowledge, information and reasonable belief."
- (5) it changes the identifying information for the signature to now require information such as name, title, company, address, and telephone number.

Given the changes to go into effect in December 2011, creditors should review their claims procedures to ensure they satisfy the requirements of the amended Rule 3001. Failing to comply with Rule 3001 may result in disallowance of the claim, and bankruptcy courts are empowered to require the creditor to pay the debtor's attorneys' fees in objecting to the claim.