

(6) If the debtor fails to include a creditor on the list required by Rule 1007(a)(1), filed with the petition, or if notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days from the date of the court's determination if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

2. Rule 3007

Among the rule amendments published for public comment last August was an amendment of Rule 3007(a), which addresses the time and manner of serving objections to claims. Rather than proceed with the published amendment of Rule 3007(a), the Advisory Committee decided in March to postpone further action on the amendment until a unified approach to the service of claim objections and claim determinations through plans can be proposed. Although this unified approach has not yet been developed, the Working Group proposes an amendment to Rule 3007 that would provide an exception to the need to file a claim objection if the determination of the allowance of a claim is made under proposed Rule 3012 in connection with plan confirmation in a chapter 12 or 13 case. The proposed language is as follows:

Rule 3007. Objections to Claims

(a) **OBJECTIONS TO CLAIMS.** An objection to the allowance of a claim shall be in writing and filed. Except to the extent that a determination of the allowance of a claim is made under Rule 3012 in connection with plan confirmation in a chapter 12 or 13 case, a copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing.

3. Rule 3012

Just as the amendment to Rule 3002 will assist in determining the proper treatment of secured claims under a form chapter 13 plan, an amendment to Rule 3012 will clarify that the amount of an allowed secured claim, as well as the amount of a claim subject to priority, may be specified in a proposed plan, subject to objection and resolution at the confirmation hearing. Current Rule 3012 provides for the valuation of secured claims by motion only, and there is no rule governing the determination of priority claim amounts. However, the secured and priority status of claims must often be determined at the time of plan confirmation in chapter 13, because of a need for these claims to be given special treatment under § 1322(a)(2) (full payment of priority claims), § 1322(b)(2) and (5) (special treatment for homestead-only mortgages), and § 1325(a)(5) with the “hanging paragraph” (treatment of certain other secured claims). Similarly, because of the importance of curing mortgage arrears under § 1322(b)(5), the Working Group decided, after the initial proposed revision was drafted, to add the determination of arrearage amounts to the matters that could be determined through the confirmation process. Finally, because of the importance of these determinations to secured and priority creditors, a further amendment is proposed to require that these creditors receive notice consistent with the requirement of Rule 7004 for service of an adversary proceeding.

In recognition that a claim of a governmental unit may be timely filed after confirmation, the proposed rule also provides that determinations with respect to such a claim may be made only after the claim is filed or after the time for filing the claim has expired.

Objections to claims under § 502(b) of the Code are not affected by this amendment and would continue to be governed by Rule 3007. Section 502(b) generally requires that any proof of claim be “allowed” unless an objection is brought under one of the grounds listed in that

subsection. Those grounds do not include insufficiency of collateral to support a secured claim or the absence of a basis for priority. Thus, a claim can be “allowed” in its full amount, with secured or priority status determined separately. The determination of the allowed amounts of general unsecured claims is generally not required at the time of plan confirmation. Similarly, the procedures for confirmation of chapter 11 plans are also not affected by the amendment. A Committee Note to the amendment would reflect these limitations.

The amendment of Rule 3012 as proposed to deal with the valuation issues and notice is as follows:

Rule 3012. Determination of the Amount of Secured and Priority Claims

On request of a party in interest and after notice—to the holder of the claim and any other entity designated by the court—and a hearing, the court may determine

- (a) the amount of an allowed secured claim under § 506(a) of the Code,
- (b) the amount necessary to cure any default as of the date of the petition,
- or
- (c) the amount of a claim entitled to priority under § 507 of the Code.

The request may be made by motion, in a plan filed in a chapter 12 or 13 case, or in a claim objection. The request shall be served on the holder of the claim and any other entity designated by the court in the manner provided for service of a summons and complaint by Rule 7004. Determinations under this rule may be made with respect to a claim of a governmental unit only after a proof of claim has been filed by the governmental unit or after the time for filing a proof of claim under Rule 3002(c)(1) has expired.

4. Rule 3015

The most extensive proposed amendments are to Rule 3015, which deals with filing, objections to, and modification of a chapter 13 plan. In addition to several stylistic

changes, the proposed amendment introduces, in Rule 3015(c), the requirement that an official form be used for all chapter 13 plans. The rule further provides that non-standard provisions will be ineffective unless they are set out in the section of the official form specifically designated for such provisions and are identified in accordance with the requirements of the official form.

Rule 3015(d) would be amended to assure that creditors receive a copy of the plan prior to confirmation.

Rule 3015(f) would establish a default deadline for objections to confirmation at seven days before the confirmation hearing. This new deadline would create the need for extended notice of plan confirmation under Rule 2002(b)(2), which provides for 28-day notice of both the hearing on confirmation of a chapter 13 plan and the deadline for filing objections to confirmation. If a single notice is provided, it would need to be sent at least 35 days before the confirmation hearing, in order to give 28-days notice of the deadline for filing objections. A Committee Note could point this out. However, the Working Group may wish to consider an amendment to Rule 2002(b)(2) to provide either for 21 days' notice of the deadline for filing objections or 35 days' notice of the confirmation hearing.

A new Rule 3015(g) is added, which provides, consistent with *United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367 (2010), that the confirmation of a chapter 13 plan controls over any contrary proof of claim, and so effectuates the amendments to Rule 3012.

Finally, former Rule 3015(g), now designated as Rule 3015(h), is amended to provide more effective notice of proposed plan modifications.

The proposed language of the amendments is as follows:

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation and Modification of a Plan in a Chapter 12 or a Chapter 13 Case

- (a) **FILING OF CHAPTER 12 PLAN.** The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.
- (b) **FILING OF CHAPTER 13 PLAN.** The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.
- (c) **FORM OF CHAPTER 13 PLAN.** The plan filed in a chapter 13 case shall be prepared as prescribed by the appropriate Official Form. Provisions not otherwise included in the Official Form or deviating from provisions of the Official Form shall not be effective unless they are included in a section of the Official Form that is designated for non-standard provisions and are also identified in accordance with any other requirements of the Official Form.
- (d) **NOTICE.** If the plan is not included with the notice of the hearing on confirmation mailed pursuant to Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.
- (e) **TRANSMISSION TO UNITED STATES TRUSTEE.** The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed pursuant to subdivision (a) or (b) of this rule.
- (f) **OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION.** An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the hearing on confirmation, unless otherwise ordered by the court. An objection to confirmation is governed by Rule 9014. If no objection is timely

filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) EFFECT OF CONFIRMATION. Any determination made under Rule 3012 of the validity, amount and treatment of a claim filed in a chapter 12 or 13 case shall be binding on the holder of the claim notwithstanding any contrary proof of claim filed by the holder in accordance with Rule 3001 or any scheduling of that claim by the debtor pursuant to § 521(a) of the Code, whether or not any objection has been filed to the claim under Rule 3007.

(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan pursuant to § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. If a copy is not included with the notice and the proposed modification is sought by the debtor, a copy shall be served on the trustee and all creditors in the manner provided for service of the plan by subdivision (d) of this rule. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

5. Rule 4003

Rule 4003(d) is amended, consistent with Rule 3012, to make clear that chapter 12 and 13 plans may provide for avoidance of liens pursuant to § 522(f) of the Code. Again, to assure that a creditor affected by the avoidance has proper notice of the plan, the plan would have to be served on that creditor in accordance with Rule 7004. The proposed language is as follows:

Rule 4003. Exemptions

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(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY.

A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be commenced by motion in the manner provided for by Rule 9014 or by a chapter 12 or 13 plan served in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion or chapter 12 or 13 plan provision filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

6. Rule 5009

Another issue considered by the Working Group is whether there should be a procedure for the debtor to obtain an order confirming that a secured claim has been satisfied. The primary concern is that a debtor may need documentation for title purposes of the elimination of an unsecured second mortgage or other lien. Because requests for such orders are likely to be made at the time the case is being closed, the Working Group is proposing that the procedure be added as an amendment to Rule 5009. However, the rule would allow a debtor to request an order at any time after the lien has been satisfied. The language is drafted to avoid taking a position on whether a chapter 13 discharge must be entered before a request for an order may be made.

Rule 5009. Closing Chapter 7, Chapter 12, and Chapter 13 Cases; Order Declaring Lien Satisfied

(a) CLOSING OF CASES UNDER CHAPTERS 7, 12, AND 13. If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered and the case shall be closed.