February 16, 2010

Via e-mail to Rules_Comments@ao.uscourts.gov

Peter G. McCabe, Secretary
Committee of Rules of Practice and Procedure
Thurgood Marshall Federal Judiciary Building
Washington, DC 20544

Re: Proposed Revisions to Bankruptcy Rule 3001

Dear Mr. McCabe:

In response to the August 12, 2009 notice issued by the Committee on Rules of Practice and Procedure (http://www.uscourts.gov/rules/propsed0809/Memo_Bench_BK_CR.pdf), the American Financial Services Association ("AFSA") thanks the Committee for the opportunity to comment upon the proposed amendments to the Federal Rules of Bankruptcy Procedure. The majority of AFSA members are creditors, although none are debt collectors.

AFSA commends the Committee for its thoughtful approach to revising the Federal Rules of Bankruptcy Procedure. Many of the proposed revisions will genuinely improve practice in the bankruptcy courts, however, AFSA also believes that the Committee should consider minor changes to the extensive revisions to Rule 3001 that will accomplish the Committee's goals of protecting trustees and consumers in Chapter 7 and 13 bankruptcy cases from the practices of the few creditors and simultaneously protect the majority of creditors who honestly file claims.

AFSA fully supports the statements in the comment authored by Philip S. Corwin, Esquire, on behalf of the American Bankers Association and others who represent more than 95% of the nation's credit industry. In addition, AFSA suggests the following modifications to the revisions the Committee proposes to Rule 3001:

1. That the revisions to Rule 3001(c)(2)(A) be changed to the following: "If in addition to its principal amount, a claim includes interest, fees, expenses or other charges incurred before the petition was filed a statement of the principal amount, and all fees, expenses or charges still outstanding and owed as of the date of the filing of the petition."

2. That the revisions to Rule 3001(c)(2)(B) be further modified so the words "arrearage or" are inserted between "any" and "default."

3. That the revisions to Rule 3001(c)(2)(C) be further modified so that "escrow account statement" be deleted and replaced with "a statement of amounts currently held and not yet disbursed in escrow for the debtor."

4. That the revisions to Rule 3001(c)(2)(D) be further modified in the first sentence. After the words "subdivision" (c) and before the comma, the Committee insert the words "after notice and a reasonable opportunity to cure." This suggested revision works hand in hand with the next suggested modification because creditors filing claims should have a reasonable opportunity to cure omissions before risking sanctions. Filing claims can be, and for creditors that manage many accounts, a laborious task and mistakes will occur. Creditors should have an opportunity to cure mistakes of omission on claims that are correct in all other aspects, and the bankruptcy courts should not be burdened with motions seeking awards for mistakes that could have been easily cured.

5. That in the final sentence of proposed Rule 3001 (c)(2)(D), after the word "sanction," add the phrase "in accordance with Rule 9011(c)." AFSA strongly recommends this addition because bankruptcy courts have developed well established standards for imposing sanctions under Rule 9011(c), and there is no justification for developing a different standard for sanctions under Revised Rule 3001(c)(2)(D). Even more importantly, trustees in cases under Chapters 7 and 13 have a statutory obligation to examine proofs of claims and to object to the allowance of claims that are improper. 11 U.S.C. §§ 704(a)(5), 1302(b)(1). Trustees receive compensation for performing those duties. 11 U.S.C. §§ 326, 330. There is no justification for awarding sanctions to a trustee that simply performs a statutory duty by objecting to a claim if the objection is sustained. Sanctions should not be a windfall to trustees or the first or easiest option for a bankruptcy court, and a sanction is more likely to be justified if a creditor has been given notice and an opportunity to cure an omission but fails to do so.

6. In the fourth paragraph to the Committee Note to Subdivision (c), AFSA recommends that in the first sentence the words 'is in arrears or is in default" be substituted for the word "defaulted" and the words "arrearage or" be added between the words "prepetition" and "default" before the period. AFSA recommends these changes to make this portion of the Committee Note consistent with the revision suggested in Paragraph 1 above, because a debt can be in arrears on an obligation where the failure to pay on time does not trigger an *ipso facto* default, and in those obligations where a creditor must declare a default.

Again, AFSA thanks the Committee for considering this comment.

Respectfully submitted,

Bill Himpler
Executive Vice President
American Financial Services Association