

Amendments to the Federal Rules of Bankruptcy Procedure and the Official Forms (Effective December 1, 2003)

- I. Privacy-Related Amendments (December 1, 2003)
- II. New Corporate Ownership Statement (December 1, 2003)
- III. New Declaration by Bankruptcy Petition Preparer (December 1, 2003)
- IV. Compliance with E-Government Act of 2002
- V. Changes to Fees Effective November 1, 2003

I. Privacy-Related Amendments (December 1, 2003).

Overview: Among the amendments to the Federal Rules of Bankruptcy Procedure and the Official Forms effective on December 1, 2003 are changes pertaining to the privacy of individuals (see the amendments to FRBP 1005, 1007 and 2002). These privacy-related changes are intended to protect an individual's privacy and prevent those viewing the docket on the Court's Electronic Case Filing (ECF) System from seeing an individual debtor's full nine-digit social security number. As of December 1, 2003, only the last four digits of the debtor's social security number will be displayed on publicly available documents, including the docket.

Use of Amended Official Forms: Commencing December 1, 2003, the amended version of the following Official Forms must be used:

- Official Form 1 – Voluntary Petition
- Official Form 3 – Application and Order to Pay Filing Fee in Installments
- Official Form 5 – Involuntary Petition
- Official Form 6 – Schedules
- Official Form 7 – Statement of Financial Affairs
- Official Form 8 – Individual Debtor's Statement of Intention
- Official Form 9 – Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates
- Official Form 10 – Proof of Claim
- Official Form 16A – Caption (Full)
- [Official Form 16C – Caption of Complaint in Adversary Proceeding Filed by a Debtor – ABROGATED]
- Official Form 19 – Certification and Signature of Non-Attorney Bankruptcy Petition Preparer

When viewed on the electronic docket, the amended Official Forms will display to the public only the **last four digits** of a debtor's social security number. Some examples are:

- Voluntary and involuntary petitions will display only the last four digits of an individual debtor's social security number.
- A business debtor listing in its schedules the employees owed back pay should provide only the last four digits of the employees' social security numbers.

- An employee owed back pay should use only the last four digits of his or her social security number when completing Official Form 10 (Proof of Claim).

To ensure that the petition preparation software is using the amended version of the Official Form on or after December 1st, check the upper left-hand corner of the first page of the form, making sure that “(12/03)” appears in the fine print.

Use of New Official Form 21: In addition to the amendments to existing Official Forms, filers are now required to complete new **Official Form 21 – Statement of Social Security Number** in all cases involving individual debtors. As of December 1, 2003, Official Form 21 will be the *only* Official Form requiring individual debtors to list their full nine-digit social security numbers. This form will **not** appear on the docket. The practice to be followed by electronic filers differs from the protocol for conventional filers; both are noted below:

Electronic Filers: An attorney filing the case of an individual debtor on the Court’s ECF system will enter – in the applicable “Case Opening” field – the debtor’s full nine-digit social security number. Because the attorney has provided the Court with the debtor’s full social security number at the time of electronic filing, the attorney need not submit to the Court the debtor’s Official Form 21, *provided that* the attorney retains the original version of the completed Official Form 21 bearing the debtor’s **original signature** in a file with the copy of the petition that has the debtor’s original signature. [NOTE: ECF filers using petition preparation software may need to update their software and should contact their software vendor for more information.]

Conventional Filers: An attorney or *pro se* debtor filing an individual case conventionally – that is, either at the Intake Window *or* by mail or courier – will need to submit the completed Official Form 21 to the Court. In a voluntary case, Official Form 21 must be submitted to the Court **with the petition**. In an involuntary case, the debtor must provide the Court with the completed Official Form 21 within 15 days after entry of the order for relief. **A failure to submit Official Form 21 in a timely manner could result in the dismissal of the case.** While *pro se* filers must submit the original copy of Official Form 21 to the Court, attorneys who are filing conventionally may submit a copy, provided that the attorney retains the original version of the completed Official Form 21 bearing the debtor’s **original signature** in a file with the copy of the petition that has the debtor’s original signature. The Clerk’s office will accept and store the debtor’s Official Form 21; the form, however, will **not** appear on the docket of the debtor’s case.

Notice of Section 341(a) or Section 1104(b) Meeting: Official Form 9 (Notice of Commencement of Case under the Bankruptcy Code, Meeting of Creditors, and Fixing of Dates) – when mailed to creditors – should contain the full nine digits of the individual debtor’s social security number; however, the docketed copy of the notice will contain only the last four digits.

Notice Requirement under Section 342(c): The section 342(c) requirement remains in effect. The debtor must include his or her social security number in a notice “required to be given by the debtor to a creditor” under applicable law or court order. For example, if an individual debtor commences an adversary proceeding against a creditor, the summons accompanying the complaint must include the debtor’s **full** nine-digit social security number; however, the copy of the summons appearing on the docket should contain only the last four digits.

Social Security Number of Bankruptcy Petition Preparer: Pursuant to section 110(c)(2), a non-attorney “bankruptcy petition preparer” – as that term is defined in section 110(a)(1) – should continue to provide the preparer’s own social security number on a petition that he or she is completing on behalf of a debtor. [Note that it is the preparer’s full social security number that appears on the petition, and **not** that of the debtor; only the last four digits of the debtor’s social security number will be displayed.]

Privacy-Related Amendments Do Not Apply to Employer Identification Numbers (EIN’s): The Rules and Forms amendments relating to privacy and taking effect on December 1, 2003 do **not** apply to employer identification numbers (EIN’s). [It is, therefore, not necessary for a corporate debtor to submit a copy of Official Form 21.]

II. New Corporate Ownership Statement (December 1, 2003).

In addition to the privacy-related amendments, the 2003 Rules Amendments effective on December 1, 2003 make other changes to the Federal Rules of Bankruptcy Procedure (see new FRBP 7007.1 and the amendments to FRBP 1007, 2003, 2009 and 2016). Among the other changes is the requirement imposed on corporations to file a **corporate ownership statement** when the corporation is either a **debtor** (FRBP 1007, as amended) *or* a **party to an adversary proceeding** (new FRBP 7007.1). For corporate debtors, the corporate ownership statement is due **at the time of the filing of the petition**. For corporate parties to an adversary proceeding, the corporate ownership statement should be filed **with the first pleading**. The corporate ownership statement should identify any other corporation owning ten percent or more of the corporate filer’s stock.

III. New Declaration by Bankruptcy Petition Preparer (December 1, 2003).

Pursuant to the amendment to FRBP 2016, a bankruptcy petition preparer – as that term is defined in section 110(a)(1) – must file a **declaration** (under penalty of perjury) and transmit the declaration to the United States Trustee – within ten days after filing the petition – and, subsequently, file a supplemental statement within 10 days after any payment or agreement not previously disclosed. The declaration should disclose the following: any fee paid; the source of the fee; from whom and on whose behalf it was received; any fees remaining unpaid; the services performed; and documents prepared.

IV. Compliance with E-Government Act of 2002.

Availability of Pleadings on Internet: The Clerk's Office accepts electronically filed documents and pleadings and makes the content of filings available on the Court's Electronic Case Filing System (ECF) via PACER. Additionally, conventionally filed documents and pleadings – after conversion to PDF format – are posted to the ECF System and, therefore, are available via PACER. Any subscriber to PACER has the ability to read, download, store or print the full content of documents stored on the Court's ECF System, unless such documents have been sealed or are otherwise restricted by Court Order.

Treatment of Sensitive Information Under the E-Government Act of 2002: Filers should not include sensitive information in any document filed with the Court unless such inclusion is required by statute, Federal Rules of Bankruptcy Procedure or Official Forms or the inclusion is otherwise necessary and relevant to the case. *Any personal information not otherwise protected will be made available on the Court's ECF System via PACER.*

Personal Data Identifiers: If sensitive information must be included, the following personal data identifiers must be partially redacted from the pleading, unless specifically required by statute, Federal Rule of Bankruptcy Procedure or Official Form, whether it is filed conventionally or electronically:

- ***Social Security Numbers:*** If an individual's social security number must be included in a pleading, only the last four digits should be used.
- ***Names of Minor Children:*** When referring to minor children, only the initials of that child should be used. Only the relationship and age of the debtor's dependents (*i.e.*, son, age 6) should be listed on **Schedule I, Official Form 6**.
- ***Date of Birth:*** Only the year should be used where an individual's date of birth must be included in a pleading. List the age (and *not* date of birth) of each of the debtor's dependents on **Schedule I, Official Form 6**.
- ***Financial Account Numbers:*** If financial account numbers are relevant, only the last four digits of these numbers should be used. To assist the trustee and creditors, debtors may choose to include their full account numbers on **Schedules D, E and F, Official Form 6**.

Filing Sensitive Information Under Seal: A party wishing to file a document containing the personal data identifiers specified above may file an unredacted document under seal. The Court will retain the sealed document as part of the record. However, the Court may require the party to file a redacted copy for the public file.

Additional Sensitive Information: Filers should exercise caution when filing documents containing the following:

- Any personal identifying number, such as driver's license number;
- Medical records, treatment and diagnosis;
- Employment history;
- Individual financial information; and
- Proprietary or trade secret information.

Responsibility of Counsel and Parties: Counsel is strongly urged to share this notice with all clients so that an informed decision about the inclusion of sensitive information may be made. **It is the sole responsibility of counsel and parties to be sure that all documents and pleadings comply with the Court's Local Rules and Administrative Orders requiring redaction of personal data identifiers, in addition to compliance with federal statute, rules of procedure and mandatory forms.** The Clerk will *not* review each pleading for redaction.

V. Changes to Fees Effective November 1, 2003.

Separate from the amendments to the Federal Rules of Bankruptcy Procedure and the Official Forms are the increases to certain fees that become effective on **November 1, 2003**. To see the list of current fees, please access the Fee List appearing on the Court's website [www.nysb.uscourts.gov] under the heading "General Information."