

**Summary Statement of Philip S. Corwin
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On behalf of the
American Bankers Association
Before the
Advisory Committee on Bankruptcy Rules
New York, NY
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My name is Philip Corwin and I am appearing today on behalf of the members of the American Bankers Association (ABA). The ABA appreciates the opportunity to present this oral statement and engage in dialogue with members of the Advisory Committee.

Proposed Amendments to Rule 3001

- Assuring accuracy of proofs of claim is very important, but the proposal would place an unreasonable burden upon consumer lenders and debt purchasers that in many cases will be impossible to satisfy. Overall, the proposed amendments fundamentally alter the balance between debtor and creditor in bankruptcy. By requiring additional information and penalizing the omission of this information, the proposed rule imposes additional costs on creditors and will encourage debtors to dispute otherwise undisputed claims and encourage unnecessary litigation. It would likely result in a further diminution of consumer credit availability and greater losses for financial institutions as a result of its detrimental impact upon the purchased debt market. We do not know of any serious problems in regard to proofs of claim for unsecured consumer debt that justify this negative economic impact. As set forth below, portions of the proposal raise credit market policy issues that should be first addressed by the legislative branch, rather than the judiciary.
- The inclusion of the last open-end or revolving credit account statement could confuse the debtor, as the creditor's or debt purchaser's claim is for the amount due on the date of the filing of the bankruptcy petition, not as of the last statement date. Such statements would also be difficult to produce where a bank merger has occurred. Moreover, a debt purchaser could find it difficult or even impossible to obtain such a statement if the debt is old. It is also unclear what "statement" is being referenced – that of the original creditor, or the demand letter sent by the debt purchaser?
- The requirement for an itemized statement of interest, fees, expenses or charges would be very difficult or impossible to comply with unless a standardized calculation formula is adopted. Devising such a formula is a complex technical matter. For example, what is the "principal amount", and how should a creditor

treat an account that includes a balance transfer from another lender? It is unclear what benefit this difficult and burdensome requirement will provide to the debtor. Moreover, there is no statutory authority for the Committee to take this action.

- The above proposed new documentation requirements would contravene the implied presumption of validity accorded to a creditor's claim under Rule 3001f – yet there is no waiver of Rule 3001f (as proposed new Rule 3002.1 includes). We do not advocate the addition of such a waiver – in fact, we strongly oppose it – but absent such waiver the proposed amendments are contradictory.
- The proposed requirement to include a statement of the amount necessary to cure any default for debts secured by property requires further refinement. For example, if the claim is based upon a judgment lien then the cure amount would be the entire debt.
- The proposed requirement for an escrow account statement for debts secured by a principal residence is already the local rule in many jurisdictions. But there is no uniform national form for providing such information, and the Committee should promulgate such a form in conjunction with this proposed amendment.
- The additional sanctions proposed for creditors who fail to provide the proposed documentation required by the amendments, to the extent they go beyond barring presentation of the omitted information at later stages of the case, are outside the proper role of the Judiciary. Again, Congress has provided no statutory authority for this.

New Rule 3002.1

- Proposed Rule 3002.1 appears to attempt to implement pending Congressional legislation that has not been enacted into law. The proposed new Rule would therefore intrude impermissibly upon legislative prerogatives and should be withdrawn as beyond the proper functioning of a body restricted to regulatory/administrative functions.
- Notices of changes in payment amount due to interest rate or escrow account adjustments should be entitled to a presumption of validity absent evidence to the contrary and Rule 3001f should not be waived as proposed.

- Providing itemized notice of all fees, expenses or charges within 180 days after they were incurred may not be feasible in all cases and therefore a longer time period should be set. Again, Rule 3001f should not be waived as proposed.
- As a practical matter many creditors will be unable to serve a statement on the debtor's counsel and other parties within 21 days of receipt of a notice asserting that a cure amount has been paid in full, and this period should be lengthened to at least 90 days. Additionally, a model form should be promulgated for the provision of such notice by a trustee or debtor.
- For the same reasons asserted in regard to Rule 3001, there is no statutory authority for the Committee to mandate additional sanctions.