



**UNITED STATES BANKRUPTCY COURT**  
**Southern District of Alabama**  
**113 St. Joseph Street**  
**Mobile, AL 36602**

Henry A. Callaway  
*Chief U.S. Bankruptcy Judge*

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November 13, 2020

VIA EMAIL

Honorable Dennis R. Dow  
U.S. Bankruptcy Court for the  
Western District of Missouri  
Whittaker U.S. Courthouse  
400 East Ninth Street, Room 6562  
Kansas City, MO 64106

Re: Suggested changes to Bankruptcy Rule 3001 and Bankruptcy Form B101

Dear Judge Dow:

Bankruptcy Rule 3001(c)(3) requires that a proof of claims based upon an open-end or revolving consumer credit agreement provide the date of the last transaction and the last payment on the account. However, Rule 3001(c) does not require that information for other types of claims. That creates a problem in trying to determine whether a claim based upon an installment contract is time-barred. For example, Alabama has a six year statute of limitations for written contracts which begins running at default but is tolled by subsequent voluntary payments. As you know, new car loans now extend as long as eight or even nine years. I thus see many proofs of claim based upon automobile installment loans which were entered into outside the six year statute of limitations but have payment terms that extend well within the statute of limitations. Without last payment information in the proof of claim, I cannot tell whether the debtor made payments within the six years and thus determine whether the claim is time-barred. Objections to these claims are usually filed by the chapter 7 or chapter 13 trustee, and the debtor usually does not have any information or is AWOL.

On another subject, I also suggest a minor change for Official Form B101, the voluntary petition for individuals filing for bankruptcy. Question 4 requests any business names and Employer Identification Numbers that the debtor has used in the last eight years. The instructions state, "Include trade names and *doing business as* names." The problem is that

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many small business owners have set up limited liability companies, and debtors inevitably list their limited liability company (or less commonly, a regular corporation) in response to this question. That causes the LLC to be named in the petition, creating confusion as to whether the LLC is in bankruptcy, whether the LLC's assets are part of the bankruptcy estate, and whether creditors should file proofs of claim in the individual case based on debts of the LLC (they usually do, which then prompts a round of claim objections). I thus suggest that the instructions be revised to add language along these lines: "Do not list any separate legal entity such as a limited liability company or corporation."

Thank you for your consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "H. Callaway". The signature is fluid and cursive, with a large initial "H" and a long, sweeping tail.

Henry A. Callaway  
Chief U.S. Bankruptcy Judge

HAC/cbo