Office of the Deputy Attorney General
Washington, D.C. 20530

February 21, 2025

The Honorable Rebecca B. Connelly
Chair, Advisory Committee on Bankruptcy Rules
United States Courthouse
116 North Main Street
Harrisonburg, VA 22802

Re: Proposed Amendment to Rule 3018. Chapter 9 or 11—Accepting or Rejecting a Plan

We write to articulate the views of the Department of Justice on the current proposal to amend Federal Rule of Bankruptcy Procedure 3018, Chapter 9 or 11—Accepting or Rejecting a Plan, by allowing oral acceptance of a chapter 9 or chapter 11 plan that is part of the record. The Department has no objection to Rule 3018's proposed text and endorses the proposed Committee Note that observes what we understand to be the law: "Nothing in the rule is intended to create an obligation to accept or reject a plan."

Currently under Rule 3018(c), acceptance or rejection of a chapter 9 or chapter 11 plan must "be in writing," "be signed" by the creditor or an authorized agent, and "conform to Form 314." The proposed amendment continues to permit this written acceptance while adding a statement on the record as an alternative means of acceptance. This would allow a creditor or an authorized agent to accept a plan—or change or withdraw a rejection—in a statement on the record at a confirmation hearing. We agree that seeking more flexibility for parties is commendable and, properly applied, that flexibility will assist "the just, speedy, and inexpensive determination of every case and proceeding." Fed. R. Bankr. P. 1001.

It is important that practitioners understand the limits of this proposed amendment. The proposed amendment to Rule 3018 under consideration was originally suggested by the National Bankruptcy Conference. National Bankruptcy Conference (23-BK-F). The National Bankruptcy Conference identified the issue to be addressed by the suggestion in this way:

> For whatever reason, several categories of creditors that are repeat players in Chapter 11 cases—including the Internal Revenue Service, other federal agencies, and some state and local taxing agencies—have internal policies or practices never or very rarely to return ballots regarding bankruptcy plans, even in scenarios in which those creditors do not oppose or affirmatively support confirmation of a plan. Since these creditors' claims often must be separately classified, their institutional inability or unwillingness to return ballots means that, at least in some jurisdictions, there inevitability be a rejecting class. This result is particularly problematic in the context of subchapter V debtors—which often are small businesses that owe some overdue federal or state tax—since the rejection of a plan by even one impaired class precludes confirmation under Bankruptcy Code section 1191(a).

The National Bankruptcy Conference's suggestion continued, "We can think of no policy supporting this construct, particularly in instances when the subchapter V debtor has done everything it should do and negotiated an agreed result with the nonvoting class."

This reasoning for the suggested amendment is not addressed by a change in the allowed methods for voting. The proposed amendment provides flexibility, which the Department supports. Rule 3018, however, cannot add a substantive requirement that creditors must vote on a plan or that courts could compel the United States or federal agencies to do so. In that regard we believe the Committee Note's observation that "Nothing in the rule is intended to create an obligation to accept or reject a plan" is an important statement that practioners should not expect the proposed amendment to address the National Bankruptcy Conference's reasoning in submitting the suggestion.

We look forward to discussing these issues further in upcoming meetings.

Sincerely,

Emil Bove
Acting Deputy Attorney General