

# PRIVACY IMPLEMENTATION FREQUENTLY ASKED QUESTIONS

The AO issued guidance for implementing the judiciary's new privacy rules in July 2003. That guidance has been posted on the J-Net at:

<http://jnet/courtoperations/bankrupt/OCPB75.PDF>

As court staff, US trustees, and others review the guidance in preparation for implementing the required changes, questions arise. This document attempts to address the most frequently asked questions. Please note that a number of questions are still under review by the AO general counsel and records officer.

## SSN REDACTION AND NOTICING BASICS

**Q1:** With the new privacy rules requiring redaction of a debtor's Social Security number (SSN), how will creditors and other parties get the full number?

**A1:** *The 341 meeting notice will provide recipients – the debtor, creditors, case trustee, and the US Trustee or bankruptcy administrator – with the debtor's full SSN. Through a new dual noticing procedure to be implemented by the BNC, the file copy of that notice – returned to the court by the BNC with the certificate of service – will show the redacted number.*

**Q2:** Under CM/ECF version 2.3, how will dual noticing for 341 meetings be accomplished?

**A2:** *As outlined in AO guidance issued July 24, 2003, available on the J-Net at <http://jnet/courtoperations/bankrupt/OCPB75.PDF>*

*-CM/ECF version 2.3 will generate two versions of the 341 notice, one with a 9-digit SSN and one with just the last 4 digits. Both versions will be sent to the BNC. The 4-digit version will be returned to the court with the certificate of service for the case file.*

**Q3:** How will the redacted SSN be displayed?

**A3:** *The display will be in the format "xxx-xx-1234"*

## SSN FILED LATE/AMENDED

**Q4:** When filing a petition, the debtor must provide a full SSN to the court – either by submitting a paper Statement of Social Security (Form B21) or via electronic transmittal. If the debtor does not submit the full SSN with the petition, how will parties get the number?

**A4:** *Electronic Submission: Normally, when a petition is filed electronically, either through CM/ECF or case upload, that data includes the debtor's full SSN, and it*

*will appear on recipients' 341 notices. For those instances when the SSN is not included, the court may wish to adopt a local rule providing for the dismissal of the case if the SSN is not submitted by a date certain.*

*Paper Submission: If the petition is a paper filing and a Form B21, Statement of Social Security Number, is not provided at the time of the filing (and not otherwise provided electronically), the court should accept the petition and issue a deficiency notice requiring submission of Form B21. The court may wish to adopt a local rule providing for the dismissal of the case if the form is not submitted by a date certain.*

**Q5:** If the debtor amends the full SSN later in the case, will the UST Interface pick up the new number? How would creditors or other parties receive the new number?

**A5:** *Although the debtor may submit the amended Statement of Social Security Number on paper in order to comply with Rule 1007(f) and the privacy policy, Rule 1009(a) requires that the debtor give creditors notice of the amendment, and section 342(c) of the Bankruptcy Code requires that the debtor include his or her full SSN in the notice. Consistent with its privacy policy, the Judicial Conference is seeking to amend section 342(c) to require that the debtor provide only the last four digits of the SSN. A local rule could require the debtor to send the creditor copies of the amendment and/or the original 341notice.*

*The debtor should file a redacted copy of the notice along with a certificate of service. The daily trustee data interface will include the SSN and other case data for all cases with any docketing activity – as long as it is a public docket event.*

Q6: How will the UST be alerted to the amendment? By the docket event used to file the change?

A6: *As with all public docket events, the UST will receive an electronic notice of the docket entry. The interface data download will provide the debtor's amended Social Security number.*

#### **COURT DATA ENTRY ERROR**

Q7: What happens when the clerk's office discovers that it made a typographical error in entering the debtor's SSN in CM/ECF, BANCAP, or NIBS and the wrong number was included in the 341 notice sent to creditors, the trustee, and the United States trustee or bankruptcy administrator?

A7: *The clerk should give notice of the error and include the correct SSN. Rule 1009(a) requires that the clerk give notice of amendments ordered by the court. Since the debtor's Social Security number would be included, the notice would have to have the "341 notice" designation so that the CM/ECF software and the BNC would follow proper privacy procedures.*

#### **CREDITOR ADDED**

Q8: What happens when creditors are added to a case? How do they receive the debtor's full SSN?

A8: *Rule 1009(a) requires the debtor to give the creditor the full SSN, but a local rule requiring the debtor to notice both the amendment and the SSN could be helpful. The local rule could require the debtor to send the creditor copies of the amendment and/or the original 341 notice. Section 342(c) of the Bankruptcy Code currently requires that the debtor provide his or her full SSN on any notice given by the debtor to a creditor. Consistent with its privacy policy, the Judicial Conference is seeking to amend section 342(c) to require that the debtor provide only the last four digits of the SSN.*

#### **TRUSTEE USE OF SSN & VERIFICATION**

Q9: The UST requires debtors to verify their identity by bringing (1) a government-issued photo ID and (2) a Social Security card or a functional equivalent to the section 341 meeting of creditors. Currently, trustees check the number on the debtor's Social Security card against the SSN on the petition to ensure accuracy. Since the full SSN will no longer be on the petition, what documents should trustees use to verify debtor SSNs at 341 meetings?

A9: *Trustees should change their procedures to ensure that they have the information contained on the 341 notice at the meeting for use in verifying the SSN. As a potential alternative, several clerks indicated that their courts might require debtors to send signed copies of their B21 forms to the trustee.*

Q10: If a case trustee finds a mismatch between the SSN presented by the debtor at the 341 meeting and the SSN on Form B21 or the 341 notice (or last four digits on the petition), how does the trustee get the court to re-notice the case?

A10: *The trustee should follow current practice and require the debtor to amend the Statement of Social Security Number (and the petition if the last four digits are changed). If the debtor amends the Statement of Social Security Number, the debtor should submit a paper copy of the amended Form B21 in order to comply with Rule 1007(f) and the privacy policy. Because the amended Form B21 is submitted on paper, the clerk's office will have to key the revised SSN into CM/ECF, BANCAP, or NIBS.*

*Rule 1009 provides that the debtor may amend the petition, schedules, lists, and statements as a matter of course at any time before the case is closed and that the debtor must give notice of the amendment to the trustee and any affected entity. Because changing the SSN affects all parties in the case, all creditors, the trustee, and the United States trustee or bankruptcy administrator should be given notice of the amendment and the full, revised SSN (as required by section 342(c) of the Bankruptcy Code). The debtor should file a redacted copy of the notice and a certificate of service, which will be docketed. By receiving an electronic notice of the filing or by checking the docket, credit bureaus, the United States trustee, and parties can catch the fact that the SSN has changed (but not the revised SSN itself). Although section 342(c) currently requires that the debtor provide his or her full SSN on any notice given by the debtor to a creditor, the Judicial Conference is seeking to amend section 342(c) to require only the last four digits of the SSN in order to be consistent with the privacy policy. NY-S goes further and requires that an amendment be filed and heard before a judge. Other courts may not require a hearing before a judge, but may require that the debtor file an explanation of the SSN "error."*

Q11: What if a party in interest, rather than the debtor, moves to amend the petition, schedules, lists, or statements?

A11: *If the court orders the amendment, Rule 1009(a) requires that the clerk give notice of the amendment to the entities designated by the court. If the debtor's Social Security number needs to be included, the notice would have to have the "341 notice" designation so that the CM/ECF software and the BNC would follow proper privacy procedures.*

Q12: How will Chase, EPIQ, and other vendors who provide case management software for panel trustees obtain the full SSN to set up cases for their chapter 7 and chapter 13 trustees? If the court requires the trustee to notice the 341 meeting, how will the trustee's noticing vendor get the full SSN to prepare the notice? Since PACER will no longer provide the full SSN, could such vendors extract the information from a FTP (File Transfer Protocol) site set up by the court?

A12: *In this instance, any contractual relationship for providing case management services exists between the trustees and the vendors, not the vendors and the court. It would be up to the trustees to work out a process to provide such vendors, acting as their agents, with access to the case information. A court may suggest that a trustee establish an autoforward email of this information to the vendor.*

### **WAGE CLAIMS**

Q13: When the trustee is paying a tax claim or tax withholding, will the IRS accept a name and a 4-digit SSN, or would it require all 9 digits of the taxpayer's SSN with the payment?

A13: *The IRS expects the trustee/DIP to continue to furnish full SSNs with tax payments and tax withholdings. One IRS concern is getting SSNs along with the debtors' names and payment amounts when a chapter 13 trustee makes a monthly payment for a large number of debtors. Both the trustee and the IRS will get the debtor's full SSN on the 341 notice.*

Q14: How can trustees get the full SSN of a wage claimant when the full number will not appear on the new proof of claim form?

A14: *Although proofs of claim filed by wage claimants will no longer contain the claimant's full SSN, chapter 11 DIPs have the full SSNs for their employees. If the trustee doesn't have the debtor's payroll records in a business case, the trustee would not be able to include the full SSN with payment of tax claims and tax withholding. The court may wish to consider a local rule requiring wage claimants to give their full SSNs to the trustee in addition to filing proofs of claim.*

### **STATEMENT OF SSN (FORM B21)**

*Note: The following questions about Form B21 and records retention are under review by the AO general counsel and records officer.*

Q15: Does the debtor's SSN have to be submitted to the court on a paper copy of Form B21, Statement of Social Security Number?

A15: *Rule 1007(f) requires a verified statement containing the debtor's SSN to be submitted with the petition, and Form B21 provides for this requirement. By local rule, courts may provide for the full SSN to be submitted electronically and the signed paper copy of the statement retained by the debtor's attorney.*

Q16: Under such a local rule, how long should the attorney keep signed originals of Form B21?

A16: *Because the US Trustee may take action against debtors for misuse of the SSN, the court should confer with the UST on the retention period.*

Q17: Should Form B21 be kept in the case file?

A17: *No. By design, Form B21 is not part of the case file. Whether the form is received electronically or on paper, the court should keep that information separate from the case file. If the court images paper copies received of the form, it should be sure to maintain the imaged file in a separate data base from the electronic case file.*

Q18: If a court receives a paper original or copy of Form B21, how should it be stamped?

A18: *The clerk should use a "received" stamp for paper copies of the B21 since the Statement of Social Security Number is submitted, not filed.*

Q19: If a case is filed via floppy diskette, what are the recommended procedures for handling the B21? Should it be included on the diskette, e.g., in PDF format?

A19: *It is recommended that the debtor's attorney not submit the B21 on a diskette. The attorney should keep the signed original of the B21 and submit a paper copy of the B21 with the petition. Including an electronic version of B21 (Statement of Social Security Number) on the diskette poses a danger of having the file accidentally loaded into CM/ECF.*

## **PRIVACY & ACCESS TO FULL SSN**

Q20: Is Form 21 a confidential document? If someone comes to the court and requests the full SSN, should the request be denied? What if the requestor is a party in interest?

A20: *The Statement of Social Security Number should be considered confidential. The impact of the privacy policy would be severely limited if anyone could call or walk up to the counter and get the full SSN.*

*-A creditor or other entity that wants access to the full SSN may file a motion requesting the full number and setting out the rationale for the request. The court can grant the motion on a showing of sufficient cause.*

*-In granting access, the court should be careful to avoid subverting the privacy policy to help data resellers or other entities which are not entitled to receive the 341 notice which includes the full SSN.*

*-The Judicial Conference rejected the concept of differing levels of access to the case file. The privacy policy (<http://www.privacy.uscourts.gov/Policy.htm>) provides that the court's public cases files should not include full SSNs or other "personal data identifiers." The court must collect this information (as on new Official Form 21) but it is not part of the public file.*

Q21: What if the requesting party is a creditor that the debtor has just added to the case?

A21: *If a debtor adds a creditor to the case, Rule 1009(a) requires that the debtor notice the trustee and affected parties, including the new creditor. Also, if the creditor has used a SSN to identify the debtor in the past, the creditor can use the SSN in its files to get a match with the debtor through the US/Case Party Index. Section 342(c) of the Bankruptcy Code currently requires that the debtor provide his or her full SSN on any notice given by the debtor to a creditor. Consistent with its privacy policy, the Judicial Conference is seeking to amend section 342(c) to require that the debtor provide only the last four digits of the SSN.*

Q22: If a court receives a request from someone who wants the court to verify that a Social Security number provided by that person is the full SSN of the debtor, how should the clerk's office respond?

A22: *If a court is given the full SSN, the court can verify that it is the number for the debtor in question. However, the court should direct the requestor to the court's WebPacer site or VCIS to confirm the last four digits. It also would be searchable through US Case Party Index.*

### **Attorneys with old petition software**

Q23: What happens if petition software vendors don't update their programs by December 1 or if attorneys don't buy and install the updated software by then?

A23: *Pursuant to the directive of F.R.B.P. 5005(a) , the court should accept the petition. The court is not required to redact any personal identifiers. If an attorney continues to submit petitions containing the full SSN, the clerk may want to caution the attorney or suggest that the court issue an Order to Show Cause*

*why the attorney should not be sanctioned for failure to comply with the Rules.*

**EIN & OTHER TAX ID NUMBERS**

- Q24: The rules and forms require the use of the debtor's full EIN and any other Taxpayer ID no. except the SSN in the petition and notices. How will ECF or the BNC differentiate between an EIN (10 digits, one dash) and SSN (9 digits, 2 dashes).
- A24: *The Social Security number is in a separate data field from the taxpayer id; unless the SSN is entered in the wrong field, there is no possibility of confusion. Also, CM/ECF software requires that the SSN be entered with the dashes in an "nnn-nn-nnnn" format; if not, a message is displayed.*
- Q25: In the case of sole proprietorship, where there may not be an EIN (or it may be missing) and an individual's SSN is used instead for the business identification, should the full SSN be available because in this case it equates to an EIN?
- A25: *No. Even if this is a business case, it's still an individual debtor with privacy concerns. The sole proprietor's creditors didn't rely on the SSN any more than the creditors in a consumer case. The EIN and other non-SSN Taxpayer ID numbers are disclosed because they are helpful to creditors and there is no privacy interest in those numbers.*
- Q26: How should a debtor's Individual Taxpayer Identification Number (ITIN) be treated if the debtor uses that number in place of a Social Security number on the petition or on Official Form 21, Statement of Social Security Number.
- A26: *ITINs are used by certain aliens and others who cannot obtain a Social Security number. Like the SSN, the ITIN is a 9-digit number. Although ITINs are not addressed specifically in either Judiciary's privacy policy or in the amendments to the bankruptcy rules and forms which take effect on December 1, 2003, ITINs are used in place of SSNs and function in the same way for tax processing. Accordingly, ITINs should be treated the same way as SSNs, i.e.,*
- (1) that the debtor should include the full ITIN (identified as such) on the Statement of Social Security Number, Official Form 21, if **submitted** to the court,*
- (2) that the number should be redacted by the filer on any paper **filed** and included in the case file, and*
- (3) the court should include the ITIN on the 341 notice, noting that it is not a SSN.*