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## NOTE

### TIMELY FILING IN CHAPTER 13 BANKRUPTCY CASES: DOES RULE 3002(C)'S DEADLINE APPLY TO SECURED CREDITORS?

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#### INTRODUCTION

“[I]f an unsecured claim holder can only accomplish allowance by filing a proof of claim that is timely as defined by Bankruptcy Rule 3002(c), then the same is surely true with respect to the holders of secured claims . . . .”<sup>1</sup> So proclaimed Keith Lundin, Bankruptcy Judge for the Middle District of

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<sup>1</sup> KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY § 280.1 (3d ed. 2000 & Supp. 2004).

Tennessee,<sup>2</sup> and a large majority of bankruptcy courts have agreed.<sup>3</sup> Bankruptcy practice manuals and *Collier's* (the "leading treatise on bankruptcy law")<sup>4</sup> echo this majority trend.<sup>5</sup> Even the *Handbook for Chapter 13 Standing Trustees*, published by the U.S. Department of Justice, seems to agree with Judge Lundin's interpretation of the timely filing requirement, stating: "[t]he bar date in a chapter 13 case is 90 days after the first date set for the meeting of creditors."<sup>6</sup> The *Handbook* does list a few exceptions to this general rule, but nowhere does it suggest that secured creditors are not subject to the same bar date as unsecured creditors.<sup>7</sup>

Nonetheless, some bankruptcy courts are allowing secured creditors to ignore the timely filing requirement. Why? More importantly, which approach to the filing of claims by secured creditors is correct? To answer these questions, one must first understand the basic context in which the timely filing requirement operates.

Chapter 13 bankruptcy allows debtors to pay off their debts through future earnings while at the same time retaining their assets.<sup>8</sup> In order to participate

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<sup>2</sup> For a brief biography of Judge Lundin, see <http://www2.nortoninstitutes.org/norton/BioLundin.html> (last visited Dec. 17, 2007).

<sup>3</sup> See, e.g., *In re Mickens*, No. 04-1324, 2005 WL 375661, at \*2 n.3 (Bankr. D.D.C. Feb. 14, 2005) ("The court's limited research found no similar decisions [allowing secured creditors to file proofs of claim after the 3002(c) deadline] issued after the [1994] amendment of § 502(b)(9)."); *In re Boucek*, 280 B.R. 533, 539 (Bankr. D. Kan. 2002) ("Since the 1994 amendment, the clear majority addressing this issue have held that an untimely claim is disallowed and the holder is not entitled to payments under the plan of reorganization.").

<sup>4</sup> *Houglan v. Lomas & Nettleton Co. (In re Houglan)*, 886 F.2d 1182, 1184 (9th Cir. 1989); see David G. Epstein, *The Practical Scholar*, 76 N.Y.U. L. REV. 1304, 1306 (2001) (describing how *Collier's* interpretation of bankruptcy law "guide[s] judges").

<sup>5</sup> See LYNN M. LOPUCKI & CHRISTOPHER R. MIRICK, STRATEGIES FOR CREDITORS IN BANKRUPTCY PROCEEDINGS § 16.07 (5th ed. 2007) ("The proof of claim must be filed within 90 days after the first date set for the meeting of creditors."); ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY § 3002.03[1] (15th ed. 2007) ("Rule 3002(c) governs the time within which proofs of claim must be filed in chapter 7, 12, and 13 cases. For non-governmental claimants, that time is 90 days after the first date set for the section 341 meeting of creditors."); HENRY J. SOMMER, CONSUMER BANKRUPTCY LAW AND PRACTICE § 17.4.1 (8th ed. 2006) ("In cases under chapter 7, 12, or 13, the proof of claim must be filed within ninety days after the first date set for the meeting of creditors under section 341(a) of the Code.").

<sup>6</sup> EXECUTIVE OFFICE FOR U.S. TRUSTEES, U.S. DEPARTMENT OF JUSTICE, HANDBOOK FOR CHAPTER 13 STANDING TRUSTEES 6-9 (1998).

<sup>7</sup> See *id.*

<sup>8</sup> John E. Matejkovic & Keith Rucinski, *Bankruptcy "Reform": The 21st Century's Debtors' Prison*, 12 AM. BANKR. INST. L. REV. 473, 484 (2004). A consumer debtor may choose to file for bankruptcy under Chapter 13 or, alternatively, the debtor may choose to file under Chapter 7. *Id.* at 483. "Under chapter 7, the debtor must surrender his non-exempt assets to a bankruptcy trustee. The bankruptcy trustee will then sell those assets and

in Chapter 13 bankruptcy, the debtor must first file a plan that proposes how each creditor will be paid.<sup>9</sup> Once a proposed plan is filed, the debtor must begin making payments to the trustee within thirty days.<sup>10</sup> When the bankruptcy court confirms the debtor's plan, the trustee begins to distribute the collected funds to the creditors according to the terms of the confirmed plan.<sup>11</sup> After the process starts, the debtor continues to make payments to the trustee until all plan payments are made, at which point the bankruptcy court will "grant the debtor a discharge of all debts provided for by the plan."<sup>12</sup>

If a creditor desires to participate in a debtor's Chapter 13 plan and receive payment distributions from the trustee, the creditor may file a proof of claim.<sup>13</sup> In order to receive plan payments, a creditor's claim must be allowed.<sup>14</sup> This condition is presumed satisfied unless an objection is made by the debtor or the trustee.<sup>15</sup> If an objection is made, tardiness in filing the proof of claim is one reason why courts may disallow a claim.<sup>16</sup> Therefore, "[a]s the process now works, a creditor files its claim, [and] that claim is deemed allowed, unless it is objected to. Thus, even late claims are deemed allowed unless objected to, [and] [i]f an objection is filed, lateness is a reason not to allow the claim."<sup>17</sup> The question then becomes: When is a proof of claim considered to be "timely filed"?

Federal Rule of Bankruptcy Procedure 3002(c) ("Rule 3002(c)") prescribes the timeliness requirements for filing a proof of claim.<sup>18</sup> The rule states that "a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code."<sup>19</sup> While courts universally agree that Rule 3002(c)'s deadline applies to unsecured creditors that have not retained a lien, mortgage, or other secured interest in the debtor's property, much uncertainty has arisen as to whether the rule applies to secured creditors that have retained a secured interest against

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apply the proceeds to the bankrupt's creditors, according to the debt's priority, and the court's orders." *Id.* at 484.

<sup>9</sup> 11 U.S.C. §§ 1321-1322 (2000).

<sup>10</sup> 11 U.S.C. § 1326(a)(1) (2000).

<sup>11</sup> *See* 11 U.S.C. §§ 1325-1326(a)(2) (2000).

<sup>12</sup> 11 U.S.C. § 1328(a) (2000). A debtor's plan need not provide for the full satisfaction of unsecured claims as long as unsecured creditors would receive the same amount had the debtor filed bankruptcy under Chapter 7. 11 U.S.C. § 1325(a)(4) (2000). Therefore, as long as the debtor makes all plan payments, the remaining unpaid portion of unsecured claims will be discharged.

<sup>13</sup> 11 U.S.C. § 501(a) (2000).

<sup>14</sup> FED. R. BANKR. P. 3021.

<sup>15</sup> 11 U.S.C. § 502(a) (2000).

<sup>16</sup> 11 U.S.C. § 502(b)(9) (2000).

<sup>17</sup> *In re Hogan*, 346 B.R. 715, 720 (Bankr. N.D. Tex. 2006).

<sup>18</sup> FED. R. BANKR. P. 3002(c).

<sup>19</sup> *Id.* The section 341 meeting of creditors is an opportunity for the creditors and the trustee to question the debtor. 11 U.S.C. § 343 (2000).

the debtor.<sup>20</sup> As one commentator has described the situation, “[s]omething [as] basic [as the timeliness requirement’s applicability] should be clear in the Code and Rules. It isn’t.”<sup>21</sup>

Two recent cases illustrate this uncertainty. In *In re Mehl*, the debtors filed a Chapter 13 petition and their plan was confirmed on February 15, 2005.<sup>22</sup> Though the deadline pursuant to Rule 3002(c) for filing proofs of claim was April 27, 2005, Heights Bank filed a secured claim on July 5, 2005, a full sixty-nine days after the Rule 3002(c) deadline.<sup>23</sup> After the trustee objected to the late-filed claim, the bankruptcy court for the Central District of Illinois asked whether “a proof of claim filed by a secured creditor [is] subject to a firm bar date.”<sup>24</sup> The court answered in the negative, stating that “the Rule 3002(c) deadline for filing proofs of claim does not apply to secured claims . . . so that the failure to file the claim within 90 days after the first date set for the meeting of creditors is not a basis for disallowance of a secured claim.”<sup>25</sup>

In the case of *In re Hogan*, the debtors filed for Chapter 13 bankruptcy on November 3, 2004, and the Rule 3002(c) deadline for filing proofs of claim was set for March 7, 2005.<sup>26</sup> Despite this deadline, the Ford Motor Company, a secured creditor, filed a proof of claim on January 30, 2006, nearly ten months after the Rule 3002(c) deadline.<sup>27</sup> The Bankruptcy Court for the Northern District of Texas then addressed the same question as the court in *In re Mehl* but reached the opposite conclusion,<sup>28</sup> holding that secured creditors are “required to timely file proofs of claim in order to receive payments under the Chapter 13 plans of their respective [d]ebtors.”<sup>29</sup> These cases illustrate the countervailing approaches that courts take in interpreting Rule 3002(c)’s timely filing requirement, and exemplify the uncertainty of the Rule’s application to secured creditors.

This Note proceeds in three parts. Part I briefly describes the legislative history of the timeliness requirement for filing proofs of claim and provides a context for interpreting the current timeliness requirement found in Rule

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<sup>20</sup> Compare *In re Hogan*, 346 B.R. at 724 (holding secured creditors to the Rule 3002(c) deadline for filing proofs of claim) with *In re Mehl*, No. 04-85570, 2005 WL 2806676, at \*3 (Bankr. C.D. Ill. Oct. 25, 2005) (allowing secured creditors to ignore the Rule 3002(c) deadline).

<sup>21</sup> KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY § 280.1 (3d ed. 2000 & Supp. 2004).

<sup>22</sup> *In re Mehl*, 2005 WL 2806676, at \*1.

<sup>23</sup> See *id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at \*3.

<sup>26</sup> *In re Hogan*, 346 B.R. 715, 717 (Bankr. N.D. Tex. 2006).

<sup>27</sup> *Id.*

<sup>28</sup> See *id.* (asking whether “under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, must a secured creditor timely file a proof of claim in order to be entitled to receive treatment under a debtor’s Chapter 13 plan?”).

<sup>29</sup> *Id.* at 724.

3002(c). Part II then examines the three approaches that courts use in applying the current timeliness requirement. Subpart A describes the interpretation that requires both secured and unsecured creditors to adhere to the timely filing requirement found in Rule 3002(c). Subpart B explains the interpretation that holds unsecured creditors to the timely filing requirement but that allows secured creditors to file proofs of claim at any time. Subpart C examines a third interpretation of the timely filing requirement, which allows secured creditors to ignore the Rule 3002(c) deadline yet still holds these secured creditors to some unspecified timely filing requirement. Finally, Part III provides an overall assessment of the three approaches to timely filing, concluding that the proper application of the rule is to hold both secured and unsecured creditors to the 90-day deadline found in Rule 3002(c).

#### I. LEGISLATIVE HISTORY OF THE TIMELY FILING REQUIREMENT

Prior to 1898, no fixed deadline required creditors to file proofs of claim at a particular time.<sup>30</sup> As a response to the perception that the absence of a time limit unduly lengthened the administration of the debtor's estate,<sup>31</sup> Congress enacted section 57 of the Bankruptcy Act of 1898, which established a one-year deadline for filing proofs of claim.<sup>32</sup> Over the course of the next forty years, the timely filing requirement was altered twice. First, in 1926, the time limit for filing proofs of claim was decreased from one year after adjudication to six months after adjudication.<sup>33</sup> The second change came twelve years later in 1938 with the passage of the Chandler Act, which changed the deadline for filing proofs of claim from six months after adjudication to six months after the meeting of creditors.<sup>34</sup>

Between 1973 and 1976, bankruptcy rules were established "to govern procedure to carry out the provisions of the Bankruptcy Act of 1898."<sup>35</sup> Included in the new procedural requirements were deadlines for filing proofs of claim.<sup>36</sup> Under these rules, secured creditors and unsecured creditors in Chapter 13 cases were given separate deadlines.<sup>37</sup> Rule 13-302(e) required secured creditors to file their proofs of claim "before the conclusion of the first

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<sup>30</sup> See *In re Tucker*, 174 B.R. 732, 734 (Bankr. N.D. Ill. 1994).

<sup>31</sup> *Id.*

<sup>32</sup> Bankruptcy Act of 1898, ch. 541, § 57n, 30 Stat. 560, 561 (amended 1926).

<sup>33</sup> Act of May 27, 1926, ch. 406, § 13, 44 Stat. 662, 666 (amended 1938).

<sup>34</sup> Chandler Act, ch. 575, § 57n, 52 Stat. 840, 867 (1938) (repealed 1978).

<sup>35</sup> R. Patrick Vance & David S. Rubin, *An Overview of Bankruptcy Procedure Under the New Rules, Part I*, 32 LA. B.J. 75, 75 n.2 (1984). "Prior to the adoption of the Bankruptcy Rules, bankruptcy procedure was governed by a variety of General Orders, local bankruptcy rules, and unwritten procedures." Jeffrey T. Ferriell, *The Perils of Nationwide Service of Process in a Bankruptcy Context*, 48 WASH. & LEE L. REV. 1199, 1208 n.46 (1991).

<sup>36</sup> BANKR. R. 13-302(e) (11 U.S.C. app. tit. I pt. III (1982)) (repealed 1978) ("Rule 13-302(e)").

<sup>37</sup> *Id.*

meeting of creditors”<sup>38</sup> and required unsecured creditors to file “within 6 months after the first date set for the first meeting of creditors.”<sup>39</sup>

In 1978, Congress enacted the Bankruptcy Reform Act, which established the new Bankruptcy Code and replaced the old Bankruptcy Act of 1898.<sup>40</sup> No new procedural rules were promulgated to implement the new Bankruptcy Code; however, section 405 of the Bankruptcy Reform Act provided “that the rules in effect under the former Bankruptcy Act would continue to the extent that they were not inconsistent with the Code.”<sup>41</sup> Therefore, Rule 13-302(e) survived the enactment of the Bankruptcy Code as long as it was consistent with the new bankruptcy provisions.

Finally, in 1983, Congress enacted the Federal Rules of Bankruptcy Procedure, replacing the old rules of bankruptcy procedure. Rule 3002(c) replaced Rule 13-302(e) by providing a new deadline for filing proofs of claim.<sup>42</sup> Several changes were made to the Bankruptcy Code in 2005;<sup>43</sup> but because these new amendments did not affect Rule 3002, the rule’s provisions continue to provide the timely filing requirements for creditors.<sup>44</sup>

## II. THREE APPROACHES TO RULE 3002(C)’S TIMELY FILING REQUIREMENT

### A. Approach I: Both Secured and Unsecured Creditors Must Adhere to Rule 3002(c)’s Deadline

As exemplified by the previously discussed cases of *In re Mehl* and *In re Hogan*,<sup>45</sup> some courts apply Rule 3002(c)’s deadline for filing proofs of claim to both secured and unsecured creditors.<sup>46</sup> Several arguments have been presented in support of this application of Rule 3002(c), including the rule’s plain language,<sup>47</sup> the deadline’s application in context with other statutory

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549.

<sup>41</sup> *In re Dennis*, 230 B.R. 244, 250 (Bankr. D.N.J. 1999).

<sup>42</sup> FED. R. BANKR. P. 3002(c).

<sup>43</sup> Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23.

<sup>44</sup> *See id.*

<sup>45</sup> *See supra* notes 22-29 & accompanying text.

<sup>46</sup> *See, e.g., In re Mickens*, No. 04-1324, 2005 WL 375661, at \*1 (Bankr. D.D.C. Feb. 14, 2005) (“[T]he deadline of Rule 3002(c) is not limited to unsecured creditors . . . .”); *In re Boucek*, 280 B.R. 533, 537 (Bankr. D. Kan. 2002) (“[T]he time requirements [of 3002(c)] govern every proof of claim . . . .”); *In re Schaffer*, 173 B.R. 393, 397 (Bankr. N.D. Ill. 1994) (“[T]he Court concludes that [the secured creditor’s] late filed claim is barred [by Rule 3002] . . . .”).

<sup>47</sup> *See In re Dennis*, 230 B.R. 244, 251 (Bankr. D.N.J. 1999) (arguing that the statutory language clearly reflects the Congressional intent to apply Rule 3002(c)’s deadline to both secured and unsecured creditors); *see also In re Kelley*, 259 B.R. 580, 585 (Bankr. E.D.

provisions,<sup>48</sup> policy concerns raised by not applying the deadline to secured creditors,<sup>49</sup> and historic application of the timely filing requirement throughout the several incarnations of the bankruptcy provisions.<sup>50</sup>

### 1. Rule 3002's Plain Language

The most straightforward argument presented in support of applying Rule 3002(c)'s deadline to both secured and unsecured creditors is that the plain language of the rule mandates such application. As mentioned above, Rule 3002(c) states, in relevant part, that "a proof of claim is timely filed if it is filed not later than 90 days after the date set for the meeting of creditors called for under § 341(a) of the Code."<sup>51</sup> As apparent from the wording of the rule, "Rule 3002(c) does not explicitly distinguish between secured and unsecured creditors,"<sup>52</sup> and as a result, courts reason that the deadline found in the rule must apply to all creditors.<sup>53</sup>

The exceptions to Rule 3002(c)'s deadline strengthen this plain language argument. In five situations, creditors are exempted from complying with the 90-day deadline; however, a general exemption for secured creditors is not included among the five exceptions.<sup>54</sup> If Congress wanted to allow secured

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Tex. 2001) (following the argument established in *In re Dennis*).

<sup>48</sup> See *In re Mickens*, 2005 WL 375661, at \*1.

<sup>49</sup> See *In re Kelley*, 259 B.R. at 584; *In re Dennis*, 230 B.R. at 253.

<sup>50</sup> See *In re Dennis*, 230 B.R. at 249-53.

<sup>51</sup> FED. R. BANKR. P. 3002(c).

<sup>52</sup> *In re Schaffer*, 173 B.R. 393, 396 n.8 (Bankr. N.D. Ill. 1994); see *In re Kelley*, 259 B.R. at 585 ("Subsection (c) of the Rule refers to a 'proof of claim' rather than 'an unsecured creditor's proof of claim.'").

<sup>53</sup> See *In re Boucek*, 280 B.R. 533, 537 (Bankr. D. Kan. 2002); *In re Kelley*, 259 B.R. at 585.

<sup>54</sup> FED. R. BANKR. P. 3002(c) provides the following five exceptions to the deadline for filing proofs of claim:

(1) A proof of claim filed by a governmental unit is timely filed if it is filed not later than 180 days after the date of the order for relief. On motion of a governmental unit before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the governmental unit.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend

creditors to ignore the deadline found in Rule 3002(c) and to file proofs of claim at any time, the drafters of the rule would have included an exception for secured creditors in the rule.<sup>55</sup>

Subsection (a) of Rule 3002 states that “[a]n unsecured creditor or an equity security holder must file a proof of claim . . . for the claim . . . to be allowed.”<sup>56</sup> Although a different interpretation of Rule 3002(c) has been reached when read in context with subsection (a),<sup>57</sup> courts that apply the Rule 3002(c) deadline to both secured and unsecured creditors reason that subsection (a)’s distinction between unsecured and secured creditors does not carry over to subsequent subsections of the rule.<sup>58</sup> Furthermore, the wording of subsection (c) does not explicitly “refer back to subsection (a) or otherwise limit the time requirements to proofs of claims filed pursuant to subsection (a).”<sup>59</sup> Therefore, all creditors are subject to the same deadline for filing proofs of claim despite Rule 3002(a)’s reference only to unsecured creditors.<sup>60</sup>

Instead of reading Rule 3002 as not requiring secured creditors to file a proof of claim before subsection (c)’s deadline in order to have an allowed claim, courts applying the same deadline to secured and unsecured creditors present another reason for subsection (a)’s omission of secured creditors. Simply put, “Rule 3002(a) recognizes that a secured creditor does not have to file a proof of claim.”<sup>61</sup> If a secured creditor chooses not to file a proof of claim, the creditor will not be able to participate in the debtor’s plan, but will be able to retain its security interest in the debtor’s property.<sup>62</sup> As one court stated, “[b]ecause an unchallenged lien survives the discharge of the debtor in bankruptcy, a lienholder need not file a proof of claim.”<sup>63</sup>

An unsecured creditor can also choose not to file a proof of claim, and, like a secured creditor, an unsecured creditor will be ineligible to receive plan disbursements from the trustee. However, unlike a secured creditor, an unsecured creditor will have no lien to rely upon. Therefore, because unsecured debts are discharged at the end of the Chapter 13 process, an unsecured creditor that chooses not to participate in the plan by not filing a

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appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

<sup>55</sup> *In re Kelley*, 259 B.R. at 585; *In re Schaffer*, 173 B.R. at 396 n.8.

<sup>56</sup> FED. R. BANKR. P. 3002(a).

<sup>57</sup> *See infra* Part II.B.1.

<sup>58</sup> *See In re Kelley*, 259 B.R. at 585; *In re Schaffer*, 173 B.R. at 396 n.8 (“The use of the word ‘unsecured’ in Rule 3002(a) does not automatically transcend to the rest of the provisions of 3002.”).

<sup>59</sup> *In re Boucek*, 280 B.R. 533, 537 (Bankr. D. Kan. 2002).

<sup>60</sup> *In re Mickens*, No. 04-1324, 2005 WL 375661, at \*1 (Bankr. D.D.C. Feb. 14, 2005); *see In re Kelley*, 259 B.R. at 585; *In re Schaffer*, 173 B.R. at 396.

<sup>61</sup> *In re Dennis*, 230 B.R. 244, 252 (Bankr. D.N.J. 1999).

<sup>62</sup> *Id.*

<sup>63</sup> *Folendore v. U.S. Small Bus. Admin.*, 862 F.2d 1537, 1539 (11th Cir. 1989).



proof of claim will be unable to collect on its debts.<sup>64</sup> As a result, courts that apply Rule 3002(c)'s deadline to both secured and unsecured creditors suggest that Rule 3002(a)'s exclusion of secured creditors merely marks the distinction between secured creditors, who can rely on their liens if no claim is filed, and unsecured creditors, who have no security interest to rely upon.

## 2. Other Bankruptcy Provisions

Several statutory provisions of the Bankruptcy Code suggest that the Rule 3002(c) deadline should apply to all creditors, including secured creditors. As one court stated, "the Bankruptcy Code itself makes clear that filing of a timely proof of claim is necessary for a holder of a secured claim to have an allowed secured claim."<sup>65</sup> Section 502 of the Bankruptcy Code requires that a claim be disallowed if "proof of such claim is not timely filed."<sup>66</sup> Therefore, as one court noted, section 502(b)(9) "clearly conditions allowance of a claim on the timely filing of a proof of claim."<sup>67</sup> Furthermore, the Bankruptcy Code's definition of "claim" includes a "right to payment, whether or not such right is . . . secured[] or unsecured."<sup>68</sup> Allowing secured creditors to ignore the deadline for timely filing imposed by Rule 3002(c) would contradict the clear language of section 502 of the Bankruptcy Code, which requires all claims be timely filed in order to be allowed.<sup>69</sup> Applying Rule 3002(c)'s deadline to both secured and unsecured creditors, however, would avoid this "absurd" contradictory result.<sup>70</sup>

Section 501(c) of the Bankruptcy Code states that "[i]f a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim."<sup>71</sup> The Bankruptcy Code defines "creditor" as any "entity that has a claim against the debtor,"<sup>72</sup> and as mentioned above, the Code's definition of claim includes both secured and unsecured rights of payment.<sup>73</sup> Therefore, section 501 seems to suggest that both secured and unsecured claims have a deadline before which they must be filed.

Lastly, section 506(d)(2) states that "[t]o the extent that a lien secures a claim . . . that is not an allowed secured claim, such lien is void, unless such

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<sup>64</sup> See *Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004).

<sup>65</sup> *In re Mickens*, 2005 WL 375661, at \*1.

<sup>66</sup> 11 U.S.C. § 502(b)(9) (2000). Section 501 lays out the requirements for a claim to be "allowed," while section 502 provides some instances in which a claim otherwise allowed under section 501 may be disallowed, including for not being timely filed.

<sup>67</sup> *In re Boucek*, 280 B.R. 533, 537 (Bankr. D. Kan. 2002).

<sup>68</sup> 11 U.S.C. § 101(5)(A) (2000).

<sup>69</sup> See *In re Schaffer*, 173 B.R. 393, 395 (Bankr. N.D. Ill. 1994) (applying the same analysis of the Code's definition of "claim" to section 501).

<sup>70</sup> See *id.*

<sup>71</sup> 11 U.S.C. § 501(c) (2000).

<sup>72</sup> 11 U.S.C. § 101(10)(A) (2000).

<sup>73</sup> 11 U.S.C. § 101(5)(A) (2000).

claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501.<sup>74</sup> In addition to applying this rule to situations in which no claim was filed at all, courts have interpreted this provision to mean that “disallowance of a claim as an allowed secured claim solely on the ground of untimeliness does not void the lien securing the claim, [but that] disallowance does bar distribution on the claim under a confirmed plan.”<sup>75</sup> Consequently, this application of section 506(d)(2) assumes that secured creditors must adhere to a deadline for filing proofs of claim, and courts point to this section of the Bankruptcy Code as suggesting that secured creditors must adhere to the deadline found in Rule 3002(c).<sup>76</sup>

### 3. Policy Concerns

Allowing secured creditors to ignore Rule 3002(c)’s deadline and to file at any time raises several policy concerns.<sup>77</sup> The policy concerns to consider include undermining the purpose of the bar date<sup>78</sup> and causing undue hardship in the administration of Chapter 13 bankruptcy cases.<sup>79</sup>

Rule 3002(c), which establishes the time limit for filing proofs of claim in a Chapter 13 case, “is strictly construed as a statute of limitations since the purpose of such a claims bar date is ‘to provide the debtor and its creditors with finality.’”<sup>80</sup> This statute of limitations provides the trustee and debtor with finality by eliminating “the risk that a tardy proof of claim will change all the provisions and disbursements” of the Chapter 13 plan.<sup>81</sup> Additionally, creditors rely on this sense of finality by establishing expectations as to how much money they should receive through the plan.<sup>82</sup>

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<sup>74</sup> 11 U.S.C. § 506(d)(2) (2000).

<sup>75</sup> *In re Mickens*, No. 04-1324, 2005 WL 375661, at \*1 (Bankr. D.D.C. Feb. 14, 2005); see *In re Boucek* 280 B.R. 533, 538 (Bankr. D. Kan. 2002).

<sup>76</sup> See *In re Mickens*, 2005 WL 375661, at \*1 (finding that “[s]ome older decisions hold that a secured creditor’s failure to file a timely proof of claim may not be invoked to bar receipt of distributions in a chapter 13 case, but were rendered obsolete by the amendment of § 502(b)(9)”; *In re Boucek*, 280 B.R. at 537-38 (pointing to a number of statutory provisions, including section 506, which suggest that the deadline found in Rule 3002(c) applies to both secured and unsecured creditors).

<sup>77</sup> See *In re Kelley*, 259 B.R. 580, 584 (Bankr. E.D. Tex. 2001); *In re Dennis*, 230 B.R. 244, 253 (Bankr. D.N.J. 1999).

<sup>78</sup> See *In re Johnson*, 84 B.R. 492, 494 (Bankr. N.D. Ohio 1988); see also *In re Duarte*, 146 B.R. 958, 961 (Bankr. W.D. Tex. 1992).

<sup>79</sup> See *In re Turner*, 157 B.R. 904, 911 (Bankr. N.D. Ala. 1993); *Still v. State of Tenn. Dep’t of Revenue (In re Rogers)*, 57 B.R. 170, 172 (Bankr. E.D. Tenn. 1986).

<sup>80</sup> *In re Schaffer* 173 B.R. 393, 398 (Bankr. N.D. Ill. 1994) (quoting *In re Zimmerman*, 156 B.R. 192, 199 (Bankr. W.D. Mich. 1993) (internal quotes and citation omitted)).

<sup>81</sup> *In re Turner*, 157 B.R. at 911.

<sup>82</sup> *In re Duarte*, 146 B.R. 958, 961 (Bankr. W.D. Tex. 1992) (“[L]ate claims . . . upset the legitimate expectations of other creditors, who are entitled to rely on having to share the limited assets of the estate only with those who have timely participated in the process.”).

Allowing secured creditors to file after the bar date raises the question of whether these creditors' claims will actually be paid. If a late claim is filed long after the plan has been confirmed and shortly before the trustee has dispersed all payments made by the debtor, "[t]he debtor would have no duty to pay any additional funds."<sup>83</sup> One means by which these tardy creditors could receive payment is by reducing the amount of payment that other creditors receive through the Chapter 13 plan.<sup>84</sup> However, reducing the disbursements received by these other creditors would unfairly penalize creditors who timely filed,<sup>85</sup> and would be a difficult process for the trustee to undertake after plan disbursements have already commenced.<sup>86</sup> Furthermore, creditors who filed on time might be treated even more unfairly because "allowing tardily filed claims in Chapter 13 might also permit late-filing creditors to recapture payments already distributed to other creditors."<sup>87</sup> Tardy creditors could be paid by the trustee by setting aside funds at the beginning of the disbursement process for those creditors that file late; however, "[s]uch practice would require the trustee to predict future claim filings" and would prevent the trustee from "administer[ing] the plan with any measure of certainty."<sup>88</sup>

If Rule 3002(c)'s purpose is to allow trustees, debtors, and creditors to enjoy a sense of finality, that purpose can be achieved only if all involved can rely on the bar date imposed by the Rule.<sup>89</sup> Allowing secured creditors to ignore the time limit for filing proofs of claim would undermine that purpose and treat unfairly those creditors that did timely file.

Allowing secured creditors to file proofs of claim at any time causes several other problems in the administration of a Chapter 13 plan.<sup>90</sup> These problems begin with the filing of proofs of claim itself. As one court mentioned, "[i]f creditors of any stripe were permitted to file claims at their discretion," these creditors would become "sloppy and inconsistent" in the filing of their claims.<sup>91</sup> Furthermore, without a bar date for filing proofs of claim, secured creditors would have no incentive to promptly file, and several administrative inefficiencies would follow.

Section 1302(b)(1) of the Bankruptcy Code requires Chapter 13 trustees to perform the same duties that Chapter 7 trustees are required to perform under

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<sup>83</sup> *In re Turner*, 157 B.R. at 911.

<sup>84</sup> *See In re Bailey*, 151 B.R. 28, 33 (Bankr. N.D.N.Y. 1993).

<sup>85</sup> *See In re Dennis*, 230 B.R. 244, 253 (Bankr. D.N.J. 1999).

<sup>86</sup> *See In re Duarte*, 146 B.R. at 960.

<sup>87</sup> *In re Dennis*, 230 B.R. at 253.

<sup>88</sup> *Id.* (explaining further that as a result of secured creditors filing after the bar date "[d]istribution under the plan in accordance with confirmation requirements would be virtually impossible").

<sup>89</sup> *See In re Duarte*, 146 B.R. at 961.

<sup>90</sup> *See In re Dennis*, 230 B.R. at 253.

<sup>91</sup> *In re Schaffer*, 173 B.R. 393, 398 (Bankr. N.D. Ill. 1994).

section 704(5).<sup>92</sup> Section 704(5) in turn states that the trustee shall “examine proofs of claims and object to the allowance of any claim that is improper.”<sup>93</sup> If secured creditors are not required to file proofs of claim before the bar date or before the confirmation of the plan, then no proof of claim exists and the trustee does not have the ability to object to a possible improper claim.<sup>94</sup> Such a situation would require the trustee to speculate at the time of confirmation of the plan as to which unfiled secured claims were allowable or improper. This result is troubling because, as one court pointed out, “[t]rustee[s] [are] not omniscient.”<sup>95</sup> Trustees in this position would have to “either object to the confirmation of any chapter 13 plan in which a secured proof of claim has not been filed,”<sup>96</sup> assume that every unfiled secured claim is allowable, or “conduct detailed, expensive and time-consuming searches” in order to determine whether the unfiled secured claim would be allowed,<sup>97</sup> a result that “clearly cannot be the intent of the framers of the Code and the Rules.”<sup>98</sup>

The filing of proofs of claim by secured creditors after the bar date creates further administrative problems because the “[t]rustee relies on the claims on file at the end of the claims period in determining the distribution of dividends that ultimately affects the length and feasibility of the debtor’s plan.”<sup>99</sup> If secured creditors did not have to adhere to the bar date established by Rule 3002(c), trustees could no longer rely only on those claims that were timely filed and, therefore, could not efficiently perform their duties as trustees.

In sum, allowing secured creditors to file proofs of claim after the Rule 3002(c) bar date would create several administrative inefficiencies that would bog down the bankruptcy courts and create difficulties for the trustee.<sup>100</sup> As one court stated: “Deadlines and finality must be strictly applied. Otherwise, the bankruptcy courts, with case loads in this district from 3,500 to 8,000 per judge, and others with many thousands more, will grind to a halt under the overwhelming weight.”<sup>101</sup>

#### 4. Legislative History of the Timeliness Requirement

A historical analysis of bankruptcy laws, from the Bankruptcy Act of 1898 to the present day, suggests that secured creditors are bound by the same

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<sup>92</sup> 11 U.S.C. § 1302(b)(1) (2000).

<sup>93</sup> 11 U.S.C. § 704(5) (2000).

<sup>94</sup> See *In re Schaffer*, 173 B.R. at 398.

<sup>95</sup> *Id.*

<sup>96</sup> Henry Hildebrand, III, *Filing of Claims by Secured Creditors*, 13 AM. BANKR. INST. J. 17, 30 (1994).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *In re Schaffer*, 173 B.R. at 398 (adding further that a “successful reorganization under Chapter 13 requires effort from both the debtor and creditors”).

<sup>100</sup> See *id.*

<sup>101</sup> *In re Turner*, 157 B.R. 904, 911 (Bankr. N.D. Ala. 1993).

deadline for filing proofs of claim as unsecured creditors.<sup>102</sup> The current deadline found in Rule 3002(c) was patterned after previous bankruptcy provisions, including section 57 of the Bankruptcy Act of 1898 and former Bankruptcy Rule 13-302(e) (“Rule 13-302(e”).<sup>103</sup> Thus, “decisions interpreting these earlier provisions are relevant to an understanding of the current rule.”<sup>104</sup>

The first timeliness requirement for filing proofs of claim, which required that claims be filed within one year of adjudication, appeared in 1898.<sup>105</sup> This deadline was viewed as holding secured creditors to the same one-year limit as unsecured creditors.<sup>106</sup> Most notably, while “[h]olding that [a] secured creditor was bound by the one year filing period, the Court of Appeals for the Third Circuit stated that it ‘is especially the duty of a secured creditor’ to show proof of its claim against the estate.”<sup>107</sup>

The view that the timeliness requirement applied both to secured and unsecured creditors continued after the deadline was shortened from one year to six months. Like the initial one-year deadline, courts interpreted this new six-month deadline as applying to both secured and unsecured creditors.<sup>108</sup> As one court stated in a case involving the filing of a secured claim, “[t]he provision of the statute requiring the filing of claims within six months after adjudication cannot be ignored.”<sup>109</sup> Furthermore, after the Chandler Act changed the tolling rule for the statute of limitations on the filing of claims,<sup>110</sup> this view that all creditors, secured and unsecured alike, were subject to the timeliness requirement continued to prevail.<sup>111</sup> A critical factor in the continuation of the application of the timeliness requirement to secured creditors was the purpose of the amendment, which was to promote “[e]xpeditious administration”<sup>112</sup> of bankruptcy cases and “to obviate the long

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<sup>102</sup> See *In re Dennis*, 230 B.R. 244, 249-53 (Bankr. D.N.J. 1999).

<sup>103</sup> *In re Underground Util. Constr. Co.*, 35 B.R. 588, 589 (Bankr. S.D. Fla. 1983).

<sup>104</sup> *In re Stern*, 70 B.R. 472, 475 n.4 (Bankr. E.D. Pa. 1987).

<sup>105</sup> See *supra* note 32 and accompanying text.

<sup>106</sup> See *First Nat. Bank of Woodbury v. West (In re Thompson)*, 227 F. 981, 983 (3d Cir. 1915).

<sup>107</sup> *In re Dennis*, 230 B.R. at 249-50 (quoting *In re Thompson*, 227 F. at 983).

<sup>108</sup> See *Mfrs. Trust Co. v. Putnam (In re F. & W. Grand Props. Corp.)*, 74 F.2d 224, 225 (2d Cir. 1934).

<sup>109</sup> *Cook v. Union Trust Co. of Md.*, 71 F.2d 645, 647 (4th Cir. 1934).

<sup>110</sup> See *supra* note 34 and accompanying text (stating that the Chandler Act changed the deadline for filing proofs of claim from six months after adjudication to six months after the meeting of creditors).

<sup>111</sup> See *In re Supernit, Inc.*, 186 F.2d 130, 132 (3d Cir. 1950).

<sup>112</sup> *Id.*

delays in distribution of dividends which had previously afflicted creditors.”<sup>113</sup> Because of this legislative intent, the new deadline was strictly enforced.<sup>114</sup>

Over thirty-five years later, Congress altered the timely filing requirement when it enacted the first version of bankruptcy rules, which included Rule 13-302(e).<sup>115</sup> This new rule explicitly provided separate deadlines for both unsecured and secured creditors.<sup>116</sup> Because the rule explicitly stated a separate deadline for secured creditors, courts held secured creditors to the timeliness requirement.<sup>117</sup> The strong policy considerations for implementing the Rule also weighed in favor of strictly applying the deadline to secured creditors.<sup>118</sup> As one court noted, “the ends of justice will best be furthered by holding [creditors] to the strict adherence which Rule 13-302(e) normally merits. Any relaxation of the rule . . . would run athwart the substantial public interest in the expeditious processing of bankruptcy matters.”<sup>119</sup> Therefore, Rule 13-302(e) served as an absolute bar date for all untimely claims.<sup>120</sup>

In 1978, Congress replaced the Bankruptcy Act with the Bankruptcy Code.<sup>121</sup> However, Congress decided not to promulgate new procedural bankruptcy rules but instead decided to leave the previous procedural rules in place insofar as they were consistent with the new Bankruptcy Code.<sup>122</sup> Unlike the Bankruptcy Act of 1898, the new Code did not explicitly set deadlines for filing proofs of claim, although some timeliness deadline was contemplated.<sup>123</sup> This discrepancy between the statutory language of the old Bankruptcy Act and the new Bankruptcy Code, however, did not indicate that application of Rule 13-302(e) was inconsistent with the Code.<sup>124</sup> The legislative history does not suggest that the change in the statutory language of the Bankruptcy Code altered the pre-Code practice of disallowing untimely filed claims by secured

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<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> BANKR. R. 13-302(e) (11 U.S.C. app. tit. I pt. III (1982)) (repealed 1978).

<sup>116</sup> *Id.*

<sup>117</sup> See *In re Harris*, 2 B.R. 369, 371 (Bankr. D.D.C. 1980); see also *In re Louie*, 10 B.R. 928, 933 (Bankr. E.D. Mich. 1981) (strictly construing the deadline for secured creditors and holding that “Rule 13-302(e)(1) seems unambiguous, but even if it were not, the plain intent of the rule is to require that secured creditors, who wish to file as such must do so at or before the first meeting of creditors”).

<sup>118</sup> See *In re Greene*, 33 B.R. 1007, 1011 (D.R.I. 1983).

<sup>119</sup> *Id.*

<sup>120</sup> *Abraham & Straus v. Francis*, 15 B.R. 998, 1004 (Bankr. E.D.N.Y. 1981).

<sup>121</sup> See *supra* note 40 and accompanying text.

<sup>122</sup> See *supra* note 41 and accompanying text.

<sup>123</sup> See 11 U.S.C. § 501 (2000).

<sup>124</sup> See *Gullat v. United States*, 169 B.R. 385, 388 (M.D. Tenn. 1994) (“[T]he absence of specific statutory disallowance of tardy claims did not signal a change from the previous law barring tardy claims.”).

creditors.<sup>125</sup> To the contrary, the legislative history merely indicates that Congress intended the new Bankruptcy Code to provide substantive law, while the old bankruptcy rules would still provide procedural rules.<sup>126</sup> “Therefore, [it must be] that Congress intended for the filing deadlines in Rule 13-302 to be the definition of ‘timely’ as used in § 501.”<sup>127</sup> “If Congress had intended to alter the longstanding policy that claims not timely filed were disallowed, surely it could have more clearly signalled [sic] its intent in the statute and the legislative history rather than merely failing to codify the time periods of §57n of the Bankruptcy Act.”<sup>128</sup>

Rule 13-302(e) was replaced by Rule 3002(c) when Congress enacted the Federal Rules of Bankruptcy Procedure, which replaced the old rules of bankruptcy procedure.<sup>129</sup> Unlike Rule 13-302, Rule 3002(c) does not provide separate deadlines for secured and unsecured creditors.<sup>130</sup> Even though the new rule eliminated this distinction, no legislative history suggests that Congress intended to eliminate the timely filing requirement for secured creditors that was explicit in the old rule.<sup>131</sup> The other major difference between 3002(c) and 13-302(e) is that the deadline for unsecured creditors was reduced from six months after the meeting of creditors to 90 days after the meeting of creditors.<sup>132</sup> Despite these two differences, “[t]he Advisory Committee Notes following Rule 3002(c) make clear that the new Rule 3002(c) was simply adapted from former Rule [13-]302(e), with the minor change in the length of time provided for filing.”<sup>133</sup> These Advisory Committee Notes state in relevant part:

Subdivision (c) is adapted from former Bankruptcy Rule 302(e) but changes the time limits on the filing of claims in chapter 7 and 13 cases from six months to 90 days after the first date set for the meeting of

<sup>125</sup> *In re Dennis*, 230 B.R. 244, 251 (Bankr. D.N.J. 1999); *In re Gullatt*, 169 B.R. at 388.

<sup>126</sup> *In re Dennis*, 230 B.R. at 251 (“Congress merely intended to separate substantive law from procedural rules.”). The relevant legislative history states:

The Rules of Bankruptcy Procedure . . . will guide creditors as to when filing is necessary and when it may be dispensed with. . . . The Rules of Bankruptcy Procedure will set the time limits, the form, and the procedure for filing, which will determine whether claims are timely or tardily filed.

S. REP. NO. 95-989, at 61 (1978), as reprinted in 1978 U.S.C.C.A.N. 5787, 5847.

<sup>127</sup> *In re Corbett*, 68 B.R. 480, 483 (W.D. Mo. 1984).

<sup>128</sup> Thomas E. Ray, *Is There a Claims Bar in Chapter 13?*, 13 AM. BANKR. INS. J. 17, 28 (1994).

<sup>129</sup> See FED. R. BANKR. P. 3002(c).

<sup>130</sup> See *supra* notes 52, 38-39 and accompanying text.

<sup>131</sup> *In re Dennis*, 230 B.R. at 251; *In re Gullatt*, 169 B.R. 385, 388 (M.D. Tenn. 1994).

<sup>132</sup> See FED. R. BANKR. P. 3002(c).

<sup>133</sup> *In re Gullatt*, 169 B.R. at 387-88.

creditors. The special rule for early filing by a secured creditor in a chapter 13 case, in former Rule 13-302(e)(1) is not continued.<sup>134</sup>

These notes suggest that Rule 13-302(e) generally required all creditors to file proofs of claims within six months of the meeting of creditors, while subsection 13-302(e)(1) imposed a special rule on secured creditors only, requiring them to file earlier. Because Rule 3002(c) eliminated this special rule, secured creditors are now required to file proofs of claim at the same time as unsecured creditors. “Had Congress intended secured creditors to be treated differently from unsecured creditors for filing purposes, it would have retained a distinction between them in the text of the new Rule,”<sup>135</sup> and “the [R]ule’s restricted application to unsecured creditors would have been expressly stated.”<sup>136</sup>

B. *Approach II: Secured Creditors Need Not Adhere to the Rule 3002(c) Deadline*

*In re Mehl* illustrates the position where Rule 3002(c)’s deadline does not apply to secured creditors.<sup>137</sup> Under this approach, only unsecured creditors are held to the Rule 3002(c) deadline “because there is no bar date for secured creditors.”<sup>138</sup> Evidence presented in support of this interpretation includes the plain meaning of Rule 3002,<sup>139</sup> the rehabilitative purpose of Chapter 13 bankruptcy,<sup>140</sup> and the reasoning of the “majority” of courts.<sup>141</sup>

1. Rule 3002’s Plain Language

The primary argument that courts cite for allowing secured creditors to file proofs of claim at any time, including after the 3002(c) deadline, is that the plain meaning of Rule 3002 holds only unsecured creditors to the deadline found in subsection (c) of the rule.<sup>142</sup> According to this argument, subsection (c) of the rule cannot be read in isolation.<sup>143</sup> Instead, all of the rule’s subsections must be read together in order to correctly interpret the rule

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<sup>134</sup> FED. R. BANKR. P. 3002 advisory committee’s note.

<sup>135</sup> *In re Dennis*, 230 B.R. at 251.

<sup>136</sup> *Id.*

<sup>137</sup> See *In re Mehl*, No. 04-85570, 2005 WL 2806676, at \*3 (Bankr. C.D. Ill. Oct. 25, 2005); *In re Hudson*, 260 B.R. 421, 438 (Bankr. W.D. Mich. 2001); *Strong v. U.S. Dep’t of Treasury, I.R.S.*, 203 B.R. 105, 112 (Bankr. N.D. Ill. 1996); *In re Harris*, 64 B.R. 717, 719 (Bankr. D. Conn. 1986).

<sup>138</sup> *In re Hudson*, 260 B.R. at 438; see *In re Babbitt*, 164 B.R. 157, 163 (Bankr. D. Colo. 1994).

<sup>139</sup> See *In re Harris*, 64 B.R. at 719.

<sup>140</sup> See *id.*

<sup>141</sup> See *In re Strong*, 203 B.R. at 112-13.

<sup>142</sup> See *In re Harris*, 64 B.R. at 719.

<sup>143</sup> See *id.*



because reading the rule as a whole “demonstrates the internal dependence each subparagraph has on the others.”<sup>144</sup>

Subparagraph (a) of Rule 3002, which “states *who* must file a proof of claim,”<sup>145</sup> only requires “[a]n unsecured creditor or an equity security holder [to] file a proof of claim or interest for the claim or interest to be allowed.”<sup>146</sup> More importantly, subparagraph (a) does not mention secured creditors.<sup>147</sup> Some courts then reason that because subparagraph (a) does not mention secured creditors, subparagraph (c), which creates the deadline for timely filing, applies only to the types of creditors mentioned in subparagraph (a) – unsecured creditors.<sup>148</sup> Therefore, the deadline does not apply to secured creditors. Said another way, “[i]f the drafters wished to include secured creditors in 3002(a) so that such creditors would come within the time limitation established by 3002(c), they would have done so.”<sup>149</sup>

## 2. Chapter 13’s Rehabilitative Purpose

Chapter 13’s rehabilitative purpose is also a basis for an argument in favor of reading Rule 3002(c) as only applying to unsecured creditors.<sup>150</sup> Courts making this argument reason that allowing secured creditors to file proofs of claim at any time promotes the rehabilitative purpose of Chapter 13 bankruptcy.<sup>151</sup> These courts provide little explanation as to how such rehabilitative benefits would be derived. For example, in the case of *In re Harris*, the Bankruptcy Court for the District of Connecticut stated that “the absence of a rule requiring a secured creditor to file a proof of claim within the 90-day limitation promotes the rehabilitative purpose of Chapter 13.”<sup>152</sup> However, the court gave no further explanation as to how such a rule would promote debtor rehabilitation.<sup>153</sup>

Even though no justification is given for the assertion that allowing secured creditors to file at any time would promote Chapter 13’s purpose, it seems that debtor rehabilitation would be fostered somewhat by such an interpretation of Rule 3002(c). Creditors who at first decided not to participate in the debtor’s plan but change their minds after the deadline has expired, and creditors that simply ignored the deadline, would be allowed to participate in the Chapter 13 plan. As a result, the number of creditors whose debts would be satisfied

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<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> FED. R. BANKR. P. 3002(a).

<sup>147</sup> *Id.*; see *In re Hill*, 286 B.R. 612, 615 n.3 (Bankr. E.D. Pa. 2002).

<sup>148</sup> See *id.*; *In re Babbitt*, 164 B.R. 157, 163 (Bankr. D. Colo. 1994).

<sup>149</sup> *In re Harris*, 64 B.R. 717, 719 (Bankr. D. Conn. 1986).

<sup>150</sup> See *In re Harris*, 64 B.R. at 719 (quoting *In re Taddeo*, 685 F.2d 24, 29 (2d Cir. 1982)).

<sup>151</sup> See *id.*

<sup>152</sup> See *In re Harris*, 64 B.R. at 719.

<sup>153</sup> See *id.*

under the plan would increase, and rehabilitation would be promoted because the debtor would have fewer debts to repay after completing the plan.

C. *Approach III: Secured Creditors Are Not Subject to Rule 3002(c) But Are Subject to Some Unspecified Timely Filing Requirement*

Some courts hold that the Rule 3002 (c) deadline does not apply to secured creditors, but that secured creditors are required to meet some other deadline for filing proofs of claim. These courts reason that despite the fact that Rule 3002 does not explicitly hold secured creditors to its 90-day filing requirement,<sup>154</sup> section 502(b)(9) of the Bankruptcy Code,<sup>155</sup> “which expressly permits the disallowance of claims for being untimely,”<sup>156</sup> does “presume a ‘timeliness’ feature, without distinguishing between secured or unsecured claims.”<sup>157</sup> However, neither the Code nor the Rules are helpful in determining what deadline should apply to secured creditors.<sup>158</sup>

Courts that create their own deadline for secured creditors suggest that “Congress has left it to the courts to invest terms found in the Bankruptcy Code with meaning in those situations in which the bankruptcy rules are silent.”<sup>159</sup> In giving meaning to timely filing of secured claims the court in *In re Macias* decided that because the purpose of the timeliness requirement is to “aid in the orderly and efficient administration of bankruptcy cases,”<sup>160</sup> and because “trustee[s] cannot perform [their] task of distribution in an orderly and efficient manner unless and until [they] know[] with a certainty which creditors are entitled to receive how much money,”<sup>161</sup> the bar date for secured creditors should be sometime before the commencement of the distribution of funds by the trustee.<sup>162</sup> Because applying the 3002(c) deadline to secured creditors would eliminate the court’s concerns regarding the administration of the Chapter 13 plan, the *Macias* court then decided that secured creditors should adhere to the same time constraints for filing claims as their unsecured counterparts.<sup>163</sup>

Other courts, while not explicitly setting their own deadline for secured creditors, have suggested that there is a point in time when a secured creditor

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<sup>154</sup> See *In re Jurado*, 318 B.R. 251, 255 (Bankr. D.P.R. 2004); *In re Macias*, 195 B.R. 659, 662 (Bankr. W.D. Tex. 1996).

<sup>155</sup> 11 U.S.C. § 502(9) (2000).

<sup>156</sup> *In re Macias*, 195 B.R. at 661.

<sup>157</sup> *Id.*

<sup>158</sup> See *id.* at 662.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 662-63.

<sup>162</sup> *Id.* For a discussion of the problems with the trustee’s administration of the Chapter 13 plan caused by allowing secured creditors to file at any time, see *supra* Part II.A.3.

<sup>163</sup> See *In re Macias*, 195 B.R. at 663.

will not be able to file a proof of claim.<sup>164</sup> These courts have proposed some possible deadlines, including “upon completion of all plan payments, . . . after the trustee files a final report and account, . . . [and] when the case is closed.”<sup>165</sup>

In sum, this approach appears to be a hybrid between the two previously discussed approaches to interpreting Rule 3002(c). By interpreting the rule as not applying to secured creditors, this approach resembles Approach II, which applies no timely filing requirement to secured creditors. However, this approach also resembles Approach I in that it does hold secured creditors to some deadline for filing proofs of claim.

### III. DOES RULE 3002(C)’S DEADLINE APPLY TO SECURED CREDITORS?

One purpose of this Note is to describe the various arguments that courts use to support their interpretation of Rule 3002(c). However, after the completion of this initial objective, the question still remains: Does the Rule 3002(c) deadline apply to secured creditors? From the analysis of the various approaches that courts take in addressing this issue, the correct answer to this question seems to become clear – Rule 3002(c)’s deadline for filing proofs of claim does apply to secured creditors.

Proponents on both sides of the timely filing deadline debate point to the plain language of Rule 3002 to support their positions.<sup>166</sup> The fact that courts rely on the plain meaning of the words of the Rule are ambiguous. Therefore, any argument based on the plain language of the Rule should not be dispositive in interpreting the Rule’s meaning. When the plain language of a rule or statute is ambiguous, courts look to evidence outside the words of the rule to determine the intended application of the statute, including the legislative history,<sup>167</sup> the statutory context of the provision within a larger statutory scheme,<sup>168</sup> and the purpose of the rule.<sup>169</sup>

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<sup>164</sup> See *In re Jurado*, 318 B.R. 251, 255 (Bankr. D.P.R. 2004); *In re Hudson*, 260 B.R. 421, 438 (Bankr. W.D. Mich. 2001).

<sup>165</sup> *In re Hudson*, 260 B.R. at 438 n.36.

<sup>166</sup> See *supra* Parts II.A.1 & II.B.1.

<sup>167</sup> See, e.g., *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 508-09 (1989); *United Steel Workers v. Weber*, 443 U.S. 193, 253-54 (1979) (Rehnquist, J., dissenting).

<sup>168</sup> See *Green*, 490 U.S. at 509.

<sup>169</sup> See *Braschi v. Stahl Assocs. Co.*, 543 N.E.2d 49, 52 (N.Y. 1989). The Supreme Court has gone even farther than stating that ambiguous statutory terms should be construed to further the purpose of the statute and has held that “[i]t is a well-established canon of statutory construction that a court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute.” *Bob Jones Univ. v. United States*, 461 U.S. 574, 586 (1983).

A. *Legislative History*

Former Chief Justice Rehnquist emphasized the importance of legislative history in statutory interpretation when he stated: “Our task in this case, like any other case involving the construction of a statute, is to give effect to the intent of Congress. To divine that intent, we traditionally look first to the words of the statute and, if they are unclear, then to the statute’s legislative history.”<sup>170</sup>

Furthermore, the Supreme Court has stressed the importance of the historic practices of past bankruptcy laws in interpreting current bankruptcy law when it held that “[w]hen Congress amends the bankruptcy laws, it does not write ‘on a clean slate.’”<sup>171</sup> Therefore, courts should be more willing to find that amendments effect “a major change in pre-Code practice” only when legislative history includes some discussion of Congress’s intent to make such a change.<sup>172</sup>

Courts that apply Rule 3002(c) to secured creditors look to legislative history of the Bankruptcy Code and Bankruptcy Rules, along with the historic application of other timely filing provisions for support of their interpretation of the Rule.<sup>173</sup> As detailed above, the application of the different timely filing requirements upon secured creditors has been consistent throughout history, from the passage of the Bankruptcy Act of 1898 and continuing through to the adoption of Rule 3002(c). Though Rule 3002(c) did make some changes to the timely filing requirement, legislative history suggests that when Rule 3002 was promulgated the drafters did not intend for the longstanding historic practice of holding secured creditors to some filing deadline to change.<sup>174</sup>

While courts that apply the timeliness requirement to secured creditors point to this extensive history of bankruptcy law for support, courts that allow secured creditors to file at any time are silent on the subject of legislative history. Surely, if the drafters intended Rule 3002(c) to alter longstanding bankruptcy practice, some legislative history would support this interpretation.<sup>175</sup> More importantly, if such legislative history did exist, courts applying Rule 3002(c)’s deadline only to unsecured creditors would point to it as evidence in support of their interpretation.

Beginning in 1898 and continuing through to today, bankruptcy law has required both secured and unsecured creditors to adhere to a deadline for filing proofs of claim. Though this deadline has changed throughout the several

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<sup>170</sup> *United Steel Workers*, 443 U.S. at 253-54 (Rehnquist, J., dissenting).

<sup>171</sup> *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) (citing *Emil v. Hanley*, 318 U.S. 515, 521 (1943)).

<sup>172</sup> *Id.*

<sup>173</sup> See *supra* Part II.A.4.

<sup>174</sup> See *supra* note 131.

<sup>175</sup> See *In re Dennis*, 230 B.R. 244, 251 (Bankr. D.N.J. 1999) (“Congress’ silence on this issue actually makes a very loud statement respecting its intention to carry forward from the Act and the old Rules filing deadlines for secured and unsecured creditors alike.”).

incarnations of this country's bankruptcy laws and procedural rules, and though at times different deadlines have applied separately to secured and unsecured creditors, the policy of imposing some deadline on creditors has consistently been in place. By enacting Rule 3002(c), Congress did not intend to alter this longstanding policy, and when deciding whether Rule 3002(c) should apply to secured creditors, these historic bankruptcy practices cannot be ignored.

B. *Purpose*

The purpose of a rule or statutory provision is integral when reaching the correct interpretation of ambiguous statutory language. As one court stated, "where a problem as to the meaning of a given term arises, a court's role is . . . to effectuate the statute by carrying out the purpose of the statute."<sup>176</sup> Rehabilitation of the debtor is generally recognized as one purpose of Chapter 13 bankruptcy.<sup>177</sup> Additionally, Congress has expressed that one of its intents in drafting the bankruptcy laws was to foster debtor rehabilitation.<sup>178</sup> These rehabilitative effects are accomplished by allowing debtors to systematically repay their debts,<sup>179</sup> and by providing debtors an educational opportunity to develop restraint and discipline in managing their finances.<sup>180</sup> Along with the rehabilitative purpose of Chapter 13 is the "twin purpose[] of providing for efficient debt collection . . . . As a debt collection device, bankruptcy provides equitable treatment for creditors and avoids the race between creditors to collection that often results under state insolvency laws."<sup>181</sup> Though debtor rehabilitation and debt collection are the two main purposes of Chapter 13, the

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<sup>176</sup> *Brachi v. Stahl Assocs. Co.*, 543 N.E.2d 49, 52 (N.Y. 1989).

<sup>177</sup> *See In re Ahlers*, 794 F.2d 388, 402 (8th Cir. 1986).

<sup>178</sup> H.R. REP. NO. 95-595, at 10 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 5971 (explaining that one of "[t]he present purposes of the bankruptcy act" is "to rehabilitate financially a distressed debtor").

<sup>179</sup> *See Hallenbeck v. Penn. Mut. Life Ins. Co.*, 323 F.2d 566, 570 (4th Cir. 1963).

<sup>180</sup> *See Jean Braucher, An Empirical Study of Debtor Education in Bankruptcy: Impact on Chapter 13 Completion Not Shown*, 9 AM. BANKR. INST. L. REV. 557, 565 (2001) ("A debtor can learn self-discipline and financial responsibility by making a repayment plan and carrying it out . . ."); Reginald W. McDuffie, *The Wage Earner's Plan in Practice*, 15 VAND. L. REV. 173, 193 (1962) (explaining that Chapter 13 bankruptcy provides debtors "a means of learning (perhaps for the first time) the hard lesson of self-discipline"). The educational benefits of Chapter 13 bankruptcy also come from provisions requiring debtors to attend financial management courses. *See* 11 U.S.C. § 109(h)(1) (2000) (requiring a debtor to perform a "budget analysis" with a credit counseling agency); 11 U.S.C. § 1328(g)(1) (2000) (conditioning discharge on the creditor "complete[ing] an instructional course concerning personal financial management").

<sup>181</sup> Ann Habermel, *A Reexamination of the Non-Dischargeability of Criminal Restitutive Obligations in Chapter 13 Bankruptcies*, 43 HASTINGS L.J. 1517, 1532 (1992).

rehabilitative goal has generally been categorized as the “overriding purpose” of consumer bankruptcy.<sup>182</sup>

Courts only applying the deadline to unsecured creditors point to Chapter 13’s rehabilitative purpose in support of their position not to also apply a timely filing deadline to secured creditors.<sup>183</sup> Under this line of reasoning, the rehabilitation of the debtor is fostered by allowing secured creditors to file proofs of claim at anytime because more creditors will be able to participate in the Chapter 13 plan.<sup>184</sup> With more secured creditors participating, fewer lien-holding creditors will remain after completion of the plan.

Contrary to these courts’ assumption, the effectiveness of a rule that allows secured creditors to file proofs of claim at any time to promote Chapter 13’s rehabilitative purpose seems questionable. One argument is that rehabilitation is fostered by allowing late secured claims because more secured creditors will be able to participate in the plan. However, it seems that there is little boost to the overall rehabilitative effects of Chapter 13 bankruptcy received by permitting secured creditors to file at any time. This is likely because of the small number of secured creditors that actually attempt to file proofs of claim after the deadline.<sup>185</sup> Furthermore, the increase of rehabilitative effects to an individual debtor is further diminished because this reading of rule 3002(c) would not provide the debtor with any extra educational rehabilitative benefits resulting from additional creditor participation. These educational benefits are derived from the act of participation in the plan and not from the number of debts repaid as a result of that plan.<sup>186</sup>

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<sup>182</sup> See *In re Cohen*, 54 F.3d 1108, 1113 (3d Cir. 1995); *In re Cross*, 666 F.2d 873, 879 (5th Cir. 1982). Other courts have described rehabilitation as the “basic purpose,” the “primary purpose[,]” and the “very purpose” of the Bankruptcy Code. See *Lines v. Frederick*, 400 U.S. 18, 19 (1970) (stating that “the basic purpose of the Bankruptcy Act” is to rehabilitate the debtor); *In re Angelle*, 610 F.2d 1335, 1339 (5th Cir. 1980); *In re Riposo*, 59 B.R. 563, 567 (Bankr. N.D.N.Y. 1986).

<sup>183</sup> See *supra* Part II.B.2.

<sup>184</sup> See *supra* Part II.B.2.

<sup>185</sup> A comprehensive search of Westlaw found that across all jurisdictions only four bankruptcy cases during the period spanning July 1, 2005 through June 30, 2006 discuss the issue of Rule 3002(c)’s applicability to secured creditors. Two of these cases assume that Rule 3002(c)’s deadline applies to secured creditors and instead focus on the issue of whether the court can extend the time limit for excusable neglect. See *In re Fries*, No. 04-40523, 2005 WL 4705223, at \*2 (Bankr. D. Idaho July 15, 2005); *In re Roubert*, 336 B.R. 22, 25 (Bankr. P.R. 2005). The other two cases directly address the question of whether the Rule 3002(c) deadline applies to secured creditors. See *In re Mehl*, No. 04-85570, 2005 WL 2806676, at \*2-3 (Bankr. C.D. Ill. Oct. 25, 2005); *In re West*, No. 04-33883-DK, 2005 WL 3132700, at \*1-2 (Bankr. D. Md. Oct. 12, 2005). Over this same period, a total of 313,085 Chapter 13 cases were filed. Press Release, U.S. Courts, Total Bankruptcy Cases Filed Fall to Lowest in Nearly Five Years (Aug. 28, 2006), [http://www.uscourts.gov/Press\\_Releases/bankruptcyfilings\\_082806.html](http://www.uscourts.gov/Press_Releases/bankruptcyfilings_082806.html).

<sup>186</sup> See *supra* note 180.

Moreover, courts do not universally accept the notion that allowing secured creditors to file proofs of claim at any time promotes the rehabilitative purpose of Chapter 13 bankruptcy.<sup>187</sup> In fact, some courts have found that the rehabilitative purpose of Chapter 13 bankruptcy is furthered more by holding both secured and unsecured creditors to Rule 3002(c)'s deadline than by allowing secured creditors to file at any time.<sup>188</sup> One court reasoned that the statutory interpretation applying Rule 3002(c) to both secured and unsecured creditors is "complemented by [the] sound bankruptcy policy [of providing a statute of limitations for creditors' claims]. One goal of the Chapter 13 reorganization is to rehabilitate the debtor. Finality and swift distribution of the Chapter 13 plan expedite this goal."<sup>189</sup>

Instead of focusing on the rehabilitation of debtors, allowing secured creditors to file proofs of claim at any time seems to take a more "creditor-centered approach"<sup>190</sup> to timely filing. Courts that allow secured creditors to file claims at any time are not focused on the rehabilitation of debtors but are instead focused on a "competing goal"<sup>191</sup> of bankruptcy, namely "efficient debt collection."<sup>192</sup> These courts appear to be more concerned about conferring this benefit of the bankruptcy process to all creditors rather than with rehabilitating debtors. However, debtor rehabilitation is Chapter 13's paramount purpose.<sup>193</sup> If allowing secured creditors to file claims at any time significantly increased Chapter 13's rehabilitative effects, the argument in favor of this reading of Rule 3002(c) would have substantial merit. However, because this reading of the Rule appears to favor creditors, and because it only minimally fosters debtor rehabilitation, the persuasiveness of the argument is necessarily diminished.

### C. *Context Within a Larger Statutory Scheme*

The context of a rule or statutory provision within a larger statutory scheme can provide evidence of the proper interpretation of unclear statutory language. For instance, the Supreme Court, while reviewing the meaning of a single provision of the Federal Rules of Evidence, has sought guidance from the "the Rules' overall structure."<sup>194</sup> Courts that favor the universal application of Rule 3002(c) point to the Rule's context within the larger bankruptcy statutory

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<sup>187</sup> See *In re Schaffer*, 173 B.R. 393, 398 (Bankr. N.D. Ill. 1994).

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Deborah Langehennig, *Application of the Till Interest Rate*, 68 TEX. BAR. J. 1022, 1023 (2005) (comparing Justice Stevens's "focus on the rehabilitation purposes" of Chapter 13 with the dissent's "creditor-centered approach" in the recent case of *Till v. SCS Credit Corp.*, 124 S.Ct. 1956 (2004)).

<sup>191</sup> *In re VanMeter*, 137 B.R. 908, 918 (Bankr. N.D. Ind. 1992).

<sup>192</sup> *Haberfelde*, *supra* note 181.

<sup>193</sup> See *supra* note 182.

<sup>194</sup> *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 509 (1989).

scheme to support their position.<sup>195</sup> Several provisions found elsewhere in the Bankruptcy Code suggest that the timeliness requirement found in Rule 3002(c) applies to secured creditors. One example of these provisions is section 502, which requires that a claim be disallowed if not timely filed.<sup>196</sup> When read in combination with the definition of “claim,” which includes both secured and unsecured claims, section 502 strongly suggests that Rule 3002(c) applies to both unsecured and secured creditors.<sup>197</sup> Once again, while courts holding secured creditors to the timeliness requirement point to Rule 3002(c)’s context within the larger bankruptcy statutory scheme to support their interpretation, courts favoring the Rule’s application only to unsecured creditors are silent on the issue.<sup>198</sup>

D. *Rule 3002(c)’s Deadline Applies to Both Secured and Unsecured Creditors*

After analyzing the various approaches to interpreting Rule 3002(c), Approach I, which applies Rule 3002(c)’s deadline to both secured and unsecured creditors alike, appears superior to Approach II, which applies the Rule only to unsecured creditors. Courts adopting Approach I point to the Rule’s context within a larger statutory scheme and, perhaps most importantly, the legislative history of the Rule and the historic tradition of applying the deadline to all creditors. Courts adopting Approach II are generally silent on these issues, but they argue that the purpose of Chapter 13 bankruptcy supports their interpretation of the Rule, and that the majority of courts have adopted such an interpretation. However, these arguments for Approach II, as discussed previously, are neither persuasive nor substantiated.

Approach III to the timely filing requirement discussed in this Note does not hold secured creditors to the explicit deadline found in Rule 3002(c),<sup>199</sup> but rather holds secured creditors to some unspecified filing deadline.<sup>200</sup> This approach seems to be a compromise between the two primary approaches in that it interprets Rule 3002(c) as not directly applying to secured creditors while also realizing that some problems may arise by allowing secured creditors to file proofs of claim at any time.

Applying a court-imposed deadline for filing secured claims does address some of the problems raised by exempting secured creditors from the Rule

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<sup>195</sup> See *supra* Part II.A.3.

<sup>196</sup> See *supra* Part II.A.3. Other statutory provisions discussed in Part II.A.3 that suggest Rule 3002(c)’s deadline applies to both secured and unsecured creditors include 11 U.S.C. § 501(c) (2000) and 11 U.S.C. § 506(d)(2) (2000).

<sup>197</sup> See *supra* notes 66-69 and accompanying text.

<sup>198</sup> See, e.g., *In re Mehl*, No. 04-85570, 2005 WL 2806676 (Bankr. C.D. Ill. Oct. 25, 2005); *In re Hudson*, 260 B.R. 421 (Bankr. W.D. Mich. 2001); *In re Strong*, 203 B.R. 105 (Bankr. N.D. Ill. 1996).

<sup>199</sup> See *supra* Part II.C.

<sup>200</sup> See *supra* notes 154-158 and accompanying text.



3002(c) deadline – namely, policy concerns relating to efficient administration of the debtor’s Chapter 13 plan.<sup>201</sup> However, this approach is not buttressed by convincing analysis. The one court which explicitly adopted this approach stated that “Congress has left it to the courts to invest terms found in the Bankruptcy Code with meaning in those situations in which the bankruptcy rules are silent,”<sup>202</sup> and then went on to declare that the timely filing requirement of secured creditors is one of those instances in which Congress has vested the courts with the responsibility of giving meaning to the requirement.<sup>203</sup> However, the court did not cite any authority in support of the position that the timely filing of secured creditors is one of these instances in which the court may formulate its own requirements, and further, it did not provide any arguments to rebut the position of other courts holding that the Bankruptcy Rules *do* speak to the timely filing requirement of secured creditors.<sup>204</sup>

Furthermore, by allowing courts discretion in setting a filing deadline, there is no guarantee that the benefit of promoting the efficient administration of the Chapter 13 plan will be realized because the court may apply a deadline that is late in the administration of the plan, including, as has been suggested, after the case is closed.<sup>205</sup> Lastly, unlike those courts that do not apply any deadline for filing proofs of claim to secured creditors, courts that hold secured creditors to some deadline, but not necessarily the same deadline that applies to unsecured creditors, do not ignore the long-standing policy of American bankruptcy law of setting a deadline for secured creditors.<sup>206</sup> However, these courts *do* ignore the legislative intent of Congress in promulgating Rule 3002(c) – that is, to apply *one definite deadline to both* secured and unsecured creditors.<sup>207</sup> Therefore, even though this approach may address some concerns raised by applying the 90-day deadline only to unsecured creditors, it seems unlikely that this approach is the correct interpretation of Rule 3002(c)’s timely filing requirement.

After looking carefully at the arguments and evidence on both sides of this issue, the answer to the question of whether Rule 3002(c) applies to secured creditors seems clear: “[I]t only makes sense that the secured creditor who seeks to participate in the receipt of disbursements from the Chapter 13 Trustee

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<sup>201</sup> See *supra* Part II.A.3.

<sup>202</sup> *In re Macias*, 195 B.R. 659, 662 (Bankr. W.D. Tex. 1996).

<sup>203</sup> *Id.*

<sup>204</sup> See *id.*

<sup>205</sup> See *In re Hudson*, 260 B.R. 421, 438 n.36 (Bankr. W.D. Mich. 2001) (stating that “[t]here exists a thirty-day window period immediately after the expiration of the unsecured claims bar date [to file a secured claim]”).

<sup>206</sup> See *supra* Part II.A.4.

<sup>207</sup> See *supra* notes 133-136 and accompanying text.

must comply with the same ‘time-for-filing’ requirements imposed on the unsecured creditor.”<sup>208</sup>

#### CONCLUSION

Uncertainty regarding whether Rule 3002(c)’s deadline for filing proofs of claim applies to secured creditors has persisted for many years. Many might find it surprising that such a simple provision – “a proof of claim is timely filed if it is filed not later than 90 days after the date set for the meeting of creditors”<sup>209</sup> – has caused courts to reach so many different interpretations. Courts have continued to look at numerous sources of evidence to find the true applicability of the Rule, including the legislative history, the purpose of Chapter 13 bankruptcy, the statutory framework of the Bankruptcy Code, and policy concerns raised by particular interpretations of the Rule. While examining the same evidence, courts have continued to reach different conclusions as to the scope of Rule 3002(c).<sup>210</sup> Some find that the Rule’s deadline applies both to secured and unsecured creditors.<sup>211</sup> Others find that the deadline applies only to unsecured creditors and that secured creditors can file proofs of claim at any time.<sup>212</sup> Finally, at least one court has concluded that Rule 3002(c) does not apply to secured creditors, but that some sort of deadline applies to the filing of proofs of claim by secured creditors.<sup>213</sup>

No resolution of this issue seems forthcoming. As one commentator stated over a decade ago, “[t]his controversy will continue to rage in consumer bankruptcy cases until resolved by the various Courts of Appeal. Hopefully, the appellate courts will deal with this matter as quickly as possible in order to bring certainty back to this aspect of chapter 13 practice.”<sup>214</sup> Unfortunately, that hope for certainty in Rule 3002(c)’s applicability has not yet been fulfilled. I hope, however, this Note will contribute to a greater understanding of the Rule, and perhaps aid in the eventual resolution of that uncertainty.

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<sup>208</sup> *In re Schaffer*, 173 B.R. 393, 398 (Bankr. N.D. Ill. 1994).

<sup>209</sup> FED. R. BANKR. P. 3002(c).

<sup>210</sup> Compare *In re Harris*, 64 B.R. 717, 719 (Bankr. D. Conn. 1986) (finding that chapter 13’s rehabilitative purpose supports the view that Rule 3002(c)’s deadline applies to only unsecured creditors) with *In re Schaffer*, 173 B.R. at 398 (finding that Chapter 13’s rehabilitative purpose supports the view that Rule 3002(c)’s deadline applies to both secured and unsecured creditors).

<sup>211</sup> See *In re Mickens*, No. 04-1324, 2005 WL 375661, at \*1 (Bankr. D.D.C. Feb. 14, 2005); *In re Boucek*, 280 B.R. 533, 537 (Bankr. D. Kan. 2002); *In re Schaffer*, 173 B.R. at 397.

<sup>212</sup> See *In re Mehl*, No. 04-85570, 2005 WL 2806676, at \*3 (Bankr. C.D. Ill. Oct. 25, 2005); *In re Hudson*, 260 B.R. 421, 438 (Bankr. W.D. Mich. 2001); *In re Strong*, 203 B.R. 105, 112 (Bankr. N.D. Ill. 1996); *In re Harris*, 64 B.R. 717, 719 (Bankr. D. Conn. 1986) .

<sup>213</sup> See *In re Macias*, 195 B.R. 659, 661 (Bankr. W.D. Tex. 1996); see also *supra* Part II.C.

<sup>214</sup> Ray, *supra* note 128.