

Office of The Chapter 13 Trustee

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National Form Plan

Effective for District: December 1, 2017

I. Uniform Chapter 13 Plan for Northern District of Ohio

- A. Plan items in specific order.
- B. Helps users find information quickly.
- C. Helps attorneys practicing in multiple jurisdictions.
- D. Plan Allows space for non-standard items.
- E. Not all provisions of plan are applicable for all jurisdictions.
- F. Plan does not void Sixth Circuit Law, Local Rules or Local Administrative Orders.

II. Read the Plan

- A. Make sure your software is putting the information where you believe the items need to be disclosed.
- B. Work first couple of plans manually to become familiar with plan terms and location of specific items.
- C. Review first couple of plans manually before filing.
- D. FAILURE TO CHECK APPROPRIATE BOXES ON PAGE ONE VOIDS THAT PROVISION!

III. Plan Payments

- A. Be careful not to “lock” below median income debtors into a 60 month applicable commitment period. A lot of plans say debtor will make payments for 60 months even when a debtor is a below median debtor and could finish the plan term in less than 60 months. However, if plan proposed and confirmed at 60 months, that is the agreement that the debtor has made with the creditors.
- B. In the new plan form, for below median debtors, that requires some stepped up payments, the following would be helpful to the debtor:

Debtor(s) will make regular plan payments to the trustee as follows:

\$500 for 12 months

\$1,000 for next 12 months

\$1,500 in plan payments thereafter for the Debtor’s full applicable commitment period or conclusion of the case, whichever is greater.

IV. Payroll Deduction

- A. Whenever possible, plan payments should be made by payroll deductions to increase the probability that creditors and debtor's attorney will be paid.

V. Tax Refunds

- A. Generally, tax refunds are property of the estate, See In Re Freeman, 86F.3d 478 (1996)(Sixth Circuit Court of Appeals).
- B. Court locations generally allow a "no look stipend" portion of the tax refund to be retained by debtor(s) in an amount up to \$1,500.
- C. The Ohio Revised Code also allows the retention of earned income credit.
- D. In the treatment of tax refund line, the debtor(s) may consider the following:

The debtor will retain the first \$1,500 in tax refunds in addition to any portion of the tax refund exempt pursuant to the Ohio Revised Code. The balance of the refund shall be paid into the Chapter 13 plan.

VI. Additional Payments

- A. Additional payments may include sale of property or insurance proceeds.

VII. Treatment of Secured Claims

- A. Proof of claim controls over plan.
- B. Administrative Order on conduit payments is still in effect.
- C. Relief from stay stops payment to all creditors associated with the collateral regardless if the creditor was a party to the relief action.

VIII. Valuation of Security

- A. Plan allows the cram down of non-governmental creditors provided box on page 1 is checked and Section 3.2 is completed correctly.
- B. Proof of claims of governmental units cannot be crammed down by this section.
- C. Cramming down interest rate only.
 - i. If cramming down interest only on a vehicle make sure to have car paid through plan otherwise if challenged, counsel and their client will need to calculate an amortization table. The Trustee's records are available to parties online, at no cost.

IX. Stripping Liens through Plan

- A. Plan allows the stripping of judgment liens and non-purchase security claims through the plan provided section 3.4 is completed correctly.

X. Unsecured Creditors

- A. When stating how unsecured creditors should be paid, two boxes should be checked.
 - i. The box stating a % and an estimated payment in dollars.
 - 1. Checking this box will help creditors see what they can expect and maybe help them decide not to object to the plan, saving time and resources for debtor's counsel.

- ii. The box that all remaining funds to unsecured creditors after payment to all other creditors will allow the Trustee to adjust the percent as needed.
- B. Be careful when selecting on going direct payments on unsecured debt. If the debt is dischargeable it is more beneficial to be paid through the plan and discharged at the conclusion of the case.

XI. Separate Classification of Debt

- A. Separate classification of unsecured debt will require legal authority under Title 11.

XII. Vesting of Property of the Estate

- A. It is best if vesting the property of the estate occur at confirmation.

XIII. Non Standard Provision

- A. Section 8.1 allows non-standard provisions.

XIV. Checking Feasibility of Plan

- A. Reviewing estimated payments on trustee worksheet is a good way to test feasibility of plan.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure

FROM: Hon. Sandra Segal Ikuta, Chair
Advisory Committee on Bankruptcy Rules

RE: Report of the Advisory Committee on Bankruptcy Rules

DATE: December 5, 2016

I. Introduction

The Advisory Committee on Bankruptcy Rules met in Washington, D.C., on November 14, 2016. The draft minutes of that meeting are attached.

At the meeting the Committee concluded its more than five-year consideration of an Official Form and related rules for chapter 13 plans by giving final approval to the amendment of one rule, the adoption of a new rule, and minor amendments to the proposed new Official Form. This action completed the Committee's approval process that was begun at the fall 2015 meeting, when amendments to eight additional rules and the Official Form were approved, but held in abeyance. The Committee now seeks the Standing Committee's approval of the entire package of chapter 13 plan form and rule amendments.

The Committee also approved a technical amendment to one rule and a conforming amendment to one Official Form. It seeks the Standing Committee's approval of these amendments without publication.

These action items are discussed in Part II of this report.

Part III presents two information items. The first concerns the Committee's intention at the June Standing Committee meeting to seek approval of conforming amendments to Rule 8011 without publication. The second item provides information about the Committee's consideration of noticing issues under the Bankruptcy Rules.

II. Action Items

A. Items for Final Approval Following Publication

The Committee requests that the Standing Committee approve amendments to Rules 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009; new Rule 3015.1; and new Official Form 113. The Committee recommends that the package of rules and the form be submitted to the Judicial Conference at its March meeting and, if approved, that the rules be sent to the Supreme Court immediately thereafter so that, if promulgated by the Supreme Court by May 1, they may take effect on December 1, 2017. The rules and form in this group appear in *Appendix A1*.

Action Item 1. Chapter 13 plan Official Form and rules package.

The Committee began considering the possibility of creating a chapter 13 plan Official Form at the spring 2011 meeting. At that meeting the Committee discussed Suggestions 10-BK-G and 10-BK-M, which proposed the promulgation of a national plan form. Judge Margaret Mahoney (Bankr. S.D. Ala.), who submitted one of the suggestions, noted that “[c]urrently, every district's plan is very different and it makes it difficult for creditors to know where to look for their treatment from district to district.” The States' Association of Bankruptcy Attorneys (“SABA”), which submitted the other suggestion, stressed the impact of the Supreme Court's then-recent decision in *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010). Because the Court held that an order confirming a plan is binding on all parties who receive notice, even if some of the plan provisions are inconsistent with the Bankruptcy Code or rules, SABA explained that creditors must carefully scrutinize plans prior to confirmation. Moreover, SABA noted, the Court imposed the obligation on bankruptcy judges to ensure that plan provisions comply with the Code, and thus uniformity of plan structure would aid, not only creditors, but also bankruptcy judges in carrying out their responsibilities. Following discussion of the suggestions, the Committee approved the creation of a working group to draft an Official Form for chapter 13 plans and any related rule amendments.

A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in August 2013. Approximately 150 comments were submitted. Because the Committee made significant changes to the form in response to comments, the revised form and rules were published again in August 2014.

At the spring 2015 meeting, the Committee considered the approximately 120 comments that were submitted after republication, many of which—including the joint comments of 144 bankruptcy judges—were strongly opposed to the adoption of a mandatory national form for chapter 13 plans. The Committee discussed a number of options relating to the chapter 13 national form and associated rules. No member favored completely abandoning the project, and no one favored proceeding with the proposed amendments to the nine rules without also proposing a national plan form. Although there was widespread agreement regarding the benefit of having a national plan form, Committee members generally did not want to proceed with a mandatory Official Form in the face of substantial opposition by bankruptcy judges and other bankruptcy constituencies. Accordingly, the Committee was generally inclined to explore the possibility of a compromise along the lines suggested by a group of commenters, led by Bankruptcy Judges Marvin Isgur and Roger Efremsky (“the compromise group”).¹ After a full discussion, the Committee voted unanimously to give further consideration to pursuing a proposal that would involve promulgating a national plan form and related rules, but that would allow districts to opt out of the use of the Official Form if certain conditions were met.

During the summer of 2015, the Forms Subcommittee, joined by former Committee chair Judge Gene Wedoff and chapter 13 trustee Jon Waage, considered how best to implement an opt-out proposal and how to respond to the substantive and stylistic comments that were submitted on the plan form and Rules 3002, 3015, and 9009 (the rules most closely associated with the opt-out proposal). The Consumer Subcommittee considered the comments submitted on Rules 2002, 3007, 3012, 4003, 5009, and 7001.

The Forms Subcommittee shared its proposed revisions of Official Form 113 and Rules 3002 and 3015 with members of the compromise group, some members of the consumer debtor bar, and some chapter 13 trustees. Prior to the fall 2015 meeting, the Committee received correspondence from the president of the National Association of Consumer Bankruptcy Attorneys (“NACBA”) and from Representative John Conyers, Jr., the Ranking Member on the House Committee on the Judiciary, and Representative Hank Johnson, Ranking Member on the Subcommittee on Regulatory Reform, Commercial and Antitrust Law. Their primary concern was procedural: they advised the Advisory Committee not to approve a version of the opt-out approach without first publishing it for public comment.

At the fall 2015 meeting, the Committee gave approval to proposed Official Form 113 and related amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009—with some technical changes made in response to comments. The Committee voted to defer submitting those items to the Standing Committee in order to allow the Committee to further consider the opt-out proposal and the necessity, timing, and scope of any republication. It

¹ Members of this group are Bankruptcy Judges Isgur, Efremsky, and Rebecca Connelly; George Stevenson, Rick Yarnell, and David Peake, who are chapter 13 trustees and past or present officers of the National Association of Chapter 13 Trustees; and creditors’ attorneys Michael Bates (Wells Fargo Bank), Alane Becket (Becket & Lee, LLP), and Karen Cordry (National Association of Attorneys General).

directed the Forms Subcommittee to continue to obtain feedback on the opt-out proposal from a broad range of bankruptcy constituencies and to make a recommendation at the spring 2016 meeting regarding the need for additional publication.

The Subcommittee reached out to all relevant groups and invited them to provide feedback on the opt-out proposal, as set out in proposed Rules 3015 and 3015.1, as well as on whether they perceived a need for further publication. The following groups provided comments to the Subcommittee in response: National Bankruptcy Conference (“NBC”), National Conference of Bankruptcy Judges (“NCBJ”), National Association of Consumer Bankruptcy Attorneys (“NACBA”), the American Bankruptcy Institute’s Consumer Committee, a large number of chapter 13 trustees whose comments were collected by the National Association of Chapter 13 Trustees, and an informal mortgage servicer group. While the bulk of the comments received were directed at the plan form itself, rather than at the opt-out proposal, three groups (NBC, NCBJ, and the mortgage servicers) and seven individual trustees did express support for allowing districts to opt out of a national plan form. In addition, Bankruptcy Judge Marvin Isgur (S.D. Tex.) circulated the opt-out proposal to the 144 bankruptcy judges who had submitted a letter in 2014 opposing a national plan form, and he reported that there was general acceptance of Rules 3015 and 3015.1 among the group.

The response of NACBA to the Subcommittee’s outreach was relatively brief. The president of the organization said that he could not speak for the thousands of NACBA members, and he urged the Committee to publish the proposals that were being considered. He asserted that “adoption of the ‘compromise’ proposal without providing a new comment period would not comply with the law and [would] subject such to litigation and added controversy.” NCBJ also advised that the opt-out proposal be published for public comment.

At the spring 2016 meeting, the Committee unanimously approved the Forms Subcommittee’s recommendation that the amendments to Rule 3015 and proposed new Rule 3015.1 be published for public comment. The Committee also unanimously agreed that the Committee should seek to publish Rules 3015 and 3015.1 on a truncated schedule. According to § 440.20.40(d) of the Guide to Judiciary Policy, “The Standing Committee may shorten the public comment period or eliminate public hearings if it determines that the administration of justice requires a proposed rule change to be expedited and that appropriate notice to the public can still be provided and public comment obtained.” Because of the two prior publications and the narrow focus of the revised rules, the Committee believed that the usual 6-month comment period should be shortened so that an entire year could be eliminated from the period leading up to the effective date of the Committee’s proposed rules and form.

The Standing Committee accepted the Committee’s recommendation, and Rules 3015 and 3015.1 were published for public comment on July 1, 2016. The comment period ended on October 3. Eighteen written comments were submitted. In addition, five witnesses testified at a

Committee hearing conducted telephonically on September 27; they also submitted their written testimony, which was posted along with the written comments.

A majority of the comments were supportive of the proposed rules' implementation of an Official Form for chapter 13 plans with the option for districts to use a single local form instead. Some of those comments suggested specific changes to particular rule provisions, which the Committee considered. The strongest opposition to the opt-out procedure came from NACBA and from three consumer debtor attorneys who testified at the hearing. They favored a mandatory national plan because of their concern that in some districts only certain plan provisions are allowed and plans with any nonstandard provisions are not confirmed. In addition, the bankruptcy judges of the Southern District of Indiana stated that they unanimously opposed Rule 3015(c) and (e) and Rule 3015.1 because they said that mandating the use of a "form chapter 13 plan," whether national or local, exceeds rulemaking authority.

At the fall 2016 meeting, the Committee unanimously accepted the Forms Subcommittee's recommendation that Rules 3015 and 3015.1 be approved with some changes that were responsive to comments submitted and that Official Form 113 (previously approved by the Committee) be amended in some minor respects and reapproved. The Committee concluded that no changes were needed to the published rules in response to comments expressing general opposition to the Committee's approach. The Committee concluded that promulgating a form for chapter 13 plans and related rules that require debtors to format their plans in a certain manner but do not mandate the content of such plans was consistent with the Rules Enabling Act. Further, given the significant opposition expressed to the original proposal of a mandatory national plan form, the Committee concluded that it was prudent to give bankruptcy districts the ability to opt out of using it, subject to certain conditions that would still achieve many of the goals the Committee sought in its original proposal. Finally, the Committee concluded it did not have the ability to address concerns that bankruptcy judges in some districts consistently refuse to confirm plans that are permissible under the Bankruptcy Code. Rather, litigants affected by such improper rulings should seek redress through an appeal.

The comments submitted in response to the August 2014 and July 2016 publications are summarized in *Appendix B*. The text of the proposed rule amendments, new rule, and new Official Form, along with their Committee Notes and a list of changes made after publication, are included in *Appendix A1*.

B. Items for Final Approval Without Publication

The Committee requests that the Standing Committee approve amendments to Rule 7004(a)(1) and Official Form 101 without publication due to their technical and conforming nature. The Committee recommends that the amendment to Form 101 take effect on December 1, 2017.

Action Item 2. Reference to Civil Rule 4 in Rule 7004(a)(1) (Summons; Service; Proof of Service).

Rule 7004 incorporates by reference certain components of Civil Rule 4. In 1996, the Committee amended Rule 7004(a) to incorporate by reference the provision of Civil Rule 4 addressing a defendant's waiver of service of a summons. At that time, the relevant provision of the civil rules was set forth in Civil Rule 4(d)(1), which read:

(1) A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

In 2007, Civil Rule 4(d) was amended to change, among other things, the language and placement of the foregoing provision. Specifically, the 2007 amendments renumbered the provision as Civil Rule 4(d)(5) and modified the language to read:

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

The cross-reference to Civil Rule 4(d)(1) in Rule 7004(a), however, was not changed at that time.

Accordingly, the Committee recommends an amendment to Rule 7004(a) to incorporate the correct subsection of Civil Rule 4(d), that being Civil Rule 4(d)(5). The language of the proposed amendment to Rule 7004(a) is included in *Appendix A2*. Based on its technical and conforming nature, the Committee further recommends that the proposed amendment to Rule 7004(a) be submitted to the Judicial Conference for approval without prior publication.

Action Item 3. Question 11 on Official Form 101 (Voluntary Petition for Individuals Filing for Bankruptcy). The Committee has identified a need to amend question 11 on Official Form 101, the voluntary petition for individual debtors, to make the wording consistent with § 362(l)(5)(A).

Section 362(b) provides exceptions to the automatic stay. Section 362(b)(22) provides that the automatic stay does not apply to the continuation of any eviction action by a lessor against the debtor with respect to the debtor's residence if the lessor obtained a judgment of

this bankruptcy petition.” The proposed revised Form 101 is included in *Appendix A2*. Based on its technical and conforming nature, the Committee further recommends that the proposed amendments to Form 101 be submitted to the Judicial Conference for approval without prior publication.

III. Information Items

A. Conforming Amendments to Rule 8011 (Filing and Service; Signature) Without Publication

The Bankruptcy, Civil, Criminal, and Appellate Rules Advisory Committees are engaged in a coordinated effort to address electronic filing, signatures, service, and proof of service in their respective rules. This project began with the Civil Committee’s proposal for amending Civil Rule 5 (Serving and Filing Pleadings and Other Papers); the other committees then proposed similar amendments to their service and filing rules. The committees’ proposed rule amendments were published for public comment in August.

In furtherance of this effort, the Bankruptcy Rules Committee published for comment an amendment to address electronic filing, Bankruptcy Rule 5005(a) (Filing). The preliminary draft follows the draft of Civil Rule 5(d) (except where deviations were required for bankruptcy-specific reasons). The Committee did not propose any amendment to address electronic service and proof of service, because the amendments to Civil Rule 5(b) and (d)(1)(B) will automatically apply in bankruptcy proceedings. That is because Bankruptcy Rule 7005 makes Civil Rule 5 applicable in adversary proceedings, and Bankruptcy Rule 9014(b) provides that Civil Rule 5(b) governs service in contested matters.

Because the proposed amendments focused on changes to Civil Rule 5, the Committee considered only electronic filing, service and proof of service at the trial level. It did not consider electronic filing, service and proof of service on appeal before district courts and bankruptcy appellate panels. This oversight came to light at the June 2016 Standing Committee meeting when the Appellate Rules Committee presented its proposed amendment to FRAP 25 (Filing and Service), which closely track the proposed electronic filing, service and proof of service amendments to Civil Rule 5.

Bankruptcy Rule 8011, which addresses filing and service in bankruptcy appeals, is based on and closely tracks FRAP 25. Indeed, one of the goals of our 2014 revision of bankruptcy appellate rules (Part VIII of the Bankruptcy Rules) was to have our appellate rules mirror the Federal Rules of Appellate Procedure, except when there was a bankruptcy-specific reason to do otherwise. The Committee therefore recommends amending Rule 8011 to track the amendments to FRAP 25 and address electronic filing (FRAP 25(a)), electronic signatures (FRAP 25(a)(2)(B)(iii)), electronic service (FRAP 25(c)(2)), and electronic proof of service (FRAP 25(d)). A draft of the proposed amendments to Rule 8011 is included in *Appendix A3*.

The Committee plans to review the proposed amendments to Rule 8011 at its April 2017 meeting, which will allow it to consider any public comments to FRAP 25, as well as any refinements to the rule proposed by the Appellate Rules Committee. After making any necessary revisions to ensure consistency with FRAP 25, the Committee will request approval of Rule 8011 without publication at the Standing Committee's June 2017 meeting.

The Committee intends to recommend that the amendments to Rule 8011 be approved without publication. There are several reasons for taking such an approach. First, the Committee has determined that the proposed amendments to Rule 8011, which will be materially identical to the proposed amendments to FRAP 25, do not raise issues unique or particular to bankruptcy cases. Therefore, the public's comments on the amendments to FRAP 25 would be adequate to identify any issues or concerns about the amendments to Rule 8011. Second, to avoid confusion, it is important for the federal rules to be consistent in their approach to electronic filing, service, and proof of service. An approval of the amendments to Rule 8011 without publication will allow them to remain on the same track as FRAP 25, Civil Rule 5, Bankruptcy Rule 5005(a), and Criminal Rule 49, with a potential effective date of December 1, 2018.

B. Noticing Project

Over the years, the Committee has been asked to review noticing issues in bankruptcy cases—both the mode of noticing and service (other than service of process) and the parties entitled to receive such notices or service. These issues are important in the federal bankruptcy system, but they are also complex. The bankruptcy rules contain approximately 145 rules addressing noticing or service issues, and many of those rules include multiple subparts with different requirements. Unlike many civil or criminal matters, a single bankruptcy case may involve hundreds of parties, and the bankruptcy rules require the clerk (or some other party as the court may direct) to notice or serve certain papers on all of these parties on numerous occasions. In addition, many courts have adopted local rules to address noticing and service issues in bankruptcy cases.

At its fall 2015 meeting, the Committee approved a work plan to study noticing issues generally in federal bankruptcy cases. At its spring 2016 meeting, the Committee determined that the ongoing electronic filing, notice, and service initiatives by the federal rules committees could mitigate many of the general concerns regarding the extent and cost of required noticing in bankruptcy cases, and therefore the Committee decided to defer undertaking an extensive overhaul of bankruptcy noticing provisions. Nevertheless, the Committee decided to review and evaluate the specific suggestions regarding noticing issues in bankruptcy cases that had been submitted to the Committee.

Based on its preliminary review, the Committee decided to focus first on a specific suggestion regarding providing electronic noticing and service to businesses, financial institutions, and other non-individual parties that hold claims or other rights against the debtor. These parties may receive numerous notices and papers in multiple bankruptcy cases; thus, permitting electronic noticing and service on such parties would generate significant cost savings and other efficiencies. The Committee is exploring an amendment to the bankruptcy rules that would allow such non-individual parties who are not registered users of CM/ECF to opt into electronic noticing and service in bankruptcy cases. The Committee will ensure that any such amendment is consistent with 11 U.S.C. § 342(e) and (f), which gives certain creditors the right to designate a particular service address. While such an amendment would address bankruptcy-specific issues, it may affect the Appellate Rules Committee, the Civil Rules Committee, and the Criminal Rules Committee because the amended bankruptcy rule would govern issues similar to those in the proposed and pending amendments to Appellate Rule 25(c), Civil Rule 5(b)(2), and Criminal Rule 49(a)(3).

The Committee will provide a further update on the noticing project at the Standing Committee's June 2017 meeting.

TAB 5B

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APPENDIX A1

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16 (8) the time fixed for filing objections and the
17 hearing to consider confirmation of a chapter 12 plan;

18 and

19 (9) the time fixed for filing objections to
20 confirmation of a chapter 13 plan.

21 (b) TWENTY-EIGHT-DAY NOTICES TO
22 PARTIES IN INTEREST. Except as provided in
23 subdivision (l) of this rule, the clerk, or some other person
24 as the court may direct, shall give the debtor, the trustee, all
25 creditors and indenture trustees not less than 28 days'
26 notice by mail of the time fixed

27 (1) for filing objections and the hearing to
28 consider approval of a disclosure statement or, under
29 §1125(f), to make a final determination whether the
30 plan provides adequate information so that a separate
31 disclosure statement is not necessary; ~~and~~

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

38

1 **Rule 3002. Filing Proof of Claim or Interest**

2 (a) NECESSITY FOR FILING. ~~An~~A secured
3 creditor, unsecured creditor, or an equity security holder
4 must file a proof of claim or interest for the claim or
5 interest to be allowed, except as provided in Rules 1019(3),
6 3003, 3004, and 3005. A lien that secures a claim against
7 the debtor is not void due only to the failure of any entity to
8 file a proof of claim.

9 (b) PLACE OF FILING. A proof of claim or
10 interest shall be filed in accordance with Rule 5005.

11 (c) TIME FOR FILING. In a voluntary chapter 7
12 ~~liquidation~~case, chapter 12 ~~family—farmer’s—debt~~
13 ~~adjustment~~case, or chapter 13 ~~individual’s—debt~~
14 ~~adjustment~~case, a proof of claim is timely filed if it is filed
15 not later than ~~90~~70 days after the order for relief under that
16 chapter or the date of the order of conversion to a case
17 under chapter 12 or chapter 13. In an involuntary chapter 7

18 case, a proof of claim is timely filed if it is filed not later
19 than 90 days after the order for relief under that chapter is
20 entered,~~the first date set for the meeting of creditors called~~
21 ~~under § 341(a) of the Code, except as follows:~~ But in all
22 these cases, the following exceptions apply:

23 * * * * *

24 (6) ~~If notice of the time to file a proof of claim~~
25 ~~has been mailed to a creditor at a foreign address, o~~On
26 ~~motion filed by the~~a ~~creditor before or after the~~
27 ~~expiration of the time~~ to file a proof of claim, ~~the~~
28 ~~court may extend the time by not more than 60 days~~
29 from the date of the order granting the motion. The
30 motion may be granted ~~if the court finds that~~~~the~~
31 ~~notice was insufficient under the circumstances to~~
32 ~~give the creditor a reasonable time to file a proof of~~
33 ~~claim~~

34 (A) the notice was insufficient under the
35 circumstances to give the creditor a reasonable
36 time to file a proof of claim because the debtor
37 failed to timely file the list of creditors' names
38 and addresses required by Rule 1007(a); or

39 (B) the notice was insufficient under the
40 circumstances to give the creditor a reasonable
41 time to file a proof of claim, and the notice was
42 mailed to the creditor at a foreign address.

43 (7) A proof of claim filed by the holder of a
44 claim that is secured by a security interest in the
45 debtor's principal residence is timely filed if:

46 (A) the proof of claim, together with the
47 attachments required by Rule 3001(c)(2)(C), is
48 filed not later than 70 days after the order for
49 relief is entered; and

50 (B) any attachments required by
51 Rule 3001(c)(1) and (d) are filed as a supplement
52 to the holder's claim not later than 120 days after
53 the order for relief is entered.

Committee Note

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The inclusion of language from § 506(d) is not intended to effect any change of law with respect to claims subject to setoff under § 553. The amendment preserves the existing exceptions to this rule under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the

§ 341 meeting of creditors to 70 days after the petition date. If a case is converted to chapter 12 or chapter 13, the 70-day time for filing runs from the order of conversion. If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a). The amendment also clarifies that if a court grants a creditor's motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court's decision on the motion.

Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim secured by an interest in the debtor's principal residence. Those proofs of claim must be filed with the appropriate Official Form mortgage attachment within 60 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See § 301 and § 303(h). The confirmation of a plan within the 120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to any proof of claim.

Changes Made After Publication and Comment

- The deadline in subsection (c) for filing a proof of claim in a voluntary chapter 7, 12, or 13 case was changed from 60 days to 70 days.
- The phrase “under that chapter” was added after “order for relief” in two places in subdivision (c).
- The Committee Note was changed accordingly.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

1 **Rule 3007. Objections to Claims**

2 (a) ~~OBJECTIONS TO CLAIMS~~ TIME AND
3 MANNER OF SERVICE.

4 (1) Time of Service. An objection to the allowance
5 of a claim and a notice of objection that substantially
6 conforms to the appropriate Official Form shall be ~~in~~
7 ~~writing and filed:~~ and served at least 30 days before
8 any scheduled hearing on the objection or any
9 deadline for the claimant to request a hearing. ~~A copy~~
10 ~~of the objection with notice of the hearing thereon~~
11 ~~shall be mailed or otherwise delivered to the claimant,~~
12 ~~the debtor or debtor in possession, and the trustee at~~
13 ~~least 30 days prior to the hearing.~~

14 (2) Manner of Service.

15 (A) The objection and notice shall be served
16 on a claimant by first-class mail to the person
17 most recently designated on the claimant's
18 original or amended proof of claim as the person

19 to receive notices, at the address so indicated;
20 and

21 (i) if the objection is to a
22 claim of the United States, or any of
23 its officers or agencies, in the
24 manner provided for service of a
25 summons and complaint by Rule
26 7004(b)(4) or (5); or

27 (ii) if the objection is to a
28 claim of an insured depository
29 institution, in the manner provided
30 by Rule 7004(h).

31 (B) Service of the objection and notice shall
32 also be made by first-class mail or other
33 permitted means on the debtor or debtor in
34 possession, the trustee, and, if applicable, the
35 entity filing the proof of claim under Rule 3005.

36 * * * * *

Committee Note

Subdivision (a) is amended to specify the manner in which an objection to a claim and notice of the objection must be served. It clarifies that Rule 7004 does not apply to the service of most claim objections. Instead, a claimant must be served by first-class mail addressed to the person that the claimant most recently designated on its proof of claim to receive notices, at the address so indicated. If, however, the claimant is the United States, an officer or agency of the United States, or an insured depository institution, service must also be made according to the method prescribed by the appropriate provision of Rule 7004. The service methods for the depository institutions are statutorily mandated, and the size and dispersal of the decision-making and litigation authority of the federal government necessitate service on the appropriate United States attorney's office and the Attorney General, as well as the person designated on the proof of claim.

As amended, subdivision (a) no longer requires that a hearing be scheduled or held on every objection. The rule requires the objecting party to provide notice and an opportunity for a hearing on the objection, but, by deleting from the subdivision references to "the hearing," it permits local practices that require a claimant to timely request a hearing or file a response in order to obtain a hearing. The official notice form served with a copy of the objection will inform the claimant of any actions it must take. However, while a local rule may require the claimant to respond to the objection to a proof of claim, the court will still need to determine if the claim is valid, even if the claimant does not file a response to a claim objection or request a hearing.

Changes Made After Publication and Comment

- Subdivision (a) was divided into two paragraphs that separately address time of service and manner of service.
- A requirement of service on an entity that files a proof of claim under Rule 3005 was added to subdivision (a)(2)(B).

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

1 **Rule 3012. ~~Valuation of Security~~Determining the**
2 **Amount of Secured and Priority Claims**

3 ~~The court may determine the value of a claim secured~~
4 ~~by a lien on property in which the estate has an interest on~~
5 ~~motion of any party in interest and after a hearing on notice~~
6 ~~to the holder of the secured claim and any other entity as~~
7 ~~the court may direct.~~

8 **(a) DETERMINATION OF AMOUNT OF CLAIM.**

9 On request by a party in interest and after notice—to the
10 holder of the claim and any other entity the court
11 designates—and a hearing, the court may determine

12 (1) the amount of a secured claim under §
13 506(a) of the Code, or

14 (2) the amount of a claim entitled to priority
15 under § 507 of the Code.

16 **(b) REQUEST FOR DETERMINATION; HOW**
17 **MADE.** Except as provided in subdivision (c), a request to

18 determine the amount of a secured claim may be made by
19 motion, in a claim objection, or in a plan filed in a
20 chapter 12 or chapter 13 case. When the request is made in
21 a chapter 12 or chapter 13 plan, the plan shall be served on
22 the holder of the claim and any other entity the court
23 designates in the manner provided for service of a
24 summons and complaint by Rule 7004. A request to
25 determine the amount of a claim entitled to priority may be
26 made only by motion after a claim is filed or in a claim
27 objection.

28 (c) CLAIMS OF GOVERNMENTAL UNITS. A
29 request to determine the amount of a secured claim of a
30 governmental unit may be made only by motion or in a
31 claim objection after the governmental unit files a proof of
32 claim or after the time for filing one under Rule 3002(c)(1)
33 has expired.

Committee Note

This rule is amended and reorganized.

Subdivision (a) provides, in keeping with the former version of this rule, that a party in interest may seek a determination of the amount of a secured claim. The amended rule provides that the amount of a claim entitled to priority may also be determined by the court.

Subdivision (b) is added to provide that a request to determine the amount of a secured claim may be made in a chapter 12 or chapter 13 plan, as well as by a motion or a claim objection. When the request is made in a plan, the plan must be served on the holder of the claim and any other entities the court designates according to Rule 7004. Secured claims of governmental units are not included in this subdivision and are governed by subdivision (c). The amount of a claim entitled to priority may be determined through a motion or a claim objection.

Subdivision (c) clarifies that a determination under this rule with respect to a secured claim of a governmental unit may be made only by motion or in a claim objection, but not until the governmental unit has filed a proof of claim or its time for filing a proof of claim has expired.

Changes Made After Publication and Comment

None.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

Rule 3015. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 ~~Family Farmer's Debt Adjustment~~ or a Chapter 13 ~~Individual's Debt Adjustment~~ Case

(a) FILING A CHAPTER 12 PLAN. The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

(b) FILING A CHAPTER 13 PLAN. The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) ~~DATING.~~ Every proposed plan and any modification thereof shall be dated. FORM OF CHAPTER

13 PLAN. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, “nonstandard provision” means a provision not otherwise included in the Official or Local Form or deviating from it.

(d) ~~NOTICE AND COPIES.~~ If the plan ~~The plan or a summary of the plan shall be~~ is not included with the ~~each~~ notice of the hearing on confirmation mailed under ~~pursuant to~~ Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court. ~~If required by the court, the debtor shall furnish a sufficient~~

~~number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.~~

(e) TRANSMISSION TO UNITED STATES TRUSTEE. The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed under ~~pursuant to~~ subdivision (a) or (b) of this rule.

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, ~~before confirmation of the plan~~ at least seven days before the date set for the hearing on confirmation, unless the court orders otherwise. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in

good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan:

(1) any determination in the plan made under Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the debtor schedules that claim, and regardless of whether an objection to the claim has been filed; and

(2) any request in the plan to terminate the stay imposed by § 362(a), § 1201(a), or § 1301(a) is granted.

~~(g)~~(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan pursuant to under § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court

may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. ~~If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice.~~ Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

Committee Note

This rule is amended and reorganized.

Subdivision (c) is amended to require use of an Official Form if one is adopted for chapter 13 plans unless a Local Form has been adopted consistent with Rule 3015.1. Subdivision (c) also provides that nonstandard provisions in a chapter 13 plan must be set out in the section of the Official or Local Form specifically designated for such provisions and must be identified in the manner required by the Official or Local Form.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan before confirmation. Service may be made either at the time the plan is filed or with the notice under Rule 2002 of the hearing to consider confirmation of the plan.

Subdivision (f) is amended to require service of an objection to confirmation at least seven days before the hearing to consider confirmation of a plan, unless the court orders otherwise.

Subdivision (g) is amended to set out two effects of confirmation. Subdivision (g)(1) provides that the amount of a secured claim under § 506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination, unlike the amount of any current installment payments or arrearages, controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under § 521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012. Subdivision (g)(2) provides for termination of

the automatic stay under §§ 362, 1201, and 1301 as requested in the plan.

Subdivision (h) was formerly subdivision (g). It is redesignated and is amended to reflect that often the party proposing a plan modification is responsible for serving the proposed modification on other parties. The option to serve a summary of the proposed modification has been retained. Unless required by another rule, service under this subdivision does not need to be made in the manner provided for service of a summons and complaint by Rule 7004.

Changes Made After Publication and Comment

- The phrase “unlike the amount of any current installment payments or arrearages” was added to the paragraph of the Committee Note that discusses Rule 3015(g)

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

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1 **Rule 3015.1. Requirements for a Local Form for Plans**
2 **Filed in a Chapter 13 Case**

3 Notwithstanding Rule 9029(a)(1), a district may
4 require that a Local Form for a plan filed in a chapter 13
5 case be used instead of an Official Form adopted for that
6 purpose if the following conditions are satisfied:

7 (a) a single Local Form is adopted for the district
8 after public notice and an opportunity for public comment;

9 (b) each paragraph is numbered and labeled in
10 boldface type with a heading stating the general subject
11 matter of the paragraph;

12 (c) the Local Form includes an initial paragraph for
13 the debtor to indicate that the plan does or does not:

14 (1) contain any nonstandard provision;

15 (2) limit the amount of a secured claim based on
16 a valuation of the collateral for the claim; or

17 (3) avoid a security interest or lien;

18 (d) the Local Form contains separate paragraphs
19 for:

20 (1) curing any default and maintaining payments
21 on a claim secured by the debtor's principal residence;

22 (2) paying a domestic-support obligation;

23 (3) paying a claim described in the final
24 paragraph of § 1325(a) of the Bankruptcy Code; and

25 (4) surrendering property that secures a claim
26 with a request that the stay under §§ 362(a) and
27 1301(a) be terminated as to the surrendered collateral;
28 and

29 (e) the Local Form contains a final paragraph for:

30 (1) the placement of nonstandard provisions, as
31 defined in Rule 3015(c), along with a statement that
32 any nonstandard provision placed elsewhere in the
33 plan is void; and

34 (2) certification by the debtor's attorney or by
35 an unrepresented debtor that the plan contains no

- 36 [nonstandard provision other than those set out in the](#)
37 [final paragraph.](#)

Committee Note

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. If a Local Form does not comply with this rule, it may not be used in lieu of the Official Chapter13 Plan Form. *See* Rule 3015(c).

Under the rule only one Local Form may be adopted in a district. The rule does not specify the method of adoption, but it does require that adoption of a Local Form be preceded by a public notice and comment period.

To promote consistency among Local Forms and clarity of content of chapter 13 plans, the rule prescribes several formatting and disclosure requirements. Paragraphs in such a form must be numbered and labeled in bold type, and the form must contain separate paragraphs for the cure and maintenance of home mortgages, payment of domestic support obligations, treatment of secured claims covered by the “hanging paragraph” of § 1325(a), and surrender of property securing a claim. Whether those portions of the Local Form are used in a given chapter 13 case will depend on the debtor’s individual circumstances.

The rule requires that a Local Form begin with a paragraph for the debtor to call attention to the fact

that the plan contains a nonstandard provision; limits the amount of a secured claim based on a valuation of the collateral, as authorized by Rule 3012(b); or avoids a lien, as authorized by Rule 4003(d).

The last paragraph of a Local Form must be for the inclusion of any nonstandard provisions, as defined by Rule 3015(c), and must include a statement that nonstandard provisions placed elsewhere in the plan are void. This part gives the debtor the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form. The form must also require a certification by the debtor's attorney or unrepresented debtor that there are no nonstandard provisions other than those placed in the final paragraph.

Changes Made After Publication and Comment

- References to Bankruptcy Code §§ 362(a) and 1301(a) were added to subsection (d)(4);
- References to Rules 3012(b) and 4003(d) were added to what is now the penultimate paragraph of the Committee Note; and
- The last paragraph of the Committee Note was subdivided and the sentence "This part gives the debtor the opportunity to propose provisions that are not otherwise in, or that deviate from, the Local Form." was added to what is now the final paragraph.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

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1 **Rule 4003. Exemptions**

2 * * * * *

3 (d) AVOIDANCE BY DEBTOR OF TRANSFERS
4 OF EXEMPT PROPERTY. A proceeding under § 522(f)
5 ~~by the debtor~~ to avoid a lien or other transfer of property
6 exempt under ~~§ 522(f)~~ of the Code shall be commenced by
7 motion in the manner provided by ~~in accordance with~~
8 Rule 9014, or by serving a chapter 12 or chapter 13 plan on
9 the affected creditors in the manner provided by Rule 7004
10 for service of a summons and complaint. Notwithstanding
11 the provisions of subdivision (b), a creditor may object to a
12 ~~motion filed~~ request under § 522(f) by challenging the
13 validity of the exemption asserted to be impaired by the
14 lien.

Committee Note

Subdivision (d) is amended to provide that a request under § 522(f) to avoid a lien or other transfer of exempt

property may be made by motion or by a chapter 12 or chapter 13 plan. A plan that proposes lien avoidance in accordance with this rule must be served as provided under Rule 7004 for service of a summons and complaint. Lien avoidance not governed by this rule requires an adversary proceeding.

Changes Made After Publication and Comment

None.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

1 **Rule 5009. Closing Chapter 7~~Liquidation~~, Chapter 12**
2 **~~Family Farmer's Debt Adjustment,~~**
3 **~~Chapter 13 Individual's Debt Adjustment,~~**
4 **~~and Chapter 15 Ancillary and Cross-~~**
5 **~~Border Cases; Order Declaring Lien~~**
6 **Satisfied**

7 (a) CLOSING OF CASES UNDER CHAPTERS 7,
8 12, AND 13. If in a chapter 7, chapter 12, or chapter 13
9 case the trustee has filed a final report and final account
10 and has certified that the estate has been fully administered,
11 and if within 30 days no objection has been filed by the
12 United States trustee or a party in interest, there shall be a
13 presumption that the estate has been fully administered.

14 * * * * *

15 (d) ORDER DECLARING LIEN SATISFIED. In a
16 chapter 12 or chapter 13 case, if a claim that was secured
17 by property of the estate is subject to a lien under
18 applicable nonbankruptcy law, the debtor may request entry
19 of an order declaring that the secured claim has been

20 satisfied and the lien has been released under the terms of a
21 confirmed plan. The request shall be made by motion and
22 shall be served on the holder of the claim and any other
23 entity the court designates in the manner provided by
24 Rule 7004 for service of a summons and complaint.

Committee Note

Subdivision (d) is added to provide a procedure by which a debtor in a chapter 12 or chapter 13 case may request an order declaring a secured claim satisfied and a lien released under the terms of a confirmed plan. A debtor may need documentation for title purposes of the elimination of a second mortgage or other lien that was secured by property of the estate. Although requests for such orders are likely to be made at the time the case is being closed, the rule does not prohibit a request at another time if the lien has been released and any other requirements for entry of the order have been met.

Other changes to this rule are stylistic.

Changes Made After Publication and Comment

None.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

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1 **Rule 7001. Scope of Rules of Part VII**

2 An adversary proceeding is governed by the rules of
3 this Part VII. The following are adversary proceedings:

4 * * * * *

5 (2) a proceeding to determine the validity,
6 priority, or extent of a lien or other interest in
7 property, ~~other than~~ but not a proceeding under
8 Rule 3012 or Rule 4003(d);

9 * * * * *

Committee Note

Subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012, like a proceeding by the debtor to avoid a lien on or other transfer of exempt property under Rule 4003(d), does not require an adversary proceeding. The determination of the amount of a secured claim may be sought by motion or through a chapter 12 or chapter 13 plan in accordance with Rule 3012. An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

Changes Made After Publication and Comment

- The first sentence of the Committee Note was revised to describe more accurately a proceeding under Rule 4003(d).
- The example in the Committee Note of a proceeding to determine the amount of a secured claim was deleted.
- The phrase “by motion or” was added to the second sentence of the Committee Note.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

1 **Rule 9009. Forms**

2 (a) OFFICIAL FORMS. ~~Except as otherwise~~
3 ~~provided in Rule 3016(d), the~~ The Official Forms
4 prescribed by the Judicial Conference of the United States
5 shall be ~~observed and used with alterations as may be~~
6 ~~appropriate~~ without alteration, except as otherwise
7 provided in these rules, in a particular Official Form, or in
8 the national instructions for a particular Official Form.

9 ~~Forms may be combined and their contents rearranged to~~
10 ~~permit economies in their use.~~ Official Forms may be
11 modified to permit minor changes not affecting wording or
12 the order of presenting information, including changes that

13 (1) expand the prescribed areas for responses in
14 order to permit complete responses;

15 (2) delete space not needed for responses; or

16 (3) delete items requiring detail in a question or
17 category if the filer indicates—either by checking

18 “no” or “none” or by stating in words—that there is

19 nothing to report on that question or category.

20 (b) DIRECTOR’S FORMS. The Director of the

21 Administrative Office of the United States Courts may

22 issue additional forms for use under the Code.

23 (c) CONSTRUCTION. The forms shall be

24 construed to be consistent with these rules and the Code.

Committee Note

This rule is amended and reorganized into separate subdivisions.

Subdivision (a) addresses permissible modifications to Official Forms. It requires that an Official Form be used without alteration, except when another rule, the Official Form itself, or the national instructions applicable to an Official Form permit alteration. The former language generally permitting alterations has been deleted, but the rule preserves the ability to make minor modifications to an Official Form that do not affect the wording or the order in which information is presented on a form. Permissible changes include those that merely expand or delete the space for responses as appropriate or delete inapplicable items so long as the filer indicates that no response is intended. For example, when more space will be necessary

to completely answer a question on an Official Form without an attachment, the answer space may be expanded. Similarly, varying the width or orientation of columnar data on a form for clarity of presentation would be a permissible minor change. On the other hand, many Official Forms indicate on their face that certain changes are not appropriate. Any changes that contravene the directions on an Official Form would be prohibited by this rule.

The creation of subdivision (b) and subdivision (c) is stylistic.

Changes Made After Publication and Comment

None.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of these rule amendments are set forth in Appendix B.

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Official Form 113

Fill in this information to identify your case:

Debtor 1 _____
 First Name Middle Name Last Name

Debtor 2 _____
 (Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____
 (State)

Case number _____
 (If known)

Check if this is an amended plan, and list below the sections of the plan that have been changed.

Official Form 113
Chapter 13 Plan

12/17

Part 1: Notices

To Debtors: This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not indicate that the option is appropriate in your circumstances or that it is permissible in your judicial district. Plans that do not comply with local rules and judicial rulings may not be confirmable.

In the following notice to creditors, you must check each box that applies.

To Creditors: Your rights may be affected by this plan. Your claim may be reduced, modified, or eliminated.

You should read this plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. See Bankruptcy Rule 3015. In addition, you may need to file a timely proof of claim in order to be paid under any plan.

The following matters may be of particular importance. **Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Included" or if both boxes are checked, the provision will be ineffective if set out later in the plan.**

1.1	A limit on the amount of a secured claim, set out in Section 3.2, which may result in a partial payment or no payment at all to the secured creditor	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.2	Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4	<input type="checkbox"/> Included	<input type="checkbox"/> Not included
1.3	Nonstandard provisions, set out in Part 8	<input type="checkbox"/> Included	<input type="checkbox"/> Not included

Part 2: Plan Payments and Length of Plan

2.1 Debtor(s) will make regular payments to the trustee as follows:

\$ _____ per _____ for _____ months

[and \$ _____ per _____ for _____ months.] *Insert additional lines if needed.*

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in this plan.

2.2 Regular payments to the trustee will be made from future income in the following manner:

Check all that apply.

- Debtor(s) will make payments pursuant to a payroll deduction order.
- Debtor(s) will make payments directly to the trustee.
- Other (specify method of payment): _____.

2.3 Income tax refunds.

Check one.

- Debtor(s) will retain any income tax refunds received during the plan term.
- Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term.
- Debtor(s) will treat income tax refunds as follows:

2.4 Additional payments.

Check one.

- None.** If "None" is checked, the rest of § 2.4 need not be completed or reproduced.
- Debtor(s) will make additional payment(s) to the trustee from other sources, as specified below. Describe the source, estimated amount, and date of each anticipated payment.

2.5 The total amount of estimated payments to the trustee provided for in §§ 2.1 and 2.4 is \$ _____.

Part 3: Treatment of Secured Claims

3.1 Maintenance of payments and cure of default, if any.

Check one.

- None.** If "None" is checked, the rest of § 3.1 need not be completed or reproduced.
- The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Collateral	Current installment payment (including escrow)	Amount of arrearage (if any)	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage	Estimated total payments by trustee
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____ %	\$ _____	\$ _____
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____ %	\$ _____	\$ _____

Insert additional claims as needed.

3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims. Check one.

None. If "None" is checked, the rest of § 3.2 need not be completed or reproduced.

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

The debtor(s) request that the court determine the value of the secured claims listed below. For each non-governmental secured claim listed below, the debtor(s) state that the value of the secured claim should be as set out in the column headed *Amount of secured claim*. For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below. For each listed claim, the value of the secured claim will be paid in full with interest at the rate stated below.

The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan. If the amount of a creditor's secured claim is listed below as having no value, the creditor's allowed claim will be treated in its entirety as an unsecured claim under Part 5 of this plan. Unless otherwise ordered by the court, the amount of the creditor's total claim listed on the proof of claim controls over any contrary amounts listed in this paragraph.

The holder of any claim listed below as having value in the column headed *Amount of secured claim* will retain the lien on the property interest of the debtor(s) or the estate(s) until the earlier of:

- (a) payment of the underlying debt determined under nonbankruptcy law, or
- (b) discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor.

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____

Insert additional claims as needed.

3.3 Secured claims excluded from 11 U.S.C. § 506.

Check one.

None. If "None" is checked, the rest of § 3.3 need not be completed or reproduced.

The claims listed below were either:

- (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or
- (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	\$ _____	____%	\$ _____	\$ _____
				Disbursed by:	
				<input type="checkbox"/> Trustee	
				<input type="checkbox"/> Debtor(s)	
_____	_____	\$ _____	____%	\$ _____	\$ _____
				Disbursed by:	
				<input type="checkbox"/> Trustee	
				<input type="checkbox"/> Debtor(s)	

Insert additional claims as needed.

3.4 Lien avoidance.

Check one.

None. If "None" is checked, the rest of § 3.4 need not be completed or reproduced.

The remainder of this paragraph will be effective only if the applicable box in Part 1 of this plan is checked.

The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). Unless otherwise ordered by the court, a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan. The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5 to the extent allowed. The amount, if any, of the judicial lien or security interest that is not avoided will be paid in full as a secured claim under the plan. See 11 U.S.C. § 522(f) and Bankruptcy Rule 4003(d). *If more than one lien is to be avoided, provide the information separately for each lien.*

Information regarding judicial lien or security interest	Calculation of lien avoidance	Treatment of remaining secured claim
Name of creditor _____ _____	a. Amount of lien \$ _____	Amount of secured claim after avoidance (line a minus line f) \$ _____
	b. Amount of all other liens \$ _____	
Collateral _____ _____	c. Value of claimed exemptions + \$ _____	Interest rate (if applicable) _____ %
	d. Total of adding lines a, b, and c \$ _____	
Lien identification (such as judgment date, date of lien recording, book and page number) _____ _____	e. Value of debtor(s)' interest in property - \$ _____	Monthly payment on secured claim \$ _____
	f. Subtract line e from line d. \$ _____	
Extent of exemption impairment (Check applicable box): <input type="checkbox"/> Line f is equal to or greater than line a. The entire lien is avoided. (Do not complete the next column.) <input type="checkbox"/> Line f is less than line a. A portion of the lien is avoided. (Complete the next column.)		Estimated total payments on secured claim \$ _____

Insert additional claims as needed.

3.5 Surrender of collateral.

Check one.

None. If "None" is checked, the rest of § 3.5 need not be completed or reproduced.

The debtor(s) elect to surrender to each creditor listed below the collateral that secures the creditor's claim. The debtor(s) request that upon confirmation of this plan the stay under 11 U.S.C. § 362(a) be terminated as to the collateral only and that the stay under § 1301 be terminated in all respects. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 5 below.

Name of creditor	Collateral
_____	_____
_____	_____

Insert additional claims as needed.

Part 4: Treatment of Fees and Priority Claims

4.1 General

Trustee's fees and all allowed priority claims, including domestic support obligations other than those treated in § 4.5, will be paid in full without postpetition interest.

4.2 Trustee's fees

Trustee's fees are governed by statute and may change during the course of the case but are estimated to be _____% of plan payments; and during the plan term, they are estimated to total \$_____.

4.3 Attorney's fees

The balance of the fees owed to the attorney for the debtor(s) is estimated to be \$_____.

4.4 Priority claims other than attorney's fees and those treated in § 4.5.

Check one.

None. If "None" is checked, the rest of § 4.4 need not be completed or reproduced.

The debtor(s) estimate the total amount of other priority claims to be _____.

4.5 Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

Check one.

None. If "None" is checked, the rest of § 4.5 need not be completed or reproduced.

The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4). *This plan provision requires that payments in § 2.1 be for a term of 60 months; see 11 U.S.C. § 1322(a)(4).*

Name of creditor	Amount of claim to be paid
_____	\$ _____
_____	\$ _____

Insert additional claims as needed.

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Nonpriority unsecured claims not separately classified.

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata. If more than one option is checked, the option providing the largest payment will be effective. *Check all that apply.*

The sum of \$_____.

_____% of the total amount of these claims, an estimated payment of \$_____.

The funds remaining after disbursements have been made to all other creditors provided for in this plan.

If the estate of the debtor(s) were liquidated under chapter 7, nonpriority unsecured claims would be paid approximately \$_____. Regardless of the options checked above, payments on allowed nonpriority unsecured claims will be made in at least this amount.

5.2 Maintenance of payments and cure of any default on nonpriority unsecured claims. Check one.

- None.** If "None" is checked, the rest of § 5.2 need not be completed or reproduced.
- The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. The claim for the arrearage amount will be paid in full as specified below and disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Current installment payment	Amount of arrearage to be paid	Estimated total payments by trustee
_____	\$ _____	\$ _____	\$ _____
	Disbursed by:		
	<input type="checkbox"/> Trustee		
	<input type="checkbox"/> Debtor(s)		
_____	\$ _____	\$ _____	\$ _____
	Disbursed by:		
	<input type="checkbox"/> Trustee		
	<input type="checkbox"/> Debtor(s)		

Insert additional claims as needed.

5.3 Other separately classified nonpriority unsecured claims. Check one.

- None.** If "None" is checked, the rest of § 5.3 need not be completed or reproduced.
- The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows

Name of creditor	Basis for separate classification and treatment	Amount to be paid on the claim	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	\$ _____	_____%	\$ _____
_____	_____	\$ _____	_____%	\$ _____

Insert additional claims as needed.

Part 6: Executory Contracts and Unexpired Leases

6.1 The executory contracts and unexpired leases listed below are assumed and will be treated as specified. All other executory contracts and unexpired leases are rejected. Check one.

- None.** If "None" is checked, the rest of § 6.1 need not be completed or reproduced.
- Assumed items.** Current installment payments will be disbursed either by the trustee or directly by the debtor(s), as specified below, subject to any contrary court order or rule. Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Description of leased property or executory contract	Current installment payment	Amount of arrearage to be paid	Treatment of arrearage (Refer to other plan section if applicable)	Estimated total payments by trustee
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____	\$ _____
_____	_____	\$ _____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$ _____	_____	\$ _____

Insert additional contracts or leases as needed.

Part 7: Vesting of Property of the Estate

7.1 Property of the estate will vest in the debtor(s) upon

Check the applicable box:

- plan confirmation.
- entry of discharge.
- other: _____.

Part 8: Nonstandard Plan Provisions

8.1 Check "None" or List Nonstandard Plan Provisions

None. If "None" is checked, the rest of Part 8 need not be completed or reproduced.

Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Official Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.

The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3.

Part 9: Signature(s):

9.1 Signatures of Debtor(s) and Debtor(s)' Attorney

If the Debtor(s) do not have an attorney, the Debtor(s) must sign below; otherwise the Debtor(s) signatures are optional. The attorney for the Debtor(s), if any, must sign below.

Ū _____
Signature of Debtor 1

Ū _____
Signature of Debtor 2

Executed on _____
MM / DD / YYYY

Executed on _____
MM / DD / YYYY

Ū _____
Signature of Attorney for Debtor(s)

Date _____
MM / DD / YYYY

By filing this document, the Debtor(s), if not represented by an attorney, or the Attorney for Debtor(s) also certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in Official Form 113, other than any nonstandard provisions included in Part 8.

Exhibit: Total Amount of Estimated Trustee Payments

The following are the estimated payments that the plan requires the trustee to disburse. If there is any difference between the amounts set out below and the actual plan terms, the plan terms control.

- a. **Maintenance and cure payments on secured claims** *(Part 3, Section 3.1 total)* \$ _____
- b. **Modified secured claims** *(Part 3, Section 3.2 total)* \$ _____
- c. **Secured claims excluded from 11 U.S.C. § 506** *(Part 3, Section 3.3 total)* \$ _____
- d. **Judicial liens or security interests partially avoided** *(Part 3, Section 3.4 total)* \$ _____
- e. **Fees and priority claims** *(Part 4 total)* \$ _____
- f. **Nonpriority unsecured claims** *(Part 5, Section 5.1, highest stated amount)* \$ _____
- g. **Maintenance and cure payments on unsecured claims** *(Part 5, Section 5.2 total)* \$ _____
- h. **Separately classified unsecured claims** *(Part 5, Section 5.3 total)* \$ _____
- i. **Trustee payments on executory contracts and unexpired leases** *(Part 6, Section 6.1 total)* \$ _____
- j. **Nonstandard payments** *(Part 8, total)* + \$ _____

Total of lines a through j

\$ _____

Committee Note

Official Form 113 is new and is the required plan form in all chapter 13 cases, except to the extent that Rule 3015(c) permits the use of a Local Form. Except as permitted by Rule 9009, alterations to the Official Form are not permitted. As the form explains, spaces for responses may be expanded or collapsed as appropriate, and sections that are inapplicable do not need to be reproduced. Portions of the form provide multiple options for provisions of a debtor's plan, but some of those options may not be appropriate in a given debtor's situation or may not be allowed in the court presiding over the case. Debtors are advised to refer to applicable local rulings. Nothing in the Official Form requires confirmation of a plan containing provisions inconsistent with applicable law.

Part 1. This part sets out warnings to both debtors and creditors. For creditors, if the plan includes one or more of the provisions listed in this part, the appropriate boxes must be checked. For example, if Part 8 of the plan proposes a provision not included in, or contrary to, the Official Form, that nonstandard provision will be ineffective if the appropriate check box in Part 1 is not selected.

Part 2. This part states the proposed periodic plan payments, the estimated total plan payments, and sources of funding for the plan. Section 2.1 allows the debtor or debtors to propose periodic payments in other than monthly intervals. For example, if the debtor receives a paycheck every week and wishes to make plan payments from each check, that should be indicated in § 2.1. If the debtor proposes to make payments according to different "steps," the amounts and intervals of those payments should also be indicated in § 2.1. Section 2.2 provides for the manner in which the debtor will make regular payments to the trustee. If the debtor selects the option of making payments pursuant to a payroll deduction order, that selection serves as a request by the debtor for entry of the order. Whether to enter a payroll deduction order is determined by the court. See Code § 1325(c). If the debtor selects the option of making payments other than by direct payments to the trustee or by a payroll deduction order, the alternative method (*e.g.*, a designated third party electronic funds transfer program) must be specified. Section 2.3 provides

for the treatment of any income tax refunds received during the plan term.

Part 3. This part provides for the treatment of secured claims.

The Official Form contains no provision for proposing preconfirmation adequate protection payments to secured creditors, leaving that subject to local rules, orders, forms, custom, and practice. A Director's Form for notice of and order on proposed adequate protection payments has been created and may be used for that purpose.

Section 3.1 provides for the treatment of claims under Code § 1322(b)(5) (maintaining current payments and curing any arrearage). For the claim of a secured creditor listed in § 3.1, an estimated arrearage amount should be given. A contrary arrearage or current installment payment amount listed on the creditor's timely filed proof of claim, unless contested by objection or motion, will control over the amount given in the plan.

In § 3.2, the plan may propose to determine under Code § 506(a) the value of a secured claim. For example, the plan could seek to reduce the secured portion of a creditor's claim to the value of the collateral securing it. For the secured claim of a non-governmental creditor, that determination would be binding upon confirmation of the plan. For the secured claim of a governmental unit, however, a contrary valuation listed on the creditor's proof of claim, unless contested by objection or motion, would control over the valuation given in the plan. *See* Bankruptcy Rule 3012. Bankruptcy Rule 3002 contemplates that a debtor, the trustee, or another entity may file a proof of claim if the creditor does not do so in a timely manner. *See* Bankruptcy Rules 3004 and 3005. Section 3.2 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.3 deals with secured claims that under the so-called "hanging paragraph" of § 1325(a)(5) may not be bifurcated into secured and unsecured portions under Code § 506(a), but it allows for the proposal of an interest rate other than the contract rate to be applied to payments on such a claim. A contrary claim amount listed on the creditor's timely filed proof of claim, unless contested by

objection or motion, will control over the amount given in the plan. If appropriate, a claim may be treated under § 3.1 instead of § 3.3.

In § 3.4, the plan may propose to avoid certain judicial liens or security interests encumbering exempt property in accordance with Code § 522(f). This section includes space for the calculation of the amount of the judicial lien or security interest that is avoided. A plan proposing avoidance in § 3.4 must be served in the manner provided by Bankruptcy Rule 7004 for service of a summons and complaint. *See* Bankruptcy Rule 4003. Section 3.4 will not be effective unless the appropriate check box in Part 1 is selected.

Section 3.5 provides for elections to surrender collateral and requests for termination of the stay under § 362(a) and § 1301 with respect to the collateral surrendered. Termination will be effective upon confirmation of the plan.

Part 4. This part provides for the treatment of trustee's fees and claims entitled to priority status. Section 4.1 provides that trustee's fees and all allowed priority claims (other than those domestic support obligations treated in § 4.5) will be paid in full. In § 4.2, the plan lists an estimate of the trustee's fees. Although the estimate may indicate whether the plan will be feasible, it does not affect the trustee's entitlement to fees as determined by statute. In § 4.3, the form requests a statement of the balance of attorney's fees owed. Additional details about payments of attorney's fees, including information about their timing and approval, are left to the requirements of local practice. In § 4.4, the plan calls for an estimated amount of other priority claims. A contrary amount listed on the creditor's proof of claim, unless changed by court order in response to an objection or motion, will control over the amount given in § 4.4. In § 4.5, the plan may propose to pay less than the full amount of a domestic support obligation that has been assigned to, or is owed to, a governmental unit, but not less than the amount that claim would have received in a chapter 7 liquidation. *See* §§ 1322(a)(4) and 1325(a)(4) of the Code. This plan provision requires that the plan payments be for a term of 60 months. *See* § 1322(a)(4).

Part 5. This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.1, the plan may propose to pay nonpriority unsecured claims in accordance with several options. One or more options may be selected. For example, the plan could propose simply to pay unsecured creditors any funds remaining after disbursements to other creditors, or it could also provide that a defined percentage of the total amount of unsecured claims will be paid. In § 5.2, the plan may propose to cure any arrearages and maintain periodic payments on long-term, nonpriority unsecured debts pursuant to § 1322(b)(5) of the Code. In § 5.3, the plan may provide for the separate classification of nonpriority unsecured claims (such as co-debtor claims) as permitted under Code § 1322(b)(1).

Part 6. This part provides for executory contracts and unexpired leases. An executory contract or unexpired lease is rejected unless it is listed in this part. If the plan proposes neither to assume nor reject an executory contract or unexpired lease, that treatment would have to be set forth as a nonstandard provision in Part 8.

The Official Form contains no provision on the order of distribution of payments under the plan, leaving that to local rules, orders, custom, and practice. If the debtor desires to propose a specific order of distribution, it must be contained in Part 8.

Part 7. This part defines when property of the estate will revert in the debtor or debtors. One choice must be selected—upon plan confirmation, upon entry of discharge the case, or upon some other specified event. This plan provision is subject to a contrary court order under Code § 1327(b).

Part 8. This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or that deviate from, the Official Form. All such nonstandard provisions must be set forth in this part and nowhere else in the plan. This part will not be effective unless the appropriate check box in Part 1 is selected. *See* Bankruptcy Rule 3015(c).

Part 9. The plan must be signed by the attorney for the debtor or debtors. If the debtor or debtors are not

represented by an attorney, they must sign the plan, but the signature of represented debtors is optional. In addition to the certifications set forth in Rule 9011(b), the signature constitutes a certification that the wording and order of Official Form 113 have not been altered, other than by including any nonstandard provision in Part 8.

Changes Made After Publication and Comment

- Part 1 (Notices). The following language was added to the Notice to Debtors: “Plans that do not comply with local rules and judicial rulings may not be confirmable.”
- Part 2. Subpart 2.3 (Income tax refunds) was expanded to include all income taxes, not just federal, and a more open-ended response option was added.
- Part 3. In subpart 3.1 (Maintenance of payments and cure of default, if any), “if any” was inserted after “cure of default” and “amount of arrearage.” Language was added to limit postpetition changes in the payment amount to those that are properly noticed pursuant to Rule 3002.1, and the provision now specifies that the trustee will make any arrearage payments. A sentence was added to cover the situation in which a secured creditor does not file a timely proof of claim.
- Changes were made in subpart 3.2 (Request for valuation of security . . .) to clarify that the lien of a secured creditor is released at discharge only as to the debtor’s or the estate’s interest in the collateral and only if the debt secured by the property is discharged.
- In subpart 3.3 (Secured claims excluded from 11 U.S.C. § 506), a sentence was added to provide that if the secured creditor does not file a timely proof of claim, the plan’s statement of the amount of the claim will control.
- Subpart 3.4 (Lien avoidance) was changed to recognize the court’s authority to provide an

effective date for a lien avoidance other than the date the confirmation order is entered. A change was also made to clarify that a claim for which a lien is avoided will be treated as an unsecured claim only to the extent that the claim is allowed.

- Subpart 3.5 (Surrender of collateral) was changed from providing for the debtor's consent to termination of the stay to providing that the debtor requests that the stay be terminated upon confirmation.
- Part 4. Subpart 4.1 (General) was changed to clarify that domestic support obligations that have not been assigned will be treated under the general provision for payment in full of the priority amount. "Postpetition" was inserted before "interest."
- In subpart 4.2 (Trustee's fees), language was added to specify that the amount of the trustee's fees is determined by statute and may vary over time.
- In subpart 4.5 (Domestic support obligations assigned or owed to a governmental unit. . .), a reminder was inserted that § 1322(a)(4) requires that the debtor's disposable income for 60 months be devoted to the plan if the plan provides for less than full payment of assigned domestic support obligations.
- Part 5. Subpart 5.1 (General) and subpart 5.3 were deleted. In the subpart that is now 5.2 (Maintenance of payments and cure of any default on nonpriority unsecured claims), clarifying explanations were added, including a statement that the trustee will make payments on any arrearages being cured.
- Part 6 (Executory contracts and unexpired leases). In subpart 6.1, the columns were rearranged to a more logical order, and the heading of the second column was changed to include executory contracts.

A statement was added that the trustee will disburse arrearage payments.

- Part 7 of the published form (Order of distribution of Trustee Payments) was deleted. Subsequent parts were renumbered.
- New Part 7 (Vesting of Property of the Estate). The option of property vesting in the debtor upon the closing of the case was changed to vesting upon the “entry of discharge.”
- New Part 8 (Nonstandard Plan Provisions). A sentence explaining the meaning of “nonstandard provision” was added, along with a statement that nonstandard provisions placed elsewhere in the plan are ineffective.
- New Part 9 (Signatures). A statement was added after the signatures certifying that the plan is identical in wording and order of provisions to Official Form 113, except for any nonstandard provisions placed in Part 8.
- Exhibit: Total Amount of Estimated Trustee Payments. The wording of the introductory explanation was revised, and a sentence was added to clarify that payment amounts specified in the plan control over the amounts listed in the Exhibit. An entry was added for payments under any Part 8 nonstandard provisions.
- Committee Note. The Committee Note was revised in accordance with the changes in the plan.
- A number of technical and formatting changes were made.

Summary of Public Comment

Summaries of the comments submitted in response to the publication of Official Forms 113 are set forth in Appendix B.