

ORDER CONFIRMING CHAPTER 13 PLAN

Applicable Law and Rules

1. Section 1321 of the Bankruptcy Code (11 U.S.C. § 1321) requires each debtor to file a plan. Fed. R. Bankr. P. 3015(b) provides that if the plan is not filed with the petition, it may be filed within 14 days after the petition is filed. The court may extend the time for cause shown and on notice as the court may direct.
2. Under section 1322 of the Code, the plan must provide for funding from future income, pay priority creditors in full, and provide the same treatment for all claims within a particular class. The holder of a priority claim may agree to a different treatment.
3. Section 1322(a)(4) states that the plan may provide for less than full payment of domestic support claims entitled to priority under section 507(a)(1)(B) of the Code only if the plan provides for all of the debtor's disposable income to be devoted to plan payments for the next five years. Section 1322(b)(10) includes special provisions for the payment of interest on nondischargeable domestic support obligations.
4. Section 1322(b) lists other provisions which the debtor is permitted to include in the plan. This section should be read in its entirety before a plan is written.
5. Sections 1322(d) sets out how to determine whether the maximum duration of the plan payments is five years or whether the duration of the plan is limited to three years. Even if the plan would be limited to three years under section 1322(d), however, the court, for cause, may extend the payments for up to five years.
6. Prior to confirmation, the debtor may modify a chapter 13 plan pursuant to section 1323 of the Code. The debtor may not modify the plan so that the plan as modified fails to meet the requirements of section 1322.
7. After the debtor files a plan modification under section 1323, the plan as modified becomes the plan. 11 U.S.C. § 1323(b). Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted, or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection. 11 U.S.C. § 1323(c).
8. Section 1326 requires the debtor to begin making plan payments to the trustee within 30 days of the earlier of the filing of the plan or the order for relief, even if the plan has not been confirmed. In a case filed under chapter 13, the commencement of the case constitutes an order for relief. 11 U.S.C. § 301(b). In a case converted to chapter 13, the conversion constitutes an order for relief in chapter 13. 11 U.S.C. § 348(a). If the plan is

confirmed, the trustee will disburse the money to the creditors under the terms provided in the plan.

9. Under section 1325(a), the court must confirm the plan if the court finds that

(1) the plan complies with the provisions of [chapter 13] and with the other applicable provisions of [the Bankruptcy Code];

(2) any [court] fee, charge, or amount required under [28 U.S.C. §§ 1911 - 1932], or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of [the Bankruptcy Code] on such date;

(5) with respect to each allowed secured claim provided for by the plan --

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that --

(I) the holder of such claim retain the lien securing such claim until the earlier of --

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under [chapter 13] is dismissed or converted without completion of the plan, such lien shall also be retained by the holder to the extent recognizable by nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if --

(I) property to be distributed pursuant to [section 1325(a)(5)] is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of each claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first became payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

10. If the trustee or the holder of an allowed unsecured claim objects to confirmation of the plan, then the court may approve the plan only if it satisfies the requirements of section 1325(b). That section requires that the plan either provide for the payment of the claim in full or provide that all of the debtor's "projected disposable income" received over the "applicable commitment period," which can be up to five years. Section 1325(b) specifies how the "applicable commitment period" and the debtor's "disposable income" are to be calculated.
11. After confirmation of a plan, section 1325(c) authorizes the court to order the debtor's employer or any other entity from which the debtor receives income to pay all or part of that income directly to the trustee to fund the plan.

Instructions

General

Many courts have developed their own form order for the confirmation of a chapter 13 plan. Before submitting a proposed confirmation order on Form 230B, an attorney should inquire whether the court uses the form. Furthermore, the local rules or practice may require the standing trustee to prepare the confirmation order.

Caption

1. Identify the judicial district in which the bankruptcy case was filed. Example: Eastern District of California.
2. “In re”: Insert the name of the debtor as it appears in the bankruptcy petition.
3. “Case No.”: Insert the bankruptcy case number assigned at the time of filing.

Line 1, first paragraph

Insert in first blank the date of filing of the plan. Insert in the second blank the date of filing of any modification.

Numbered section 1

Select the appropriate check boxes.

Line 2: insert the amount of each payment.

Line 3: insert the day of the month payment is due, or specify the alternative payment schedule, if any, in the blank on Line 4.

Line 5: insert the length of the plan in months, specify on Line 6 the total percent of dividend to be paid to creditors holding allowed unsecured claims, or fill in the blank on Line 8 with any other event which will terminate the plan.

Line 9: insert the name and address of the standing trustee.

Numbered section 2

Insert in the first blank the total amount paid and to be paid to the attorney for the debtor.

In the second blank indicate the balance to be paid to the attorney for the debtor through the plan, if any.

Numbered section 3

Set forth any additional provisions ordered by the court at the confirmation hearing. An order directing the debtor's employer or any other entity from which the debtor receives income to make all or part of the plan payments may be set forth in this section or as a separate order.

General Information for the Clerk

Form 230B seeks a middle ground between two forms of confirmation orders used in the courts. The first is a "short form" order which merely recites that the court finds the plan to be in compliance with section 1325 of the Bankruptcy Code and decrees the plan to be confirmed. The second is a "long form" order which sets forth specific findings on each section 1325 requirement, as well as detailing the provisions of the confirmed plan. Form 230B does not specifically list the findings required by section 1325 and summarizes the terms of the plan.

Clerks should review this form with the judges to determine whether the form should be adopted in their district.

Clerks may also wish to establish a policy fixing the party to be charged with the responsibility for submitting this form to the court for signature: the trustee, the debtor, or the clerk. There are arguments to be made in favor of each of these policies, and each is in use somewhere in the country.

An order directing the debtor's employer or any other entity from which the debtor receives income to pay all or part of the income directly to the trustee may be included in the confirmation order or it may be prepared as a separate order. If such a provision is included in the confirmation order, the caption of the order should be revised to reflect it.