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 it 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

possession before the bankruptcy petition was filed. The exception in § 362(b)(22), however, is made subject to § 362(*l*).

Section 362(*l*), in turn, allows a debtor who complies with certain procedural requirements to get the benefit of the automatic stay under certain circumstances. One procedural requirement is set forth in § 362(*l*)(5)(A), which requires a debtor to indicate on the bankruptcy petition if "a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor." The debtor must also provide the name and address of the lessor who holds the eviction judgment. *Id.* In addition, the debtor has to file a specified certification. *See* § 362(*l*)(1).

As part of the Forms Modernization Project, the bankruptcy petition form (Official Form 101) was revised and a certification form (Official Form 101A) was promulgated.

Question 11 in Form 101 has the following questions which relate to § 362(*l*).

11. Do you rent your residence?	___ No. Go to line 12. ___Yes. Has your landlord obtained an eviction judgment against you and do you want to stay in your residence? ___No. Go to line 12. ___Yes. Fill out Initial Statement About an Eviction Judgment Against You (Form 101A) and file it with this bankruptcy petition.

After review, it appears that the Forms Modernization Project inadvertently introduced an error in Form 101. The language in Form 101 "Has your landlord obtained an eviction judgment against you and do you want to stay in your residence?" requires only debtors who desire to remain in their residences to provide information concerning an eviction judgment against them. Yet, § 362(*l*)(5)(A) requires all debtors who have an eviction judgment against them for their residence to indicate that fact on the petition and to provide the name and address of the lessor. (Form 101A, the new certification form, does not contain the same error; it correctly requires all debtors subject to a prepetition eviction judgment to indicate that fact and to give the name and address of the lessor.)

The Committee recommends amending question 11 on Form 101 to correct this error. As amended, question 11 would: (i) eliminate the second part of the compound sentence following the first yes box: "Has your landlord obtained an eviction judgment against you ~~and do you want to stay in your residence~~?"; and (ii) change the language of the last sentence to read, "Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it ~~with~~ as part 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.

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Appendix A1

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee

(a) TWENTY-ONE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i), (*l*), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

* * * * *

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); ~~and~~

* New material is underlined in red; matter to be omitted is lined through.

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

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

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

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

(2) for filing objections and the hearing to consider confirmation of a chapter 9~~,~~ or chapter 11~~, or chapter 13~~ plan; and

(3) for the hearing to consider confirmation of a chapter 13 plan.

* * * * *

Committee Note

Subdivisions (a) and (b) are amended and reorganized to alter the provisions governing notice under this rule in chapter 13 cases. Subdivision (a)(9) is added to require at least 21 days' notice of the time for filing objections to confirmation of a chapter 13 plan. Subdivision (b)(3) is added to provide separately for 28 days' notice of the date of the confirmation hearing in a chapter 13 case. These amendments conform to amended Rule 3015, which governs the time for presenting objections to confirmation of a chapter 13 plan. Other changes 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.

38

Rule 3002. Filing Proof of Claim or Interest

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

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

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

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

* * * * *

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

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

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

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

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

(B) any attachments required by Rule 3001(c)(1) and (d) are filed as a supplement to the holder's claim not later than 120 days after 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.

Rule 3007. Objections to Claims

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

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

(2) *Manner of Service.*

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

to receive notices, at the address so indicated; and

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

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

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

* * * * *

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.

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

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

(a) DETERMINATION OF AMOUNT OF CLAIM. On request by a party in interest and after notice—to the holder of the claim and any other entity the court designates—and a hearing, the court may determine

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

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

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

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

(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) 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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Rule 3015.1. Requirements for a Local Form for Plans Filed in a Chapter 13 Case

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

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

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

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

(1) contain any nonstandard provision;

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

(3) avoid a security interest or lien;

(d) the Local Form contains separate paragraphs for:

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

(2) paying a domestic-support obligation;

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

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

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

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

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

nonstandard provision other than those set out in the 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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Rule 4003. Exemptions

* * * * *

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

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

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

* * * * *

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

satisfied and the lien has been released under the terms of a confirmed plan. The request shall be made by motion and shall be served on the holder of the claim and any other entity the court designates in the manner provided by 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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Rule 7001. Scope of Rules of Part VII

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

* * * * *

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

* * * * *

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.

Rule 9009. Forms

(a) OFFICIAL FORMS. ~~Except as otherwise provided in Rule 3016(d), the~~ The Official Forms prescribed by the Judicial Conference of the United States shall be ~~observed and~~ used ~~with alterations as may be appropriate~~ without alteration, except as otherwise provided in these rules, in a particular Official Form, or in the national instructions for a particular Official Form. ~~Forms may be combined and their contents rearranged to permit economies in their use.~~ Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that

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

(2) delete space not needed for responses; or

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

"no" or "none" or by stating in words—that there is nothing to report on that question or category.

(b) DIRECTOR'S FORMS. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

(c) CONSTRUCTION. The forms shall be 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)

q 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**	q **Included**	q **Not included**
1.2	**Avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest, set out in Section 3.4**	q **Included**	q **Not included**
1.3	**Nonstandard provisions, set out in Part 8**	q **Included**	q **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.

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

2.3 Income tax refunds.

Check one.

- q Debtor(s) will retain any income tax refunds received during the plan term.
- q 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.
- q Debtor(s) will treat income tax refunds as follows:

_____

_____

2.4 Additional payments.

Check one.

- q **None.** *If "None" is checked, the rest of § 2.4 need not be completed or reproduced.*
- q 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.

- q **None.** *If "None" is checked, the rest of § 3.1 need not be completed or reproduced.*
- q 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: q Trustee q Debtor(s)	$_____	_____%	$_____	$_____
_____	_____	$_____ Disbursed by: q Trustee q 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.*

q **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.

q 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.

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

q 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: q Trustee q Debtor(s)	$_____
_____	_____	$_____	_____%	$_____ Disbursed by: q Trustee q Debtor(s)	$_____

Insert additional claims as needed.

3.4 Lien avoidance.

Check one.

q **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.

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

Insert additional claims as needed.

3.5 Surrender of collateral.

Check one.

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

q 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.

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

q 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.

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

q 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.*

q The sum of $_____.

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

q 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.*

q **None.** *If "None" is checked, the rest of § 5.2 need not be completed or reproduced.*

q 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: q Trustee q Debtor(s)		
_____	$_____	$_____	$_____
	Disbursed by: q Trustee q Debtor(s)		

Insert additional claims as needed.

5.3 Other separately classified nonpriority unsecured claims. *Check one.*

q **None.** *If "None" is checked, the rest of § 5.3 need not be completed or reproduced.*

q 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.*

q **None.** *If "None" is checked, the rest of § 6.1 need not be completed or reproduced.*

q **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: q Trustee q Debtor(s)	$_____	_____	$_____
_____	_____	$_____ Disbursed by: q Trustee q 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:

q plan confirmation.

q entry of discharge.

q other: _____.

Part 8: Nonstandard Plan Provisions

8.1 Check "None" or List Nonstandard Plan Provisions

q **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.

û _____
Signature of Debtor 1

Executed on _____
MM / DD / YYYY

û _____
Signature of Debtor 2

Executed on _____
MM / DD / YYYY

û _____
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 revest 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.

APPENDIX A2

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Appendix A2

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

Rule 7004. Process; Service of Summons, Complaint

(a) SUMMONS; SERVICE; PROOF OF SERVICE.

(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)~~(1)~~(5), (e)–(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)–(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

* * * * *

* New material is underlined in red; matter to be omitted is lined through.

Committee Note

In 1996, Rule 7004(a) was amended to incorporate by reference Rule 4(d)(1) of the Federal Rules of Civil Procedure. Civil Rule 4(d)(1) addresses the effect of a defendant's waiver of service. In 2007, Civil Rule 4 was amended, and the language of old Civil Rule 4(d)(1) was modified and renumbered as Civil Rule 4(d)(5). Accordingly, Rule 7004(a) is amended to update the cross-reference to Civil Rule 4.

Because this amendment is made to conform to the renumbering of Civil Rule 4, approval is sought without publication.

Official Form 101

Fill in this information to identify your case:

United States Bankruptcy Court for the:

_____ District of _____
(State)

Case number (*If known*): _____ Chapter you are filing under:

q Chapter 7
q Chapter 11
q Chapter 12
q Chapter 13

q Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy 12/17

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)	_____ First name _____ Middle name _____ Last name _____ Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names.	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name	_____ First name _____ Middle name _____ Last name _____ First name _____ Middle name _____ Last name
3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)	XXX – XX – ____ ____ ____ ____ OR **9** XX – XX – ____ ____ ____ ____	XXX – XX – ____ ____ ____ ____ OR **9** XX – XX – ____ ____ ____ ____

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
4. Any business names and Employer Identification Numbers (EIN) you have used in the last 8 years Include trade names and *doing business as* names	q I have not used any business names or EINs. _____ Business name _____ Business name __ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN	q I have not used any business names or EINs. _____ Business name _____ Business name __ __ – __ __ __ __ __ __ __ EIN __ __ – __ __ __ __ __ __ __ EIN
5. Where you live	_____ Number Street _____ _____ City State ZIP Code _____ County **If your mailing address is different from the one above, fill it in here.** Note that the court will send any notices to you at this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code	**If Debtor 2 lives at a different address:** _____ Number Street _____ _____ City State ZIP Code _____ County **If Debtor 2's mailing address is different from yours, fill it in here.** Note that the court will send any notices to this mailing address. _____ Number Street _____ P.O. Box _____ City State ZIP Code
6. Why you are choosing *this district* to file for bankruptcy	*Check one:* q Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. q I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____	*Check one:* q Over the last 180 days before filing this petition, I have lived in this district longer than in any other district. q I have another reason. Explain. (See 28 U.S.C. § 1408.) _____ _____ _____ _____

Part 2: Tell the Court About Your Bankruptcy Case

7. The chapter of the Bankruptcy Code you are choosing to file under

Check one. (For a brief description of each, see *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form 2010)). Also, go to the top of page 1 and check the appropriate box.

q Chapter 7

q Chapter 11

q Chapter 12

q Chapter 13

8. How you will pay the fee

q **I will pay the entire fee when I file my petition**. Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.

q **I need to pay the fee in installments**. If you choose this option, sign and attach the *Application for Individuals to Pay The Filing Fee in Installments* (Official Form 103A).

q **I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.

9. Have you filed for bankruptcy within the last 8 years?

q No

q Yes. District _____ When _____ Case number _____
MM / DD / YYYY

District _____ When _____ Case number _____
MM / DD / YYYY

District _____ When _____ Case number _____
MM / DD / YYYY

10. Are any bankruptcy cases pending or being filed by a spouse who is not filing this case with you, or by a business partner, or by an affiliate?

q No

q Yes. Debtor _____ Relationship to you _____

District _____ When _____ Case number, if known_____
MM / DD / YYYY

Debtor _____ Relationship to you _____

District _____ When _____ Case number, if known_____
MM / DD / YYYY

11. Do you rent your residence?

q No. Go to line 12.

q Yes. Has your landlord obtained an eviction judgment against you?

q No. Go to line 12.

q Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it as part of this bankruptcy petition.

Part 3: Report About Any Businesses You Own as a Sole Proprietor

12. Are you a sole proprietor of any full- or part-time business?

A sole proprietorship is a business you operate as an individual, and is not a separate legal entity such as a corporation, partnership, or LLC.

If you have more than one sole proprietorship, use a separate sheet and attach it to this petition.

q No. Go to Part 4.

q Yes. Name and location of business

_____
Name of business, if any

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Check the appropriate box to describe your business:

q Health Care Business (as defined in 11 U.S.C. § 101(27A))

q Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))

q Stockbroker (as defined in 11 U.S.C. § 101(53A))

q Commodity Broker (as defined in 11 U.S.C. § 101(6))

q None of the above

13. Are you filing under Chapter 11 of the Bankruptcy Code and are you a *small business debtor*?

For a definition of *small business debtor*, see 11 U.S.C. § 101(51D).

If you are filing under Chapter 11, the court must know whether you are a small business debtor so that it can set appropriate deadlines. If you indicate that you are a small business debtor, you must attach your most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).

q No. I am not filing under Chapter 11.

q No. I am filing under Chapter 11, but I am NOT a small business debtor according to the definition in the Bankruptcy Code.

q Yes. I am filing under Chapter 11 and I am a small business debtor according to the definition in the Bankruptcy Code.

Part 4: Report if You Own or Have Any Hazardous Property or Any Property That Needs Immediate Attention

14. Do you own or have any property that poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety? Or do you own any property that needs immediate attention?

For example, do you own perishable goods, or livestock that must be fed, or a building that needs urgent repairs?

q No

q Yes. What is the hazard? _____

_____

If immediate attention is needed, why is it needed? _____

_____

Where is the property? _____
Number Street

_____

_____ _____ _____
City State ZIP Code

Part 5: Explain Your Efforts to Receive a Briefing About Credit Counseling

15. Tell the court whether you have received a briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

About Debtor 1:

You must check one:

q **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

q **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

q **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

q **I am not required to receive a briefing about credit counseling because of:**

q **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

q **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

q **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

About Debtor 2 (Spouse Only in a Joint Case):

You must check one:

q **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**

Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.

q **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**

Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

q **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

q **I am not required to receive a briefing about credit counseling because of:**

q **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.

q **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.

q **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."

- q No. Go to line 16b.
- q Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

- q No. Go to line 16c.
- q Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts.

_____

17. Are you filing under Chapter 7?

q No. I am not filing under Chapter 7. Go to line 18.

q Yes. I am filing under Chapter 7. Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available to distribute to unsecured creditors?

- q No
- q Yes

Do you estimate that after any exempt property is excluded and administrative expenses are paid that funds will be available for distribution to unsecured creditors?

18. How many creditors do you estimate that you owe?

q 1-49	q 1,000-5,000	q 25,001-50,000
q 50-99	q 5,001-10,000	q 50,001-100,000
q 100-199	q 10,001-25,000	q More than 100,000
q 200-999		

19. How much do you estimate your assets to be worth?

q $0-$50,000	q $1,000,001-$10 million	q $500,000,001-$1 billion
q $50,001-$100,000	q $10,000,001-$50 million	q $1,000,000,001-$10 billion
q $100,001-$500,000	q $50,000,001-$100 million	q $10,000,000,001-$50 billion
q $500,001-$1 million	q $100,000,001-$500 million	q More than $50 billion

20. How much do you estimate your liabilities to be?

q $0-$50,000	q $1,000,001-$10 million	q $500,000,001-$1 billion
q $50,001-$100,000	q $10,000,001-$50 million	q $1,000,000,001-$10 billion
q $100,001-$500,000	q $50,000,001-$100 million	q $10,000,000,001-$50 billion
q $500,001-$1 million	q $100,000,001-$500 million	q More than $50 billion

Part 7: Sign Below

For you

I have examined this petition, and I declare under penalty of perjury that the information provided is true and correct.

If I have chosen to file under Chapter 7, I am aware that I may proceed, if eligible, under Chapter 7, 11,12, or 13 of title 11, United States Code. I understand the relief available under each chapter, and I choose to proceed under Chapter 7.

If no attorney represents me and I did not pay or agree to pay someone who is not an attorney to help me fill out this document, I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I understand making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

û _____ û _____

Signature of Debtor 1 Signature of Debtor 2

Executed on _____ Executed on _____

MM / DD / YYYY MM / DD / YYYY

For your attorney, if you are represented by one

If you are not represented by an attorney, you do not need to file this page.

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

û_____ Date _____
Signature of Attorney for Debtor MM / DD / YYYY

_____
Printed name

_____
Firm name

_____
Number Street

_____

_____ _____ _____
City State ZIP Code

Contact phone _____ Email address _____

_____ _____
Bar number State

For you if you are filing this bankruptcy without an attorney

If you are represented by an attorney, you do not need to file this page.

The law allows you, as an individual, to represent yourself in bankruptcy court, but **you should understand that many people find it extremely difficult to represent themselves successfully. Because bankruptcy has long-term financial and legal consequences, you are strongly urged to hire a qualified attorney.**

To be successful, you must correctly file and handle your bankruptcy case. The rules are very technical, and a mistake or inaction may affect your rights. For example, your case may be dismissed because you did not file a required document, pay a fee on time, attend a meeting or hearing, or cooperate with the court, case trustee, U.S. trustee, bankruptcy administrator, or audit firm if your case is selected for audit. If that happens, you could lose your right to file another case, or you may lose protections, including the benefit of the automatic stay.

You must list all your property and debts in the schedules that you are required to file with the court. Even if you plan to pay a particular debt outside of your bankruptcy, you must list that debt in your schedules. If you do not list a debt, the debt may not be discharged. If you do not list property or properly claim it as exempt, you may not be able to keep the property. The judge can also deny you a discharge of all your debts if you do something dishonest in your bankruptcy case, such as destroying or hiding property, falsifying records, or lying. Individual bankruptcy cases are randomly audited to determine if debtors have been accurate, truthful, and complete. **Bankruptcy fraud is a serious crime; you could be fined and imprisoned.**

If you decide to file without an attorney, the court expects you to follow the rules as if you had hired an attorney. The court will not treat you differently because you are filing for yourself. To be successful, you must be familiar with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the local rules of the court in which your case is filed. You must also be familiar with any state exemption laws that apply.

Are you aware that filing for bankruptcy is a serious action with long-term financial and legal consequences?

q No
q Yes

Are you aware that bankruptcy fraud is a serious crime and that if your bankruptcy forms are inaccurate or incomplete, you could be fined or imprisoned?

q No
q Yes

Did you pay or agree to pay someone who is not an attorney to help you fill out your bankruptcy forms?

q No
q Yes. Name of Person_____.
Attach *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119).

By signing here, I acknowledge that I understand the risks involved in filing without an attorney. I have read and understood this notice, and I am aware that filing a bankruptcy case without an attorney may cause me to lose my rights or property if I do not properly handle the case.

û_____ û_____
Signature of Debtor 1 Signature of Debtor 2

Date _____ Date _____
MM / DD / YYYY MM / DD / YYYY

Contact phone _____ Contact phone _____

Cell phone _____ Cell phone _____

Email address _____ Email address _____

Committee Note

Part 2, line 11, is amended to accurately reflect the requirements of § 362(*l*) of the Bankruptcy Code. All debtors against whom an eviction judgment has been entered with respect to their residence must fill out Official Form 101A (*Initial Statement About an Eviction Judgment Against You*), whether or not they desire to remain in their residence. Form 101A is deemed to be part of the petition.

Because this amendment is made to conform to the requirements of Bankruptcy Code § 362(*l*), approval is sought without publication.

APPENDIX A3

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Appendix A3

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE*

8011. Filing and Service; Signature

(a) FILING.

* * * * *

(2) *Method and Timeliness.*

(A) *Nonelectronic Filing*

~~(A)~~(i) *In General*. ~~Filing~~ For a document not filed electronically, filing may be accomplished by ~~transmission~~ mail addressed to the clerk of the district court or BAP. Except as provided in subdivision ~~(a)(2)(B) and (C)~~ (a)(2)(A)(ii) and (iii), filing is timely only if the clerk receives the document within the time fixed for filing.

---

* New material is underlined in red; matter to be omitted is lined through.

~~(B)~~(ii) *Brief or Appendix*. A brief or appendix not filed electronically is also timely filed if, on or before the last day for filing, it is:

~~(i)~~• mailed to the clerk by first-class mail—or other class of mail that is at least as expeditious—postage prepaid~~, if the district court's or BAP's procedures permit or require a brief or appendix to be filed by mailing~~; or

~~(ii)~~• dispatched to a third-party commercial carrier for delivery within 3 days to the clerk~~, if the court's procedures so permit or require~~.

~~(C)~~(iii) *Inmate Filing*.[1] A document not filed electronically by an inmate confined

[1] An amendment to this provision was published for comment in August 2016. At the appropriate time the two sets of amendments will have to be merged if both go forward.

in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If the institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. §1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(B) *Electronic Filing.*

(i) *By a Represented Person—Generally Required; Exceptions*. An entity represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(ii) *By an Unrepresented Individual—When Allowed or Required*. An individual not represented by an attorney:

• may file electronically only if allowed by court order or by local rule; and

• may be required to file electronically only by court order, or by a local rule that incudes reasonable exceptions.

(iii) *Same as Written Paper*. A document filed electronically is a written paper for purposes of these rules.

~~(D)~~(C) *Copies*. If a document is filed electronically, no paper copy is required. If a document is filed by mail or delivery to the district court or BAP, no additional copies are required. But the district court or BAP may require by local rule or by order in a particular

case the filing or furnishing of a specified number of paper copies.

* * * * *

(c) MANNER OF SERVICE.

(1) *Nonelectronic Service.* ~~*Methods*. Service must be made electronically, unless it is being made by or on an individual who is not represented by counsel or the court's governing rules permit or require service by mail or other means of delivery. Service~~ Nonelectronic service may be ~~made by or on an unrepresented party~~ by any of the following ~~methods~~:

(A) personal delivery;

(B) mail; or

(C) third-party commercial carrier for delivery within 3 days.

(2) *Electronic Service.* Electronic service may be made by sending a document to a registered

user by filing it with the court's electronic-filing system or by using other electronic means that the person served consented to in writing.

~~(2)~~(3) *When Service is Complete*. Service by electronic means is complete on ~~transmission~~ filing or sending, unless the ~~party~~ person making service receives notice that the document was not ~~transmitted successfully~~ received by the person served. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier.

(d) PROOF OF SERVICE.

(1) *What is Required*. A document presented for filing must contain either of the following if it was served other than through the court's electronic-filing system:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) the mail or electronic address, the fax number, or the address of the place of delivery, as appropriate for the manner of service, for each person served.

* * * * *

(e) SIGNATURE. Every document filed electronically must include the electronic signature of the person filing it or, if the person is represented, the electronic signature of counsel. ~~The electronic signature must be provided by electronic means that are consistent with any technical standards that the Judicial Conference of the United States establishes.~~ The user name and password of an attorney of record, together with the attorney's name on a signature

block, serve as the attorney's electronic[2] signature. Every document filed in paper form must be signed by the person filing the document or, if the person is represented, by counsel.

[2] The other rules, including Rule 5005(a), do not include the word "electronic" because the provisions are located in paragraphs dealing only with electronic filing.

Committee Note

The rule is amended to conform to the amendments to Fed. R. App. P. 25 on electronic filing, signature, service, and proof of service.

Consistent with Rule 8001(c), subdivision (a)(2) generally makes electronic filing mandatory. The rule recognizes exceptions for persons proceeding without an attorney, exceptions for good cause, and variations established by local rule.

Subdivision (c) is amended to authorize electronic service by means of the court's electronic-filing system on registered users without requiring their written consent. All other forms of electronic service require the written consent of the person served. As amended, subdivision (d) eliminates the requirement of proof of service when service is made through the electronic-filing system. The notice of electronic filing generated by the system serves that purpose.

Subdivision (e), which requires the signature of counsel or an unrepresented party on every document that is filed, is amended to make an attorney's user name and password the attorney's electronic signature.

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APPENDIX B

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Appendix B

Summary of Comments on Official Form 113 and Related Rules

These comments were submitted in response to the July 2016 publication of Rules 3015 and 3015.1 and the August 2014 publication of the remaining rules and the Official Form.

Comments on the Plan Form

General Comments

Comment BK-2014-0001-0008—Judge Robert Grant (Bankr. N.D. Ind.): As indicated in my comments last year, the bankruptcy judges of the N.D. Indiana do not believe the Code allows us to mandate a form (whether national or local) for chapter 13 cases. One chapter 13 trustee has encouraged some debtors' attorneys in the district to use a revised version of the proposed national plan form, but we do not require it.

Comment BK-2014-0001-0009—Judge Keith Lundin (Bankr. MD. Tenn.): I support the Official Form for chapter 13 plans and the accompanying rules. We currently have many different local forms that do approximately the same thing. The substance of chapter 13 does not require these differences.

"Local culture" is a poor model for chapter 13 practice. It leads to "hide the ball" tactics by debtor's counsel. Clarity in the treatment of creditors in the plan is prerequisite to creditor cooperation.

There will be a transition period if a national form is adopted. But that period will be short. After an initial transition period, there will be less litigation in chapter 13 cases. The

litigation that does result will not be tied to any particular local form and will be "scalable" across the country. We have needed this for decades.

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): I oppose the national plan form. It will delay payments to all secured creditors and will delay confirmation of chapter 13 cases. It will cause more unnecessary objections to confirmation.

The check box for an amended plan does not allow designation as a first amended plan, second amended plan, etc.

The plan form does not designate whether debtor is above median income or below median income. This leaves creditors and parties in interest without sufficient information as to how projected disposable income will be determined.

The plan form has no provisions for pre-confirmation adequate protection payments, no provisions for paying the Bankruptcy Court filing fee through plan administration, and no provisions for pre-confirmation ongoing mortgage payments.

Comment BK-2014-0001-0012—Judge Jeff Bohm (Bankr. S.D. Tex.), on behalf of the judges of the United States Bankruptcy Court for the Southern District of Texas: We oppose adoption of a mandatory national plan form for three reasons: (1) the form is untested and will lead to unnecessary litigation and unwanted results; (2) when tested against real-world case files, the form is unwieldy and expensive to use; and when combined with the proposed changes to Rule 9009, the form will force interpretations of the Code that differ from the law of this court and our circuit.

The inclusion of a non-standard provisions section in Part 9 does not solve these problems. There is simply no way to incorporate our case law into the plan form without the imposition of a mandatory change in Part 9.

Comment BK-2014-0001-0015—K. Michael Fitzgerald (Chapter 13 Trustee, W.D. Wash.): I oppose the adoption of a mandatory national plan form. Uniformity is not necessary, because differences in local chapter 13 forms are not a problem.

The plan form asks for the debtor's estimates, which are not helpful to the trustee.

The form does not make clear that the debtor must serve a plan with lien strip or cram down provisions in compliance with Bankruptcy Rule 7004. Who will be responsible for determining that the plan has been correctly served?

The form does not indicate whether the debtor is below or above median, nor does it make clear the Bankruptcy Code's requirement that the debtor must pay allowed nonpriority unsecured claims the projected disposable income that results from a correctly completed means test form.

How will a solo practitioner or small firm be able to compete with larger national firms that will certainly use a mandatory national form as a method to expand their client base?

Comment BK-2014-0001-0016—Judge Marvin Isgur (Bankr. S.D. Tex.) et al., on behalf of the Committee of Concerned Bankruptcy Judges: (This comment was submitted as a letter signed by 144 bankruptcy judges.)

There will be no significant benefits and very significant harms from the use of a national mandatory plan form.

The proposed plan form does not have adequate means to implement conduit mortgage or car payments. It does not deal with the administration of monthly payment changes, the imposition of late charges, the timing of distributions when there are payment shortages, automatic adjustments of payments to the chapter 13 trustee, or myriad other factors.

The inclusion of Part 9 does not resolve the problem. The imposition of mandatory nonstandard provisions by local rule or general order would arguably violate proposed Rules 3015 and 9009. And if nonstandard provisions can be mandated locally, the use of those non-standard provisions will quickly eviscerate the only real benefit of the proposed national plan form.

The form lacks a standard order of distribution. The form allows (i) the trustee to implement an undisclosed distribution scheme, or (ii) the debtor to set the distribution priority. Either option weakens the claim that a national form will better enable creditors to evaluate a plan.

The form will lead to national consumer bankruptcy practices. It will encourage regional and national debtor firms to solicit clients in distant jurisdictions, with client meetings conducted electronically. This will result in court appearances that are sub-contracted to local counsel with limited client contact or time for preparation.

A national form will not be adaptable. Changes to national forms can take upwards of two years to implement. As case law develops, or statutory changes occur, local forms can meet the exigencies of the law.

Comment BK-2014-0001-0017—George Stevenson (Chapter 13 Trustee, W.D. Tenn.), on behalf of the three trustees in the W.D. Tenn.: I oppose the national plan form. It will add costs to the chapter 13 process. We have a simple one page plan that has served us well for many years. Debtors do not need to pay the additional administrative costs for complicated plans. Debtors would struggle to understand the language and meaning of the unnecessary provisions. This would hamper self-representation.

Comment BK-2014-0001-0019—Marilyn O. Marshall (Chapter 13 Trustee, N.D. Ill., Eastern Division): I support the national plan form. Official Form 113 does not change substantive law. It is no different than using the official forms for the petition, schedules, and other related documents.

To respond to concerns about Part 9, I note that in our district, we have a local plan form with a nonstandard provision section. Generally, provisions in that section deal with late claims, attorney's fee priority, tax refund requirements, and surrender of property language. At first, some debtor's attorneys attempted to use the nonstandard provision section to re-write the substance of the plan form. We stopped that by educating the debtor bar through workshops with the aid and input of our bankruptcy judges. I anticipate that the same thing will happen nationally.

Comment BK-2014-0001-0020—Edward Maney (Chapter 13 Trustee, D. Ariz.), on behalf of two trustees in the D. Ariz.: We oppose the national plan form. We have adopted a local plan form that works well. A national plan form will not deliver the same benefits. The national plan form has many good provisions. It is better to allow individual courts to adopt the national form if they so chose or just some of its provisions that are best suited to the jurisdiction.

Comment BK-2014-0001-0021—Debbie Langehennig (Chapter 13 Trustee, W.D. Tex.): Add a provision to address pre-confirmation adequate protection payments.

Comment BK-2014-0001-0022—Judge Robert Grant (Bankr. N.D. Ind.), on behalf of the bankruptcy judges of the N.D. Ind.: We oppose adoption of the plan form and associated rule amendments.

The proposal exceeds the Advisory Committee's authority and intrudes upon matters of substance reserved to Congress.

The form is too long and complicated.

If the form has sufficient merit, practitioners will use it voluntarily, without being compelled to do so.

Comment BK-2014-0001-0023—John Hooge (Attorney, Kansas): I oppose the national plan form. Here in Kansas we have a model plan that has worked well. Kansas has unique exemption laws that will not work with a national form.

Comment BK-2014-0001-0027—Judge Keith Lundin (Bankr. MD. Tenn.), on behalf of Bankruptcy Judges in Support of Official Form for Chapter 13 Plan: (This letter is signed by 34 bankruptcy judges.) We support the adoption of an Official Form for chapter 13 plans. We offer the following responses to common objections to the form:

The form will not require changes to local rules, unless they conflict with the new amendments to the Bankruptcy Rules.

The form will not cause difficulties for debtors and their lawyers. The form has been designed to accommodate nearly all of the options that are available in chapter 13, with the options clearly set out.

The use of a national form is likely to decrease costs significantly after a short-term transition.

The form (§ 3.1) provides for the maintenance of mortgage payments in conduit districts. Other parts of the Bankruptcy Rules (e.g., Rule 3002.1) would implement that choice. No further provisions in the form are required.

Regarding Part 7, if the debtor proposes a distribution order, a creditor will (1) know where to find it, and (2) be able to object. If the debtor does not propose a distribution order, the creditor will know to inquire about the order of distribution that the trustee would implement and again file an objection if appropriate.

Part 9 simply implements the Code provision (§ 1321) that only the debtor can file a plan. If a provision added by debtor's counsel in Part 9 violates any provision of the Code or a valid local rule, the plan should be denied confirmation.

There is no empirical basis for the belief that a national chapter 13 plan form will reduce participation by local attorneys in chapter 13 debtors' representation.

There is no reason to believe that the Advisory Committee would not be able to deal effectively with any changes in the law affecting chapter 13 plans. It has been able to deal with other forms when these situations have arisen. Indeed the Committee generated a large number of new forms to deal with the enactment of BAPCPA, and put them into effect as of the effective date of the legislation.

Comment BK-2014-0001-0028—Michael Meyer (Chapter 13 Trustee, E.D. Cal.), on behalf of chapter 13 trustees opposed to a national plan form: (This comment was signed by 83 chapter 13 trustees.) We oppose the adoption of a national plan form.

Comment BK-2014-0001-0029—Robert Drummond (Chapter 13 Trustee, D. Mont.): I oppose the adoption of Official Form 113. One size does not fit all. There is local variation in chapter 13 practice. The form attempts to fix what is not broken. Despite the Advisory Committee's statement that an option does not mean that debtors need to select that option, the form will raise objections and increase the cost of the bankruptcy process for those who can least afford it. Make the plan form optional instead.

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: We oppose the adoption of a mandatory national plan form.

Our primary concern is that the proposed form could impair our conduit mortgage payment program. The form allows debtors to choose to be their own disbursing agent instead of the trustee.

There is no demonstrated need for uniformity in chapter 13 practice. The plan form will undermine judicial discretion and stifle innovation. In any event, national uniformity is an illusory goal.

Any cost savings that national creditors experience will be the result of costs imposed on local courts, clerks, trustees, and attorneys.

Comment BK-2014-0001-0033—David Lander (Attorney, St. Louis, Mo.): I urge the Advisory Committee to adopt the proposed changes to the Bankruptcy Rules but to adopt the national plan form as a Director's Form instead of an Official Form. The level of need for a national plan form does not justify forcing it on so many courts whose judges object to it.

Comment BK-2014-0001-0034—Henry Sommer (Attorney, Philadelphia), on behalf of the National Association of Consumer Bankruptcy Attorneys: NACBA takes no position on whether the proposed national plan form should be an Official Form or Director's Form.

Comment BK-2014-0001-0035—Judge Elizabeth Magner (Bankr. E.D. La.): There is merit to uniformity. This form provides a usable base for most debtors while allowing for modification due to local custom or specialized circumstance. The new provisions regarding lien stripping and the controlling effect of the plan over proofs of claim will save time and money in connection with the administration of a case.

Comment BK-2014-0001-0036—Suzanne Bauknight: I agree with the comment submitted by the Committee of Concerned Bankruptcy Judges.

Comment BK-2014-0001-0037—Margaret Burks (Chapter 13 Trustee, S.D. Ohio): The national plan form should be a Director's Form. This will enable the Rules Committee to see how it works in live situations across the country.

Comment BK-2014-0001-0038—Warren Cuntz (Chapter 13 Trustee, S.D. Miss.): I oppose adoption of the mandatory national plan form and refer the Advisory Committee to the letter of the Committee of Concerned Bankruptcy Judges, the comments of the Kansas judges, and of Laurie Williams.

Comment BK-2014-0001-0039—Jan M. Sensenich (Chapter 13 Trustee, D. Vt.): My district is a conduit mortgage district, and I am in favor of the national plan form and the accompanying rules. Much of the controversy about the project could be resolved by making clear that none of the provisions or selections suggested by the form are intended to restrict, modify, or in any substantive way interfere with current local rules regulating chapter 13 practice in various districts.

Comment BK-2014-0001-0040—Joel D. Burns (Attorney, Georgia): I oppose adoption of the national plan form. The new form would disrupt the methods of filing lien avoidances, payment of secured claims on dwellings, and other items easily accomplished under current procedures and rules in the M.D. Ga.

Comment BK-2014-0001-0041—Raymond Bell (Pennsylvania): I am a non-attorney manager of consumer bankruptcy cases. I support the national plan form. It is not perfect, but it affords easier completion by the consumer and easier access to plan information by creditors. Uniformity helps all parties involved in the bankruptcy process.

Comment BK-2014-0001-0042—Mary Beth Ausbrooks (Attorney, Nashville, Tenn.): The M.D. Tenn. adopted the national plan form without revisions. Since then, I have filed 73 cases using the form. I am not opposed to it, but it needs some additional clarifications. We have had to place information in Part 9 in every plan. Also, more space is needed for names of creditors, collateral values, etc. throughout the form.

Comment BK-2014-0001-0043—Nicholas Hahn (Law Clerk, Bankr. D. Haw.): I oppose the national plan form. It will hamper experimentation, lead to increased litigation, cause unintended consequences, and it is too long. It should be a model plan instead of a mandatory form.

I support adoption of the amended rules.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): I support a national plan form. It increases due process for all parties by putting necessary information in a specific order. It will not lead to the displacement of local attorneys by national firms.

Local courts should be permitted to remove parts of the form that are not applicable in their districts.

Comment BK-2014-0001-0046—Judge Terrence L Michael (Bankr. N.D. Okla.): I am a signatory of the letter submitted by the Committee of Concerned Bankruptcy Judges. I oppose the national plan form and the rule amendments that make the form mandatory. The form is a solution in search of a problem. There is no benefit to uniformity. If the plan form is the greatest thing since sliced bread, courts will use it voluntarily. I do not want to see the

development of national consumer bankruptcy practices that displace the local bar. The *Espinosa* case is a non-issue.

Comment BK-2014-0001-0047—Jeffrey M. Kellner (Chapter 13 Trustee, S.D. Ohio): I oppose the national plan form. If a national form is to be adopted, it should be mandatory as to format only, allowing the local bankruptcy courts the right to use local decisions, customs, and procedures.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): I oppose the national plan form. The changes made upon republication are cosmetic only.

There is no provision showing that the debtor satisfies the best interest of creditors test under Code § 1325(a)(4).

The plan does not provide for varying options for paying of filing fees.

There is no section addressing non-assigned domestic support obligations.

I attach a link to the Kansas plan form for reference.

Comment BK-2014-0001-0049—Grant Shipley (Attorney, Fort Wayne, Ind.): I oppose adoption of a mandatory national plan form.

Throughout the form, debtors must make estimates and calculate amounts that will be meaningless.

Comment BK-2014-0001-0050—Dan Melchi (Attorney, Georgia), on behalf of Lueder, Larkin & Hunter, LLC: We oppose the national plan form.

The mandatory plan form and rules violate creditors' Fifth Amendment rights to due process and against takings of property. When a creditor files a secured proof of claim, that creditor is presumed to be a secured creditor until proven otherwise by the debtor or another party in interest. *See* Bankruptcy Rule 3001(f). A creditor has the right to know before a confirmation hearing whether it is secured or unsecured—the arguments the creditor may wish to make in the case depend on knowing that status. The Advisory Committee's proposed changes mean that a secured creditor will not know whether it is secured or unsecured before confirmation. If a debtor wishes to strip a lien, then notice and a separate valuation hearing should be required so that a creditor receives a ruling from the court prior to confirmation.

Comment BK-2014-0001-0052—Keith A. Rodriguez (Chapter 13 Trustee, W.D. La.): I oppose adoption of a national plan form. In the W.D. La., we have no local plan. Most debtor's attorneys use a form provided by a software vendor. The proposed national plan form has too many places where debtors are given the option of making payments directly to creditors.

I have, in the past, objected to specific parts of prior iterations of the plan form. Now I think a general objection is more in order. This national plan form could very well leave trustees in limbo as to how to efficiently administer several of their cases.

Comment BK-2014-0001-0053—Chief Judge David S. Kennedy (Bankr. W.D. Tenn.): (This letter is signed by three other bankruptcy judges of the W.D. Tenn.) We oppose the national plan form. It is not right for our district. A one-size-fits-all plan should not be forced upon every district.

Comment BK-2014-0001-0054—Michael Joseph (Chapter 13 Trustee, D. Del.): I oppose a mandatory national plan form. The form as currently drafted presents potential legal challenges, contains unnecessary and confusing language (checking boxes), and may be misleading.

The Advisory Committee should consider allowing districts with local plan forms in place that provide the notice sought under the national form (with any non-standard provisions clearly highlighted) to continue use of their local plan forms.

Comment BK-2014-0001-0056—Marvin Wolf (Attorney, New Jersey): I am the New Jersey State co-chair of the National Association of Consumer Bankruptcy Attorneys. I agree with Henry Sommer's comment but oppose adoption of the national plan form.

Bankruptcy courts have set up filing packages seeking to eliminate lawyers from the process and turn bankruptcy into a "fill out the form" type of practice. This has hurt many debtors and encourages a lack of respect from debtors towards bankruptcy attorneys—a belief that our skills are fungible and easily replaced by some paralegal form preparer who is nothing more than a glorified typist, but who charges less than we do. A national plan form will cause more talented lawyers to leave consumer practice. It would encourage judges to "stick to the form" and interfere with our creativity in finding ways to fund plans and keep debtors in their houses.

Comment BK-2014-0001-0057—Gwendolyn M. Kerney (Chapter 13 Trustee, E.D. Tenn.): I oppose a national chapter 13 plan form. I agree with the comments of Chief Judge Grant, Judge Brian Lynch, and the many judges and trustees who have submitted comments opposing the plan form.

Comment BK-2014-0001-0059—Mitchell Marczewski (Attorney, Zanesville, Ohio): I oppose the national chapter 13 plan form. Although many things are standardized in bankruptcy, chapter 13 practice, by its nature, is not conducive to standardization.

Comment BK-2014-0001-0061—Judge Marvin Isgur (Bankr. S.D. Tex.): A diverse group of bankruptcy professionals propose a compromise alternative to the national plan form. The compromise consists of the following key features:

Each district must permit use of Official Form 113 unless the district has adopted a local plan form that conforms to the requirements set forth in new language to be added to Rule 3015(c).

A conforming local form must be adopted, after public notice and comment, by a local rule or order that (i) requires use of the local form for all chapter 13 plans; (ii) prohibits alteration; (iii) mandates that all non-standard provisions be contained only in the final paragraph of the plan labeled "Non Standard Provisions"; (iv) requires that the plan contain a certification by the debtors and their lawyer that no changes have been made to the form (other than nonstandard provisions in the final paragraph) and that the debtor does not seek confirmation of any provision that has been deemed not to be effective under the Bankruptcy Rules; and (v) is posted on the court's website under Local Rule 3015.

Our proposed amendment to Rule 3015(c) would require additional features of a conforming local plan form, including conspicuous labeling of provisions.

We propose that every chapter 13 plan—whether submitted on Official Form 113 or a local conforming plan form—must include at the beginning an informational statement. That informational statement gives notice whether the plan (i) contains nonstandard provisions; (ii) proposes to limit the amount of secured claims; (iii) avoids a security interest or lien; (iv) cures or maintains a loan secured by the debtor's principal residence; (v) provides for the treatment of domestic support obligations; or (vi) includes a 910-day car claim or one-year purchase money security interest claim.

We also propose that the amendment to Rule 3002(c) be altered to allow for the filing of claims no later than 70 days after the order for relief.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: The NCBJ takes no position on the advisability of a national plan form.

Comment BK-2014-0001-0063—Camille Hope (Chapter 13 Trustee, M.D. Ga.): I oppose the national plan form. It has major defects and is too long.

Comment BK-2014-0001-0068—Harold J. Barkley, Jr. (Chapter 13 Trustee, S.D. Miss.): I oppose a mandatory national plan form. We have had a local plan form in our district for 30 years, and it has worked well. There are features of the national form that we may incorporate in our local form, but the national form should not be mandatory. Bankruptcy law strives for uniformity, but there will always be local nuances and subtleties in local bankruptcy courts.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. W. Va. and S.D. W. Va.): We oppose the national plan form.

The range of choices left to debtors invites chaos and does not promote uniformity. The plan form leaves debtors with an inappropriately wide range of choices, which will affect the likely success of their cases. Some of the choices left to debtor discretion would cut against uniformity and expand the differences currently found among jurisdictions to differences found on a case by case basis within a jurisdiction.

The proposed plan form does not require the identification of the debtor as above or below median income or make it clear that the debtor is required to devote all disposable income to the plan.

The form does not include any information as to disposable income from B22-c or Schedules I and J. Creditors do not receive a copy of the bankruptcy schedules, so with the omission of income and expense information on the plan, they are without the necessary facts to assist them in evaluating the plan without resort to cumbersome and expensive research through PACER.

No provision is made in the proposed form for § 1305 claims [postpetition claims].

Comment BK-2014-0001-0071—Judge Marci McIvor (Bankr. E.D. Mich.): I oppose the adoption of the mandatory national plan form for the reasons stated by the Committee of Concerned Bankruptcy Judges. But I support the compromise proposal offered by a group of bankruptcy judges and other professionals.

Comment BK-2014-0001-0072—Judge Lamar W. Davis, Jr. (Bankr. S.D. Ga.): I opposed the national plan form in a comment submitted when the form was first published. I have reviewed the changes made on republication and remain opposed to adoption of the plan form. There is no consensus in favor of it.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: There is a valid concern that the benefit of diverse local practices will be lost with a proposed national plan form, notwithstanding its justifiable goals.

We endorse the compromise proposal.

Comment BK-2014-0001-0074—Judge Daniel Opperman (Bankr. E.D. Mich.): I signed the letter of the Committee of Concerned Bankruptcy Judges in opposition to the national plan form. I support the compromise proposal, so long as each district retains the right to decide for itself whether to use its own model chapter 13 plan form or adopt the national chapter 13 plan form.

Comment BK-2014-0001-0075—Barbara Foley (Chapter 13 Trustee, W.D. Wash.): I oppose a mandatory national plan form. A local form allows a more nimble response to shifting legal landscapes.

Comment BK-2014-0001-0077—Mary B. Grossman (Chapter 13 Trustee, E.D. Wisc.): I understand that the national plan form cannot require debtors to make all of their plan payments through the trustee, but I encourage the Advisory Committee to remove the check box options for disbursement of funds by debtors. The determination of who will disburse to creditors, and therefore who will pay the trustee's fees, should be made by case law and local practice.

The checkboxes for this choice are also confusing. They are in odd locations and are missing from at least one part of the form (§ 3.2).

Comment BK-2014-0001-0078—John Bodle (Attorney, Kansas): I oppose the national plan form and agree with the objections of the Kansas bankruptcy judges. Please permit us to continue to use our local chapter 13 plan, which well serves the needs of Kansas debtors, creditors, and bankruptcy practitioners.

Comment BK-2014-0001-0079—Joseph Wittman (Attorney, Topeka, Kansas): I oppose the national plan form. Our local plan form is ten pages long and works well in our conduit district. The national form will not work because it does not deal with conduit mortgage payments and because of the limitations imposed by proposed Rule 3015.

A national form is unnecessary. Very few attorneys attempt to hide provisions in plans.

Changes to a national form will take too long

I agree with the views of the Committee of Concerned Bankruptcy Judges.

Comment BK-2014-0001-0080—Gail Robinson: The national plan form is too long and complicated.

Comment BK-2014-0001-0082—Henry Hildebrand (Chapter 13 Trustee, M.D. Tenn.): I strongly support the adoption of a uniform national chapter 13 plan form. My observations are based upon our adoption of the proposed form as a mandatory form in our district. We have had actual experience with the form. It has shown the bar the degree of freedom debtors have in proposing chapter 13 plans. That freedom does not mean that any and all choices by debtors will avoid creditor or trustee opposition. We are a conduit mortgage district, and a debtor's choice to make payments directly would draw an objection from the trustee and, in all likelihood, would not be approved by the court.

There are some changes that the Advisory Committee should consider:

Add a provision for dealing with postpetition claims allowable under § 1305. Every debtor has added this provision in Part 9.

Add a provision for a plan to make applicable § 524(i) (dealing with willful failure of a creditor to credit payments received under a confirmed plan). Every debtor with a mortgage cure adds this language to Part 9.

Add a provision for pre-confirmation adequate protection payments.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): I oppose the national plan form. I agree with the views expressed by the Committee of Concerned Bankruptcy Judges.

Section 1325 sets forth the requirements for confirmation of a chapter 13 plan. Use of a form cannot be mandated so long as a plan satisfies the Code.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): I oppose proposed Rule 3015(c) and Official Form 113 on the basis that the Rule and Form unduly create litigation issues, have no known enforcement mechanism, and are directly contrary to the Bankruptcy Code.

Official Form 113 does not provide the information required by Forms B22C-1 and B22C-2 regarding a debtor's disposable income. Similarly, there is no space provided to identify disposable income as listed on Schedules I and J. Creditors need this information to determine whether to file a disposable income objection.

Comment BK-2014-0001-0085—Judge Dennis Montali (Bankr. N.D. Cal.): I oppose the mandatory national plan form for the same reasons I gave in my comments upon the initial publication of the plan form in August 2013.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): I oppose the plan form in its current form. I appreciate the concerns of the Advisory Committee and the open forum in which this process is being conducted. But the plan form should not be mandatory. It does not reflect local practices and would disrupt them.

Comment BK-2014-0001-0090—William Mark Bonney (Chapter 13 Trustee, E.D. Okla.): I support the compromise proposal. Any burden experienced by local stakeholders is outweighed by the benefit to national stakeholders. Even local stakeholders will find benefit from a more uniform plan confirmation process.

National stakeholders all too often fail to file timely claims, fail to comply with Rule 3002.1, and violate the provisions of § 524(i). They should be required to dedicate the resources

necessary to fulfill their obligations to local stakeholders if they are to receive this benefit of a national plan form or compromise.

Comment BK-2014-0001-0091—Pennsylvania Bar Association: The plan form and rule amendments (with the exception of Rule 3002) should be treated as an integrated package.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter 13 Trustees:

- The plan form does not provide options for paying of filing fees.
- There is no section addressing non-assigned domestic support obligations. Perhaps this could be added to § 4.4.
- The plan form will result in higher costs and reduce the distribution to unsecured creditors. It will cause the conduit payment processes in many districts to be turned on their head. It will certainly not provide the needed relief for debtors in specific jurisdictions.
- The plan form should be a model and not mandatory. This will enable the Rules Committee to see how it works in live situations across the country.

Comment BK-2014-0001-0093—Glenn Stearns (Chapter 13 Trustee, N.D. Ill.): I endorse the national plan form. The adoption of a local plan form in my district had a positive impact on the efficient administration of chapter 13 cases. The same will be true for a national plan form. National creditors, who now must review over 200 different local forms, will benefit. Software providers will no longer have to keep up with 200 different local forms. Debtor's and creditor's attorneys who practice in multiple districts will benefit. Chapter 13 education will become more efficient. All of these changes will lead to reduced costs for all parties.

Comment BK-2014-0001-0095—Orlando Segura, on behalf of AT&T Corp.: AT&T strongly supports the Advisory Committee's proposal for a national chapter 13 plan form. A national form would enable creditors like AT&T to implement more efficient procedures for reviewing chapter 13 plans and administering chapter 13 debtor accounts, thereby decreasing administrative costs and errors for the benefit of all parties.

There are as many as 200 local chapter 13 plan forms currently in use with a wide variety of differences in the forms. This inhibits the ability of national creditors like AT&T to develop procedures for managing claims, tracking debtors' payment obligations, and appropriately treating executory contracts in chapter 13 cases across all jurisdictions. In many cases, AT&T's administrative costs are greater than the nominal amounts owed to AT&T by chapter 13 debtors.

For example, AT&T could focus its review on Part 6 of the national plan form and determine if a contract is rejected. In the last year alone, AT&T wrote off over $55 million in uncollectible amounts due to bankruptcy filings. A portion of this loss is attributable to continued billing to debtors who failed to specify treatment of executory contracts in their chapter 13 plans.

A data-enabled form would increase the aggregation of data. AT&T actively pursues creation of electronic review methods and procedures to introduce efficiencies into the bankruptcy process where possible. The ability to do so using a national form would result in cost savings and a streamlined experience for customers in the chapter 13 process.

Comments opposed to the plan form focus on the stifling of local innovation. The argument ignores the practical difficulties associated with complying with hundreds of local plan variations in a market where the vast majority of debt is held by national rather than local creditors. The mistakes, omissions, delays, and lawsuits (by debtors and creditors alike) fostered by the lack of a national form increase costs for all parties and delay the goal of providing consumers with a fresh start.

Comment BK-2014-0001-0096—David Baker: Unlike the Schedules and Statement of Financial Affairs, a chapter 13 plan needs flexibility to be useful, because plans are jurisdiction specific. Plans should not be designed to make things easy for creditors; they have the financial resources and motivations to peruse plans carefully. Debtors and their counsel have more limited resources and need a plan that is straightforward and flexible so that variations from the "norm" can be accommodated easily. That does not seem possible (or at least not easy) in the proposed plan form.

Comment BK-2014-0001-0097—John J. Talton (Chapter 13 Trustee, E.D. Tex.): I oppose a mandatory national plan form. It should be optional.

The national plan form will not create uniformity. It will lead to litigation to interpret its provisions, driving up costs.

There is no provision for adequate protection payments.

There is no provision for plan funding from the turnover of recoveries from lawsuits, sales of property, or other sources.

Comment BK-2014-0001-0098—Judge John Gustafson (Bankr. N.D. Ohio): I support the national plan form. Uniformity is a worthy goal, and chapter 13 is the most non-uniform area of bankruptcy practice. We have national forms, such as the schedules and proof of claim form, even though the law differs across jurisdictions. Chapter 13 plans are not fundamentally different.

There are several advantages to the use of official forms. One is simply knowing where information is going to be, and that it will be presented in a standard way. Another is that chapter 13 plans will not be able to be "data-enabled" (allowing data to be collected and processed by computers) unless there is an Official Form, instead of many local forms. Not having a form for filing chapter 13 plans prevents creditors, the trustees, and the courts from automatically extracting important data from chapter 13 plans.

The new rules would go into effect with the adoption of the official form. I find it disheartening to read arguments about the difficulties the courts and trustees would have in dealing with a form for filing chapter 13 plans given the additional costs and work that have been imposed on creditors in recent rules amendments, such as Rule 3002.1. Bankruptcy courts have enforced those difficult provisions against creditors, with few excuses accepted. Dealing with a form for presenting chapter 13 plans would not be too onerous for the courts.

Finally, a form for presenting chapter 13 plans will promote increased uniformity in the case law, as every chapter 13 plan appeal will not start with idiosyncratic language from a mandatory local form that bears little relationship to the language of other parochial forms found around the country.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): A mandatory national form for chapter 13 plans will be a seismic shift in chapter 13 practice. The Committee must weigh the benefits of its adoption against the serious possibility that a change will do more harm than good. Adopting the current draft national plan form as a result of hubris or impatience will only create difficulties in the future.

There is no preconfirmation adequate protection provision.

Add a form confirmation order.

Comment BK-2014-0001-0100—Michael Bruckman: I am adamantly opposed to the chapter 13 plan form. The form restricts the ability of debtor's counsel to be flexible in an unpredictable environment of default and debt.

Comment BK-2014-0001-0101—Roger Cotner: Add a place to specify an effective date for the plan.

Add language that invokes § 524(i).

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): A national plan form is a national mistake. One size does not fit all. With the exception of a few mortgage companies and a hand-full of software providers, this does not benefit anyone. The current system is more flexible, allows districts to experiment with mandatory or proposed forms, and has worked well.

Comment BK-2014-0001-0103—R. Greg Wright: I oppose the national plan form. In Kansas, the judges, chapter 13 trustees, and members of the bar worked very hard to come up with a local plan form. Our plan is wonderful. It is also comprehensive and tracks our local rules. While a national plan form may sound like a good idea, all courts not only have their respective local rules, but also have their specific ways of conducting business.

Comment BK-2014-0001-0104—Paul Post (Attorney, Kansas): I oppose the national plan form. Our Kansas form plan meets the needs of our debtors, creditors, the bankruptcy bar, and our Kansas judges. The proposed national plan form will throw all of those efforts out the window.

The driving force behind the proposed national plan form is to allow "data enabling," which apparently benefits large national creditors. Has any study been done to determine what the additional cost will be to debtors in the form of additional attorney's fees which will undoubtedly be required to properly prepare plans?

Comment BK-2014-0001-0107—Steven R. Wiechman: A national plan form would have made more sense 8 years ago when bankruptcy filings were on the increase.

If the ultimate goal is a national form, then incremental steps requiring each jurisdiction to develop a plan form and each to include a uniform cover sheet would be of great benefit.

Comment BK-2014-0001-0108—Martin J. Peck (Attorney, Wellington, Kan.): I agree with the concerns of Kansas bankruptcy judges, particularly that the national plan form as drafted fails to address several useful and mandatory plan provisions in Kansas bankruptcies. On

the other hand, I understand the concerns of national creditors that want to be able to determine their treatment in chapter 13 without having to keep abreast of practice in 94 separate judicial districts.

I suggest that rather than a national plan form, it would be better to have a national form cover sheet or national plan summary form that calls to creditors' attention, in a standardized format, whether their rights are being impaired and where in the plan that occurs.

Comment BK-2014-0001-0109—Marie Elaina Massey (Chapter 13 Trustee, S.D. Ga.): Our district uses a two-page plan. It covers the usual cases, while including an "other provisions" section for the occasional case, and is short enough to be reviewed quickly.

If the purpose of the proposed national form is to bring consistency, having a Bankruptcy Code does not guarantee consistency. A longer, more detailed plan form will mean higher attorney's fees, less money for unsecured creditors, and a higher cost of administration for trustees.

The plan form has an obsession with math. But the numbers in chapter 13 are always estimates. There is no perfection in a chapter 13 case!

Comment BK-2014-0001-0110—W. H. Griffin (Chapter 13 Trustee, D. Kan.): I oppose the national plan form. I agree with the comments of my fellow trustees, Laurie Williams and Jan Hamilton, and with the comment submitted by Judge Karlin on behalf of the Kansas bankruptcy judges.

Comment BK-2014-0001-0111—Kelley L. Skehen (Chapter 13 Trustee, D.N.M.): I oppose the national plan form. It will bring no benefits but cause significant harms, including increased costs for parties, courts, and trustees. Nor can a national plan form address the variations in state laws that are applicable in bankruptcy.

I understand that there is a proposed draft compromise rule. I would support such a compromise (with an appropriate comment period) and encourage the Advisory Committee to consider it.

Comment BK-2014-0001-0112—Judge Terrence L. Michael (Bankr. N.D. Okla.) with Chief Judge Tom R. Cornish (Bankr. E.D. Okla.): We signed the letter submitted by the Committee of Concerned Bankruptcy Judges.

We understand that a compromise proposal has been submitted. It may be worthy of consideration, but it is not ripe for adoption. It should not be adopted without publication and the opportunity for public comment.

The compromise does not address our concerns about Rule 9009, which are independent of any chapter 13 plan form.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: We understand a suggestion has been made to allow retention of "conforming" district plans (with only a single plan per district). Although we strongly continue to believe that the goal should be to arrive at a single national plan form with adequate provision for some local options, we do agree that the new proposal is a step in the right direction.

We suggest that many of the concerns about a national plan form and local practices (such as in conduit districts) could be addressed by identifying the major points in question and providing for each district to adopt by local rule its position on those points. The plan could state in Part 1 the particular approach that the district takes.

Comment BK-2014-0001-0116—Alberta Hultman, on behalf of Michael L. Zevitz, Esq., President, USFN: The form has no provisions for pre-confirmation adequate protection payments.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): I support the national chapter 13 plan form. The uniformity of a national plan form will benefit all involved in the chapter 13 process—creditors, debtors, attorneys, and trustees. The proposed Official Form 113 meticulously takes into consideration the many possible options available to chapter 13 debtor.

Comment BK-2014-0001-0118—Teresa Kidd (Attorney, Kansas): We have had a model plan in our state for years. We finally have every conceivable question or problem worked out. I fear there will be triple the number of motions, objections, etc., with a new plan. I do not understand the concept of "fixing something that isn't broken."

Comment BK-2014-0001-0119—Gary Hinck (Attorney, Kansas): I oppose the national plan form. I agree with the comments of the Kansas judges and trustees. Our district has a workable plan form with a conduit mortgage provision. A national plan form without a conduit mortgage provision is simply not a reasonable option.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): We do not have a local plan form in Arkansas. I oppose a mandatory national plan form. It will be burdensome to practitioners, debtors, trustees, creditors, and courts, and would likely result in more, not less, administrative expense.

The compromise proposal submitted as a comment may satisfy some opponents of a mandatory national plan form. But there is no provision to allow a district to opt out of accepting the national form without adopting a conforming local plan form. A prescribed plan form is not needed for all districts.

Include provision on Official Form 113 for adequate protection payments and for amended plans.

Comment BK-2014-0001-0124—O. Byron Meredith III (Chapter 13 Trustee, S.D. Ga.): I oppose the national plan form, which will lead to increased litigation.

Comment BK-2014-0001-0126—Diana L. Erbsen, on behalf of the U.S. Department of Justice: The Department supports the concept of a national form for chapter 13 plans, because uniformity and consistency will enhance ease of case administration and increase transparency, to the benefit of debtors and creditors.

We continue to have concerns about § 3.4 and Part 8 of Official Form 113.

Comment BK-2014-0001-0127—Lonnie D. Eck (Chapter 13 Trustee, N.D. Ga.): I oppose the mandatory plan form as presently proposed.

Comment BK-2014-0001-0128—Prof. Katherine Porter (University of California, Irvine, School of Law): I support of a uniform national form for chapter 13 plans. Uniformity is a critical element of a fair and efficient bankruptcy system. It benefits parties in all roles: debtors, creditors, trustees, judges, and others. While particular members of one of these groups may prefer the existing alternative in their jurisdictions, the collective whole is indubitably better served with a national chapter 13 plan form. At stake in this debate is the integrity of justice in bankruptcy.

I am a law professor who has spent ten years conducting empirical studies of the consumer bankruptcy system. I have particular expertise in chapter 13 processes and outcomes. I conducted the first national study of mortgage servicers' conduct in chapter 13, which is governed in part by confirmed plans. I also serve as the monitor for the State of California of the $25 billion national mortgage settlement. I oversaw the implementation of new mortgage servicing rules, including several dozen pertaining to chapter 13.

A national plan form would increase creditor compliance with bankruptcy law. As California Monitor, I saw hundreds of bankruptcy cases in which mortgage payments were applied incorrectly according to the terms of the confirmed plans. While Rules 3001 and 3002 improve this issue, they are not sufficient. Creditors need to build and implement software for payment applications and for tracking chapter 13 cases. Software and improved practices are needed from car lenders and other secured, non-mortgage lenders, who are outside the scope of the existing Bankruptcy Rules. Hand-accounting for chapter 13 plans must end.

A uniform national plan form would improve creditor behavior, because it would allow them to more easily train, supervise, and audit their actions in bankruptcy cases. It also would drive down the costs of compliance checks by regulators of financial institutions. The variability in chapter 13 plans under the existing system inhibits national regulators from assessing compliance in any effective manner. Crucially, better creditor behavior and stronger compliance checks redound to the benefit of debtors and unsecured creditors, as well as to the integrity of the system.

I concede that chapter 13 plans in some jurisdictions may be superior in some respects to the proposed national plan form. In many other jurisdictions, however, the local forms are quite poor.

If the Advisory Committee does not favor the adoption of the proposed national plan form, I support the compromise proposal, which is better than the status quo.

Comment BK-2014-0001-0129—Shannon Garrett (Attorney, Kansas): I oppose the national plan form. It limits the ability of a lawyer to craft a plan that will address a client's needs. It is too rigid. It is hostile to our conduit mortgage program here in Kansas. It lacks provisions for domestic support orders. The Kansas plan form is better. I trust my judges and comrades of the bar to understand the community in which we serve.

Comment BK-2014-0001-0130—Rick A. Yarnall (Chapter 13 Trustee, D. Nev.): I oppose the national chapter 13 plan form. In February 2014, I submitted 51 items related to the initial publication of the form. Although the republished form addresses issues raised in my prior comment, the majority were not substantively considered.

In my 37 years of practicing bankruptcy law, I have never seen an issue more divisive than this proposed plan form.

I have joined in the compromise proposal submitted as a comment.

Comment BK-2014-0001-0132—Daniel H. Brunner (Chapter 13 Trustee, E.D. Wash.): We oppose a mandatory national chapter 13 plan form. It will increase litigation. It will encourage debtors to circumvent local rules, such as conduit mortgage requirements.

One size does not fit all.

Comment BK-2014-0001-0133—Joelyn Pirkle (Attorney, Georgia): I oppose a mandatory national plan form. My primary concern is the effect it will have on the quality of representation for debtors and creditors. A boom of "petition preparer" advertisements will inevitably follow. While I do not oppose all the rule changes, such as moving the claim deadline closer to confirmation, I strongly oppose a mandatory national plan form. Perhaps it will serve as a model.

Comment BK-2014-0001-0135—Joyce Bradley Babin, on behalf of the National Association of Chapter 13 Trustees: The board of the NACTT has voted to recommend support of the compromise proposal. The vote was not unanimous, with some members supporting only the mandatory national plan form and others supporting neither the national plan form nor the compromise proposal.

Comment BK-2014-0001-0136—William Heitkamp (Chapter 13 Trustee, S.D. Tex.): I oppose a mandatory national plan form. I support a national form that serves as a model for local districts.

Comment BK-2014-0001-0138—Judge Margaret M. Mann (Bankr. S.D. Cal.), on behalf of the bankruptcy judges of the district: The bankruptcy judges of the S.D. Cal. unanimously support the compromise proposal.

Part 1: Notice to Interested Parties

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): Debtors will conclude that if the form has an option then it must be available to be selected, regardless of contrary warnings.

Comment BK-2014-0001-0015—K. Michael Fitzgerald (Chapter 13 Trustee, W.D. Wash.): Debtors will conclude that if the form has an option then it must be available to be selected, regardless of contrary warnings.

Comment BK-2014-0001-0021—Debbie Langehennig (Chapter 13 Trustee, W.D. Tex.): Clarify that local rulings on procedures and statutory provisions remain in place.

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: The notice about the presence of options does not address our concern about the plan form's effect on conduit mortgage districts. Without

including specific language from our local conduit mortgage payment rule, the debtor's plan would be unconfirmable in our district. Pro se debtors and debtors represented by lawyers who are not frequent practitioners in our court would be adversely affected.

A checkbox indicating whether debtor is eligible for a discharge should be included in Part 1. It was removed from Part 3, where it did not belong, but should not be removed entirely from the form.

Comment BK-2014-0001-0034—Henry Sommer (Attorney, Philadelphia), on behalf of the National Association of Consumer Bankruptcy Attorneys: NACBA questions use of the phrase "permissible in your judicial district" in Part 1. It suggests that local courts may interfere with a debtor's right to propose a plan that satisfies § 1325. Revise that language to read: ". . . the presence of an option on the form does not indicate that the option is appropriate in your circumstances, and such an option may be prohibited in your case by controlling case law applicable in your judicial district."

Comment BK-2014-0001-0037—Margaret Burks (Chapter 13 Trustee, S.D. Ohio): Eligibility for a discharge should be indicated.

Comment BK-2014-0001-0038—Warren Cuntz (Chapter 13 Trustee, S.D. Miss.): Proposed Rule 3015(c), which mandates use of the national plan form, and proposed Rule 9009 are at odds with the "warning" in Part 1. If the plan form is adopted, this warning must be bolder and repeated throughout the form.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): One of the notices to creditors indicates that the creditor must file an objection to confirmation of a plan at least 7 days prior to the confirmation hearing date. Not all courts require confirmation hearings, and plans may be confirmed if no objections are filed.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): This language is not prominent enough. Debtors will conclude that if the form has the option then it must be available to be selected regardless of contrary judicial authority. We suggest using revised language in bold at various locations throughout the form.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: Include a checkbox to indicate if notice is required for a plan modification.

Include a checkbox for whether debtor seeks a discharge.

Include a checkbox for whether the debtor is above or below median income.

Combine the checkboxes for valuation and lien avoidance. Add a checkbox regarding service of the plan.

Include space to explain the reason for a plan modification.

Comment BK-2014-0001-0081—Matthew T. Loughney (Clerk, Bankr. M.D.Tenn.), on behalf of the Bankruptcy Noticing Working Group: The Committee Note states that inapplicable sections of the plan form "do not need to be reproduced." This should be changed

to say that unused sections "should not be reproduced." A warning to that effect should be included in Part 1.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): Please eliminate the three check boxes for claim valuation, lien avoidance, and non-standard provisions. If those provisions are in a plan, that fact will be self-evident. Having a check-box in Part 1 only serves as an opportunity to create inconsistencies between Part 1 and Parts 3 and 9.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- Add language certifying that a plan does not deviate from the Official Form.
- The form has no provision for paying pre-confirmation adequate protection payments, or ongoing mortgage payments through the plan.
- Part 1 includes a notice which says that 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 circumstance or that it is permissible in your judicial district. However, at least half of the sitting bankruptcy judges nationwide say that the comment in itself does not give them authority to address changes in their plan.
- Add space to indicate whether an amended plan is the first amended plan, second amended plan, etc.

Comment BK-2014-0001-0093—Glenn Stearns (Chapter 13 Trustee, N.D. Ill.): The warning language about the need to comply with local rules should be made stronger.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Include a date of the plan. There are instructions to debtors buried in the notice to creditors. There should be a checkbox on each part of the plan form modified by a nonstandard provision.

Comment BK-2014-0001-0104—Paul Post (Attorney, Kansas): Paragraph 1 suggests that local rules may make some or all of the possible nonstandard language unavailable. If this is so, how is this a "national" plan form?

Where does the plan form tell creditors that the debtor is above or below median income? Where does the plan form specify that above median income debtors must pay for 60 months? Will the language allow above median income debtors to pay less than 60 months?

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: If greater local options are built into the plan form, it would be appropriate to have the most important default structures set out here under the notice to creditors.

The checkbox for the use of nonstandard provisions should also include space to note the affected parts.

Comment BK-2014-0001-0116—Alberta Hultman, on behalf of Michael L. Zevitz, Esq., President, USFN: The notice of whether the plan is amended should indicate whether it is a first amended plan, a second amended plan, etc.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): The language should not state a specific time period for objections to confirmation. It should state that an objection should be filed in the time period prescribed by the court.

Comment BK-2014-0001-0121—Tracy Updike, on behalf of the M.D. Pa. Bankruptcy Bar Association:

Add space to list the plan version number.

The "important notice" language should be made more conspicuous.

We are split as to whether an objection to confirmation should be filed prior to confirmation.

Comment BK-2014-0001-0124—O. Byron Meredith III (Chapter 13 Trustee, S.D. Ga.): There is no consequence for failure to fill in the checkbox.

The requirement of an objection within 7 days of the date set for the confirmation hearing will cause problems, because in some cases the § 341 meeting of creditors is not concluded within 7 days of the scheduled confirmation hearing. This will lead to unnecessary objections.

Comment BK-2014-0001-0125—Sheryl Ith, on behalf of Cooksey, Toolen, Gage, Duffy & Woog: We represent secured creditors.

Include space for a brief description of changes if the plan is an amended plan.

Comment BK-2014-0001-0127—Lonnie D. Eck (Chapter 13 Trustee, N.D. Ga.): For pro se debtors, newer practitioners, and perhaps even some seasoned practitioners, the mere existence of an option on the form may entice the plan proponent to try the option.

The warning should not say that a creditor "may need to file" a timely claim. Filing a proof of claim is absolutely necessary for a claimant to be the holder of an allowed claim.

The preferred manner of making payments is through the trustee.

Part 2: Plan Payments and Length of Plan

Section 2.1 (payments to the trustee)

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): The provision stating that additional monthly payments will be made to the extent necessary if fewer than 60 months of payments are specified will lead to less transparency and certainty as to the length of the plan.

Comment BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: This provision appears to permit plan modifications (extensions) without notice and hearing, or any of the other requirements of 11 U.S.C. § 1329.

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: There is inadequate detail in this section for trustees to administer plans.

Comment BK-2014-0001-0035—Judge Elizabeth Magner (Bankr. E.D. La.): The default should be that all payments received after confirmation are due to the trustee, unless the court orders otherwise.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): This is an excellent provision.

Comment BK-2014-0001-0049—Grant Shipley (Attorney, Fort Wayne, Ind.): The form compels regular monthly payments, which are not required so long as the debtor has regular income that is steady and predictable. Farmers, for example, may receive income annually and still qualify for chapter 13.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): Below median debtors have an applicable commitment period of only 36 months, yet the language in this section refers to 60 months.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): Debtors should be able to specify how payments are made, in keeping with debtors' pay patterns.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: Include a provision for adequate protection payments in Part 2.

Comment BK-2014-0001-0075—Barbara Foley (Chapter 13 Trustee, W.D. Wash.): This section appears to allow for payments less than 60 months regardless of the applicable commitment period in the case. See Code § 1325 (b) (1) (B).

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): The vast majority of Chapter 13 trustees have cases that last longer than 65 months—over 3,000 cases nationally in FY 2013—perhaps due to plans that run from the date of confirmation. The form does not provide a checkbox for the debtor to specify whether the plan is to run 60 months from first plan payment or 60 months from the effective date of confirmation. The form appears to take the position that plan length is determined by the date of the first payment.

Although the Committee Note contemplates weekly or biweekly payments, the form as written unnecessarily guides debtors into monthly payments.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- If the debtor's applicable commitment period is only 36 months and the plan initially calls for a longer period to complete payments, it is unfair to require debtors to pay out for the longer period if it turns out that the longer period is unnecessary to meet debtor's obligations.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Specify the applicable commitment period and list the plan length. Add beginning and end dates and space to specify when a payment will change.

Section 2.2 (manner of payments to the trustee from future earnings)

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): The lack of a place to designate the address of an employer for the payroll order will cause delay.

Comment BK-2014-0001-0042—Mary Beth Ausbrooks (Attorney, Nashville, Tenn.): Clarify from which debtor the payroll deduction will be taken.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): I do not understand why there is an "other" check box. What other option is available besides a payroll order or no payroll order?

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): More detail is needed for the payroll deduction order.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. W. Va. and S.D. W. Va.): More detail is needed for the payroll deduction order.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): The form should not appear to give debtors the option of deciding whether to make payments by payroll deduction. This is a judicial determination.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): Delete this section. The amount of the payment should be in the plan, but the manner of payment (wage order, etc.) does not need to be in the plan.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): Provide space for the debtor to insert the name and address of the employer, or, in joint cases, an indication of whose wages will be deducted.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- Add space to designate the address of an employer for a payroll order, which will avoid delay.

Comment BK-2014-0001-0093—Glenn Stearns (Chapter 13 Trustee, N.D. Ill.): Add language that if the debtor agrees to pay by payroll deduction order, the debtor agrees to the immediate entry of the order.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Include employer information for the payroll deduction order.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Include employer information and information on joint debtors for the payroll deduction order.

Comment BK-2014-0001-0131—David S. Yen (Attorney, Chicago): This section should refer to future income, not "earnings."

Section 2.3 (federal income tax refunds)

BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: Section 2.3 does not include an option for the debtor to pay all tax refunds during the term of the plan. If this provision is to be included at all, it should either (1) include all possible options (e.g., "all tax refunds received during the term of the plan shall be turned over to the trustee") or (2) be a blank space for the debtor to complete.

Comment BK-2014-0001-0015—K. Michael Fitzgerald (Chapter 13 Trustee, W.D. Wash.): This section is internally inconsistent. At one point it requires a debtor to provide the trustee with copies of tax returns, and in another instance requires the submission of the tax return itself.

This section fails to require submission of redacted copies and in doing so will impose more work on the trustee.

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: The original published version, which reminded debtors of the requirement to submit copies of their tax returns to the trustee, is preferable. This section should not omit state tax returns.

Comment BK-2014-0001-0034—Henry Sommer (Attorney, Philadelphia), on behalf of the National Association of Consumer Bankruptcy Attorneys: This is an improvement on the previous version. But the language about providing tax returns should be removed. It conflicts with the Code § 521(f) and procedures established by the Administrative Office.

Comment BK-2014-0001-0037—Margaret Burks (Chapter 13 Trustee, S.D. Ohio): Trustees in our district do not want debtors to submit copies of tax returns.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): Debtors should not have the option to retain tax refunds.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): I would have to object to every chapter 13 plan if this provision were adopted. Tax refunds are property of the estate that should be administered by the chapter 13 trustee.

Comment BK-2014-0001-0049—Grant Shipley (Attorney, Fort Wayne, Ind.): This provision should include state income tax returns.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): Include state income tax refunds and more detail about other tax refund scenarios.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. W. Va. and S.D. W. Va.): All debtors are required to provide copies of all tax returns to chapter 13 trustees. Check box one should be modified to clarify that the copies are not excused if refunds are retained. Check box three should be modified to clarify that the trustee should receive a copy of the return and not the original return and add a time limit of 14 days from filing. The language following all three boxes should be modified to include state tax returns, if applicable. Add language referring to the requirement that tax returns should be redacted.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): The first option should require that the entire tax refund be turned over to the trustee as well as the federal tax return during the term of the plan. Probably because of rulings in some members of the committee's jurisdictions, the form takes the position that debtors a) can keep their whole refund, b) can keep the earned income credit, or c) can pick whatever portion they want to turn over. A refund that results from over withholding during the plan term is disposable income. The earned income credit is additional income not already accounted for on Schedules I and J and should be paid to creditors absent a court's ruling otherwise.

Comment BK-2014-0001-0075—Barbara Foley (Chapter 13 Trustee, W.D. Wash.): Include state and local tax returns and refunds.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): This section is unnecessary. There is nothing in our local plan form about tax refunds. The debtor should be required to submit to the trustee a copy of the tax return in all cases.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): Rather than having check boxes, the plan form should allow each district to modify the language according to the trustee's preferences. It is unclear whether the form instructs a debtor to turn over a "copy of each federal tax return" as specified in the second check-box, or the actual return, as specified in the third check-box.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): Delete this section or designate tax refunds as disposable income.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- We do not want every debtor to submit a tax return.

- Any time debtors are allowed to keep all the funds they receive from a tax refund, they are going to elect to do so.
- Add an option for dedicating the full tax refund (including earned income tax credits).
- These options do not cover all alternatives.
- This provision would require the trustee to object to each and every plan.
- Add separate options for the tax return and the tax refund, so that submission of a copy of the tax return and dedication of the tax refund do not always accompany each other.

Comment BK-2014-0001-0093—Glenn Stearns (Chapter 13 Trustee, N.D. Ill.): Clarify that payment of tax refunds is in addition to payment of the amounts listed in § 2.1.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): This section should include all tax refunds—not only federal refunds. Simplify the third checkbox.

Comment BK-2014-0001-0111—Kelley L. Skehen (Chapter 13 Trustee, D.N.M.): This provision attempts to make legal determinations. In the 10th Circuit, earned income credit constitutes disposable income and is not excluded from any tax refunds being turned over to the trustee.

Include state income tax returns and refunds.

All debtors should be required to turn tax returns to the trustee annually, not just those who are retaining their refunds.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: If there is a reference to providing the tax return within 14 days in the second option, that same time limit should apply to the third option.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Include all income tax refunds, not only federal refunds.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): This section contains unnecessary detail.

Comment BK-2014-0001-0124—O. Byron Meredith III (Chapter 13 Trustee, S.D. Ga.): Include state tax refunds.

Section 2.4 (additional payments)

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): This section should be combined with previous sections in Part 2, with the debtor proposing additional payments "as follows" or the like.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. W. Va. and S.D. W. Va.): The form should provide that the debtor has the obligation to disclose increases in income, inheritances, and other funds that may be property of the estate.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: Include checkboxes if the debtor will fund the plan from the sale or refinancing of property.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): Delete this provision. Trustees should not be bound by debtors' choice about additional funds. If additional sources of funds become available, the trustee should be able to pursue them.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): If variable plan payments are proposed a schedule of plan payments could be attached.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- Combine these sections so that the debtor proposes to make additional payments into the plan "as follows," with blank lines to list the funding source.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: Whenever real property is referenced, require that the debtor include the property tax ID number used by the local taxing authority.

Section 2.5 (total amount of estimated payments)

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): Whose determination of the actual amount of the total payment will control? The Trustee may estimate the amount of the total payments differently than the debtors, the creditors, or both.

Comment BK-2014-0001-0021—Debbie Langehennig (Chapter 13 Trustee, W.D. Tex.): Clarify here or in another provision that, in conduit districts, ongoing mortgage payments are to be disbursed by the trustee.

Comment BK-2014-0001-0075—Barbara Foley (Chapter 13 Trustee, W.D. Wash.): If this number is just the sum of monthly payments and additional payments, is this line necessary?

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): The plan form does not state, with finality, the amount the debtor will pay the trustee over the course of the plan. This is important because it determines the point at which a plan may no longer be modified. See § 1329(a).

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): Creditors should be able to rely on this number. It should not be an estimated amount.

Comment BK-2014-0001-0093—Glenn Stearns (Chapter 13 Trustee, N.D. Ill.): This total should not include §§ 2.3 and 2.4, which may turn out not to be available (*e.g.*, if the debtor does not get a tax refund).

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Delete the "estimated" language. The trustee needs certainty in base plan funding.

Part 3: Treatment of Secured Claims

Part 3 (general)

Comment BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: Part 3 fails to give the debtor the opportunity to disclose the number of months that each creditor is expected to receive payments.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): Add stronger language so that only lienholders served with the relief from stay are removed from payment under the plan.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: We have a number of questions about the meaning of the "claimed arrearage," the "amount of unsecured portion of claim," and the "government claim" controls.

Comment BK-2014-0001-0124—O. Byron Meredith III (Chapter 13 Trustee, S.D. Ga.): Include a provision on adequate protection payments.

Comment BK-2014-0001-0125—Sheryl Ith, on behalf of Cooksey, Toolen, Gage, Duffy & Woog: Include a provision for pre-confirmation adequate protection payments.

Section 3.1 (maintenance and cure)

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): There is no option for the debtor to make conduit mortgage payments through plan administration.

Comment BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: The plan is unclear as to what happens to a late-filed, secured claim for arrears. The implication is that if an arrearage claim is late-filed, it will be treated differently in the plan. There is no authority in the Code or Bankruptcy Rules for the trustee to do anything other than pay all claims as filed, whether timely or not, absent a court order disallowing or modifying the claim.

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: We are concerned about this provision's effect on our conduit mortgage payment program.

There should be language providing that after stay relief is granted, any deficiency will be treated as an unsecured claim to be discharged upon completion of the plan.

Comment BK-2014-0001-0034—Henry Sommer (Attorney, Philadelphia), on behalf of the National Association of Consumer Bankruptcy Attorneys: Debtors should not be required to set forth monthly arrearage amounts, which they often will not know at confirmation. The language should be revised to require "Estimated amount of arrearage" and "Estimated monthly plan payment on arrearage," which would conform to the next column, "Estimated total payments to trustee."

We suggest alternative language regarding relief from the stay.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): Delete the option for debtors to make direct payments to creditors.

Debtors do not know the interest rate on arrearages.

Comment BK-2014-0001-0049—Grant Shipley (Attorney, Fort Wayne, Ind.): This section does not deal with the effect of stay relief or abandonment.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: The third sentence of § 3.1 refers to proofs of claim filed before the Rule 3002(c) deadline as controlling over the plan. This is inconsistent with Code § 502(a), which provides for the allowance of proofs of claim absent an objection. Substitute the phrase "proofs of claim that have not been disallowed."

Comment BK-2014-0001-0063—Camille Hope (Chapter 13 Trustee, M.D. Ga.): The plan form lacks a standard way to specify plan payments in conduit districts.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): I suggest changes to clarify the treatment of arrearages, ongoing payments, and late-filed proofs of claim.

Comment BK-2014-0001-0065—Rebecca Holschuh (Office of the County Attorney, Hennepin County, Minn.): Section 3.1 refers to "contractual installment payments" but this is not the only basis for payment of secured claims. In Minnesota, real property taxes are secured by perpetual liens that arise each year by operation of law. Accordingly, property tax claims are secured claims paid with interest at the rate set by Minnesota law, as is required by Bankruptcy Code § 511. Part 3 should include an explicit place for secured tax claims.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): The language in this section should be amended to state that payments as to collateral "will cease as soon as practicable." It is possible that the court will enter an order granting relief from stay during the trustee's monthly distribution, overlapping disbursement to the affected creditor.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): Break this section into arrearages and regular monthly payments. The arrearage payments, which should always be made by the trustee, should not have "disbursed by" check boxes.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: The arrearage amount should be "grossed up" to include the agreed or modified interest rate.

Comment BK-2014-0001-0075—Barbara Foley (Chapter 13 Trustee, W.D. Wash.): The next to last sentence includes the phrase "will no longer be treated by the plan." Does this mean the unsecured deficiency claim is excluded all together? Clarification is needed.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): The language of this provision is troubling. The trustee will not necessarily know when the stay is lifted, and therefore will not know that payments should cease.

Clarify that the trustee will pay the arrearage.

I am not in a conduit district, but giving debtors a choice to pay directly or through the trustee will cause problems.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): Presenting debtors with multiple options when local practice limits the available choices will increase the number of plan objections and increase the time and expense required of the debtor, the trustee, chambers, and the clerk's office.

It is not clear what happens regarding the amount of the arrearage claim when the creditor files an untimely claim with a different arrearage amount from the plan. The claim is still an allowed claim, even if tardily filed.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): The trustee should be the disbursing agent on payments to creditors unless otherwise specified.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- This section includes no options for the debtor to make conduit mortgage payments through plan administration.
- This section is the biggest problem by far. Conduit payments are a main source of funding for many of the chapter 13 trustee's operations.
- Eliminate the checkboxes that appear to allow direct payment by the debtor to creditors. The provision lacks clarity and is inconsistent with precedent in may districts.
- Presenting a direct payment option would be extremely disruptive in my district, where it contradicts our local bankruptcy rule requiring trustee conduit payments.
- The provisions directing that the debtor specify the interest rate on the arrearage will create a problem, because debtors usually do not know the interest rate. A better approach would be to provide only that the arrearage bear interest as per the contract, as a default position.

- Clarify this section.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Rephrase language in this section. The columns are unwieldy.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): Section 3.1 is overly elaborate and depends on information the debtors often do not have at the beginning of their cases. It also seems to indicate that a specific portion of every plan payment must go to the secured creditors, in violation of the existing order of payments procedures in many districts. Finally, it does not appear to provide for adequate protection payments.

Having the proof of claim control over the plan requires additional objections and hearings.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: This section assumes that all secured claims are in the nature of contractual agreements with installment payments. Tax claims are secured but are usually fully due and owing with no installment provisions applicable, and no arrearages versus current payments.

Comment BK-2014-0001-0116—Alberta Hultman, on behalf of Michael L. Zevitz, Esq., President, USFN: Section 3.1 identifies the name of creditor and the collateral, but it should also include a section for reference to the last four digits of the account number.

The stay relief language in is section will prevent a creditor from receiving payment on a claim secured by collateral upon which another creditor obtained relief from stay.

The plan form is unclear as to what happens to a late-filed, secured claim for arrears.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Clarify that the trustee will disburse payments on arrearages.

When the claim controls over the plan, what will happen if a creditor amends the claim after the bar date?

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Clarify that the trustee makes the arrearage payment.

Clarify the wording and options in this section.

Comment BK-2014-0001-0125—Sheryl Ith, on behalf of Cooksey, Toolen, Gage, Duffy & Woog: We represent secured creditors. Clarify this section.

Comment BK-2014-0001-0131—David S. Yen (Attorney, Chicago): Clarify this section.

Section 3.2 (request for valuation of security and claim modification)

Comment BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: The valuation provision will result in *de facto* claims objections without the necessary requisites of claims objections.

The form does not require debtors to provide evidence for the proposed valuation of collateral.

Comment BK-2014-0001-0034—Henry Sommer (Attorney, Philadelphia), on behalf of the National Association of Consumer Bankruptcy Attorneys: See comments under § 3.1.

There should be a provision for preconfirmation adequate protection payments.

Comment BK-2014-0001-0035—Judge Elizabeth Magner (Bankr. E.D. La.): The creditor's proof of claim should only control if filed timely.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): This is an excellent provision, but the form should include space for the debtor to give the basis for valuation.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): This provision creates more work for the court and counsel. Simply state that the value in the plan controls unless objected to.

Comment BK-2014-0001-0049—Grant Shipley (Attorney, Fort Wayne, Ind.): This provision will not be effective. If, for example, a junior mortgage is valued at $0.00, that valuation does not void the lien. A debtor would then have to launch an adversary proceeding under Rule 7001.

Comment BK-2014-0001-0049—Grant Shipley (Attorney, Fort Wayne, Ind.): This section does not permit the debtor to reduce the amount of the claim and propose a stream of payments beyond the date of discharge.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): I suggest clarifying language in this section.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. W. Va. and S.D. W. Va.): The valuation or avoidance process should include a separate motion filed by the debtor and served in accordance with applicable rules. Who checks to make sure that service of a plan proposing valuation was correct? It would be unduly burdensome to delegate yet another responsibility to clerks or trustees.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): It would be simpler to provide for the secured portion of a creditor's claim and not try to deal with the ranking of a lien. The purpose should only be to let creditors know how much their collateral is going to be valued at and at what interest rate.

The columns for "estimated amount of creditors claim" and "amount of claims senior to creditor claims" will be erroneous the majority of time.

Comment BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: Eliminate the column "monthly payment to creditor" and change the last column to "total payment by trustee."

Comment BK-2014-0001-0076—Frederick Schindler (Office of the Chief Counsel, IRS): Section 3.2, as proposed, would require a creditor to release its lien after discharge, which would not occur until after satisfaction of the secured claim. Certain types of tax debts, however, are nondischargeable in chapter 13 cases. Further, certain property may be excluded from the bankruptcy estate and could not be used to calculate the value of a creditor's secured claims. *IRS v. Snyder*, 343 F.3d 1171 (9th Cir. 2003). For instance, the debtor may have an interest in a pension plan that is excluded from the estate under § 541(c), but nevertheless be subject to the federal tax lien. The lien would survive the bankruptcy case on the excluded property. The debtor would have no right in a chapter 13 plan to force the Service to release the lien upon the excluded property, the value of which could not be paid as a secured claim under the chapter 13 plan.

We recommend that the following underlined language be added to § 3.2, "The holder of any claim listed below as having value in the column headed Amount of secured claim will retain the lien until the earlier of . . . discharge under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor <u>unless the underlying debt is excepted from discharge or the underlying collateral was excluded from the bankruptcy estate under 11 U.S.C. § 541</u>."

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): Governmental creditors should not be excluded from the general chapter 13 cramdown provisions.

Some of our bankruptcy courts have held that a lien does not have to be released when there is a non-filing co-debtor. Does the plan form overrule those decisions by stating that the lien is released when the debtor is discharged?

There is no reason to list the amount of claims senior to the creditor's claim.

Include language in this section, similar to the provision in § 3.1, for situations when the stay terminates as to collateral being treated.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): This section will require scrutiny of a large number of addresses on the BNC certificate of service regarding the notice of the confirmation hearing. The entire mail list must be compared against § 3.2 to ascertain whether service was proper under Rule 7004, and whether the debtor must independently serve the plan on a specific address in the form required by Rule 7004.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): Governmental creditors should not be excluded from cramdown. Add language stating that the debtor is scheduling the value at X amount and that the creditor has Y days to object or else the value as stated by the debtor will control.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- This version of the plan form no longer addresses debtors' eligibility in this section. It should be addressed at the beginning of the plan.
- The provision for valuing a secured claim through the plan conflicts with the Code, which provides that a claim is deemed allowed unless a party in interest objects.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): The request for valuation should be labeled a motion seeking an order, in keeping with Rule 9013.

Delete the reference to nongovernmental creditors.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): Section 3.2 makes the use of the plan form to avoid or strip a lien mandatory, and effectively ends the practice in many districts of doing this by motion or adversarial proceeding. This should be left up to the individual districts.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: The term "value of the secured claims" is ambiguous.

Comment BK-2014-0001-0114—Bradley C. Johnson (District Attorney's Office, Salt Lake County, Utah): Section 3.2 does not make clear whether interest will accrue on the secured claim from the date of confirmation or the date of the petition. State and local taxing authorities will have to object to every plan that does not provide in Part 9 for interest from the petition date. The plan form in our local district includes a separate provision for secured tax claims.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Clarify that the trustee will disburse payments on arrearages.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Governmental units should not be give special consideration in the valuation of secured claims. We also have language and format suggestions.

Comment BK-2014-0001-0124—O. Byron Meredith III (Chapter 13 Trustee, S.D. Ga.): Governmental units should not be excluded from the general valuation provision.

Comment BK-2014-0001-0125—Sheryl Ith, on behalf of Cooksey, Toolen, Gage, Duffy & Woog: Clarify this section.

Comment BK-2014-0001-0131—David S. Yen (Attorney, Chicago): Clarify this section.

Section 3.3 (secured claims excluded from 11 U.S.C. § 506)

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): This section is confusing.

Comment BK-2014-0001-0034—Henry Sommer (Attorney, Philadelphia), on behalf of the National Association of Consumer Bankruptcy Attorneys: See comments under § 3.1.

There should be a provision for preconfirmation adequate protection payments.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): I do not understand how the debtor will be able to cram down a car interest rate and make payments directly. Debtors rely on the trustee's records to track the payment of principal and interest.

Add a column with the contract interest rate.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: Plan § 3.3 contains the same error regarding late-filed claims as in § 3.1.

The NCBJ urges the Advisory Committee to re-draft § 3.3 into a more general provision in which a debtor provides for any modification of a secured claim, which includes, but is not limited to, valuation and modification of the claim.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): Current language interferes with the effect of *United Student Aid Funds, Inc. v. Espinosa* and *In re Franklin*, 448 B.R. 744 (Bankr. M.D. La. 2011). The plan's controlling the secured amount (rather than the proof of claim or amended proof of claim) would be a more efficient practice and provide certainty for disbursements.

Include a column for the term of the monthly payment (*e.g.*, months 1-24 or 5-56).

Do not include a provision for direct payments by the debtor.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: This section should be used only for claims excluded from § 506(a) for which the debtor seeks modification of the interest rate, as a majority of jurisdictions permit. For secured claims that are current and unaffected, another section (either § 3.1 or a new, separate section) should be used.

Eliminate references to payment by the trustee or the debtor.

Repeat here the statement in § 3.2 about the holder of the claim's retaining the lien.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): If the debtor is behind on payments on a 910-day car claim or has altered the interest rate, then the payments should be made through the trustee.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): I offer suggestions for changing the wording and formatting.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): While the principal amount of a 910-day car claim cannot be crammed down, that is not

true of the interest rate. The plan form does not make this clear. Also, the form states that the proof of claim controls, thus requiring an objection. Therefore, this provision accomplishes little.

Comment BK-2014-0001-0111—Kelley L. Skehen (Chapter 13 Trustee, D.N.M.): Do not allow direct payment by the debtor. To provide otherwise affects the funding of the offices of the chapter 13 trustee.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: The caption might be clearer if the words "by Section 1325" were added at the end.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Clarify this section.

Comment BK-2014-0001-0124—O. Byron Meredith III (Chapter 13 Trustee, S.D. Ga.): This section does not address over-secured claims.

Comment BK-2014-0001-0125—Sheryl Ith, on behalf of Cooksey, Toolen, Gage, Duffy & Woog: This section permits the debtor to modify the interest rate. If the debtor is making these payments directly, they should be pursuant to the contract terms.

Comment BK-2014-0001-0131—David S. Yen (Attorney, Chicago): Clarify this section.

Section 3.4 (lien avoidance)

Comment BK-2014-0001-0035—Judge Elizabeth Magner (Bankr. E.D. La.): The lien avoided by this section should only be removed once the plan is completed and the debtor is discharged.

Comment BK-2014-0001-0037—Margaret Burks (Chapter 13 Trustee, S.D. Ohio): This section will streamline the lien avoidance process.

Comment BK-2014-0001-0046—Judge Terrence L Michael (Bankr. N.D. Okla.): The lien avoidance provision is contrary to case law.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: The "Lien Identification" requirement is unnecessary in a chapter 13 plan and therefore an undue burden on the debtor and the debtor's counsel. The NCBJ recommends that it be deleted.

Second, delete the sentence that reads: "The amount of the judicial lien or security interest that is avoided will be treated as an unsecured claim in Part 5." Avoidance of a judicial lien is an entirely distinct process from claims allowance. A debtor may avoid a judicial lien regardless whether the creditor has filed a claim. There is no reason to provide for a distribution of a claim without the filing of a proof of claim. Therefore, the sentence should be eliminated, or at least, qualified with the phrase, "if the holder's claim is allowed."

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): See comments under § 3.1.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. W. Va. and S.D. W. Va.): The form makes the avoidance of the lien effective upon the entry of the confirmation order. This may be premature. Section 349(b)(l)(B) of the Bankruptcy Code provides that an order dismissing a bankruptcy case reinstates "any transfer avoided under § 522." As a result, if the case is later dismissed, the lien avoidance is automatically nullified. But once a lien upon real estate has been avoided, and the order of avoidance made part of the appropriate real estate records, reversal is akin to unringing a bell. One can only imagine the problems for title examiners.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: The form states that the lien will be avoided upon confirmation. There is a split of authority as to whether lien avoidance occurs at confirmation or upon discharge. Add "unless otherwise provided by order of the court" at the end of the second sentence of that paragraph. Include the lien retention language from § 3.2.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): The form calls for judicial lien avoidance on plan confirmation and not on discharge. While case law allows lien avoidance upon entry of the § 522(f) order, that is conditional on the debtor's completion of plan payments and entry of discharge. Under § 349, such liens are not avoided when the case is subsequently dismissed (which occurs in approximately 50% of all national chapter 13 cases). Consequently, the legal advice given in § 3.4 is a half-truth that is accurate half the time.

For purposes of recording the lien avoidance, the debtor who pursues lien avoidance by plan may have to record the proposed plan, the confirmation order, and the order of discharge. When lien avoidance is by motion, a one-page order may be recorded along with the 1-page discharge order. Section 522(f) lien avoidance is a process that is better administered separately from the plan and confirmation process.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- This section is extremely confusing.
- This section will draw objections.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): This section creates timing problems by attempting to fix a binding number at an early stage of the case.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): This is a provision where due process will be raised by creditors, producing additional delay and rendering the provision useless.

Comment BK-2014-0001-0104—Paul Post (Attorney, Kansas): Why is lien avoidance included in the form when that issue will affect only one creditor? The result is that all creditors must be notified of the proposed lien avoidance.

Comment BK-2014-0001-0106—Stephanie Edmondson (Clerk of Court, Bankr. E.D.N.C.): This section should specify what type of description is requested (*i.e.*, address of property, specific description of collateral, etc.).

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: in the second sentence, it might be clearer if it read "Such a judicial lien or security interest securing a claim . . . "

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): This provision circumvents due process requirements outlined in *Espinosa*.

Comment BK-2014-0001-0125—Sheryl Ith, on behalf of Cooksey, Toolen, Gage, Duffy & Woog: This section does not require any evidence in support of the lien avoidance request.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- This section is extremely confusing.

Section 3.5 (surrender of collateral)

Comment BK-2014-0001-0021—Debbie Langehennig (Chapter 13 Trustee, W.D. Tex.): Add an option for surrender of collateral in full satisfaction.

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: A debtor cannot waive the co-debtor stay under § 1301. The language in this section may deceive debtors into thinking that the co-debtor stay is terminated upon surrender.

Comment BK-2014-0001-0049—Grant Shipley (Attorney, Fort Wayne, Ind.): Surrender is not abandonment. Many courts hold that surrender can be accomplished only with the creditor's consent.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: As in its prior comment, the NCBJ believes that the last sentence (regarding deficiencies' being allowed and then treated as Class 5 general unsecured claims) takes a substantive position on a disputed issue of law and should be deleted. *See generally In re Sneijder*, 407 B.R. 46 (Bankr. S.D.N.Y. 2009) (describing the many "practical problems" attending this question).

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): The form does not provide for a surrender value. Does this mean the plan assumes that the surrender is in full satisfaction of the claim?

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: Include a column to clarify the amount deemed unsecured.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): The language in this section about surrender of collateral and the termination of the co-debtor stay is misleading.

Comment BK-2014-0001-0109—Marie Elaina Massey (Chapter 13 Trustee, S.D. Ga.): The debtor should not be able to surrender collateral to a "secured" creditor without having to file a claim or prove a perfected security interest in the collateral. Unsecured creditors would lose out on money.

Comment BK-2014-0001-0111—Kelley L. Skehen (Chapter 13 Trustee, D.N.M.): Debtors may not, by themselves, consent to the termination of the co-debtor stay under Code § 1301.

Comment BK-2014-0001-0116—Alberta Hultman, on behalf of Michael L. Zevitz, Esq., President, USFN: We recommend revising this provision to read as follows: "Termination of the stay under 11 U.S.C. § 362(a) and § 1301 with respect to a creditor's exercise of its rights against the collateral shall be effective upon entry of an order confirming the plan without the necessity of a separate order granting relief from the automatic stay and/or co-debtor stay."

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Although the provision relates to the debtor, it should be clear that the trustee is not consenting to relief from stay or abandonment. An additional provision should be included noting that surrender does not constitute abandonment of any interest of the estate in the collateral or grant relief from stay regarding the trustee.

Comment BK-2014-0001-0125—Sheryl Ith, on behalf of Cooksey, Toolen, Gage, Duffy & Woog: We represent secured creditors. This provision does not set a deadline for the debtor to surrender the collateral. Rather than providing for the debtor's "consent," the form should provide for termination of the stay upon surrender or upon confirmation.

Comment BK-2014-0001-0127—Lonnie D. Eck (Chapter 13 Trustee, N.D. Ga.): Clarify treatment of deficiency claims.

Part 4: Treatment of Trustee's Fees and Administrative and Other Priority Claims

Part 4 (general)

Comment BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: Part 4 fails to give the debtor the opportunity to disclose the number of months that each creditor is expected to receive payments.

The form does not require the debtor to identify priority creditors or the amounts of their debts to be paid through the plan.

Comment BK-2014-0001-0082—Henry Hildebrand (Chapter 13 Trustee, M.D. Tenn.): The plan form should permit debtors to identify priority claims and how priority claims might be paid.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): This part should be renamed "Fees and Priority Claims."

Include more detail to identify priority claims.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): This provision accomplishes nothing. It does not allow for payment of trustee's or attorney's fees before other claims, even though the statute requires it. The recommended plan for the E.D. Pa. accomplishes this in a better fashion with a simple provision for order of payments.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: In light of the special provisions applicable to domestic support orders, we believe it would be appropriate to set out a special section of the plan form for them.

Comment BK-2014-0001-0116—Alberta Hultman, on behalf of Michael L. Zevitz, Esq., President, USFN: The form fails to identify priority creditors.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Add a provision in Part 4 for ongoing domestic support orders.

Section 4.1 (general)

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): This provision does not allow for existing domestic support orders to continue.

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: The plan form does not discuss how filing fees are to be paid.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): This provision does not allow for existing domestic support orders to continue. This will disrupt ongoing support payments unnecessarily.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Reword this section.

Comment BK-2014-0001-0126—Diana L. Erbsen, on behalf of the U.S. Department of Justice: Priority claims should not receive post-petition interest. But pre-petition interest is part of an allowed priority claim. See § 502(b)(2). Clarify that "without interest" means "without post-petition interest."

Section 4.2 (trustee's fees)

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): An estimated trustee's fee may not allow for fluctuation in the fee in violation of 11 U.S.C. § 586(e).

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: Trustee's fees are set by § 586(e).

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): Trustee's fees fluctuate.

Comment BK-2014-0001-0049—Grant Shipley (Attorney, Fort Wayne, Ind.): Debtors will not know the trustee's fees.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): Trustee's fees are set by the Executive Office of United States Trustee and not subject to change by Plan provisions. If an estimate is needed, it should be at the maximum statutory fee of 10% to prevent the underfunding of cases.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): Due to periodic variance in the actual percent applied, it is best to disclose the maximum fee of 10% on funds disbursed by the trustee.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): This is unnecessary. Trustee's fees are set by statute and are hard to estimate.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): The only safe way to estimate trustee fees in advance is to use the maximum rate of 10%. Only the Executive Office of the U.S. Trustee may set the chapter 13 trustee's fee and any amount asserted by the debtor will likely be ineffectual.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): The trustee's fee varies over the fiscal year. Delete this section.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- The trustee's fee fluctuates. If the debtor's estimate is too low, it may cause feasibility problems.

- An estimate of trustee's fees of anything less than 10% can cause problems.
- The provision should state: "The Trustee will be paid a variable percentage fee up to 10% of plan payments pursuant to 11 U.S.C. § 586(e)."
- Take out any mention of the percentage amount. Instead, include language to the effect that the percentage fee is fixed periodically by the United States Trustee.

Comment BK-2014-0001-0097—John J. Talton (Chapter 13 Trustee, E.D. Tex.): The actual trustee's fee may change over time. We presume 10% to calculate feasibility.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Remove the "estimated" language. A plan should state its assumptions with precision.

Section 4.3 (attorney's fees)

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): This provision only sets forth the balance of fees owed to the attorney. It does not state the amount of attorney's fees paid pre-petition.

Comment BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: The form does not give direction to the trustee as to how outstanding attorney's fees are to be paid. There is diversity among jurisdictions on this issue.

Comment BK-2014-0001-0021—Debbie Langehennig (Chapter 13 Trustee, W.D. Tex.): More detail should be required about attorney's fees.

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: More detail should be required about attorney's fees.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): More detail should be required about attorney's fees.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): More detail should be required about attorney's fees.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): The attorney's fee should not be estimated. An option for monthly payments should be included.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): Statistical reporting requires the trustee to furnish the pre-petition as well as the postpetition attorney's fees as part of the final report.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): Include the total fee charged as well as the amount to be paid in the plan.

Comment BK-2014-0001-0082—Henry Hildebrand (Chapter 13 Trustee, M.D. Tenn.): The plan form does not provide sufficient flexibility to designate monthly payments or periodic payments to the debtor's attorney.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): There should be a sum certain for the amount of attorney's fees. Trustees cannot pay out on an estimate.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): This section does not inform creditors about the manner or timing of the attorney's fee payment.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): My local form simply states that the attorney has received X amount for attorney's fees and that Y remains to be paid through the plan.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- Total attorney's fees are required to be reported by the chapter 13 trustee in the Final Report and Account.

Comment BK-2014-0001-0097—John J. Talton (Chapter 13 Trustee, E.D. Tex.): Attorney's fees should be an exact amount. Remove the word "estimated." The provision relating to attorney's fees gives no flexibility to account for any automatic step up as additional work is performed by the debtor's attorney as may be provided for in local practice.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Reword this section to cover all attorney's fees. The use of estimates is imprecise.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Greater detail on attorney's fees is needed.

Section 4.4 (other priority claims)

Comment BK-2013-0001-0006—Jan Hamilton (Chapter 13 Trustee, D. Kan.):

There is no section addressing non-assigned domestic support obligations. Include a specific reference to those obligations in § 4.4 (ongoing; arrearage; payment through the trustee; payment through an existing state court order).

Comment BK-2014-0001-0042—Mary Beth Ausbrooks (Attorney, Nashville, Tenn.): Include space for the names of priority unsecured creditors and how they will be paid.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): Provide more detail for domestic support orders.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. W. Va. and S.D. W. Va.): A lump sum figure is not sufficient, particularly where there is a domestic support obligation with a higher priority than other priority claims. Supplying a lump sum figure in the plan that is less than the amount shown on Schedule E gives the trustee no guidance as to which if any claims are not entitled to priority or are over stated.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.):
The form assumes that there can be only one priority creditor per case but fails to identify who it is. The form should allow debtors to identify the priority creditor or amount owed, or include parenthetical information.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: Include space to list all priority claims (except for attorney's fees).

Comment BK-2014-0001-0077—Mary B. Grossman (Chapter 13 Trustee, E.D. Wisc.): Leaving room for more detail at this location will allow creditors and trustees to determine if a debtor has provided for specific priority claims.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): There is no space to list other priority claims, such as IRS claims.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): All priority claim treatment should be set out in the same section.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- Permit the option of making fixed monthly payments to priority creditors.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: Add space to list and itemize the priority claims so those parties can be sure that they are properly listed.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Clarify this section.

Section 4.5 (domestic support obligations assigned to a governmental unit)

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): Provide more detail for domestic support orders.

Comment BK-2014-0001-0077—Mary B. Grossman (Chapter 13 Trustee, E.D. Wisc.): I recommend adding a statement in § 4.5 indicating in bold that, if the debtor elects to pay less than the full amount of a domestic support obligation assigned or owed to a

governmental unit, the debtor must pay all disposable income into the chapter 13 plan for sixty months.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- Specify which disbursements on domestic support orders are by the trustee and which are direct.
- Include space for the debtor to provide information needed by the trustee in order to comply with the requirements for mailing the domestic support order notice.
- Delete this section.
- Permit the option of making fixed monthly payments to priority creditors.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): The claim should control over the plan for this section.

Address the trustee's payment of court filing fees by installment.

Comment BK-2014-0001-0104—Paul Post (Attorney, Kansas): Section 4.5 on assigned domestic support obligations appears to be at odds with the Code, which requires that the debtor must pay all projected disposable income for 5 years for the debt to be discharged.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: Add reference to the requirement in § 1322(b)(4) that the plan must commit all of the debtor's disposable income for the necessary five-year period, with a certification that the plan in fact does so. That requirement is more critical than the chapter 7 liquidation test that is referenced.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Clarify that the amount stated will be paid by the trustee, regardless of any contrary proof of claim.

Part 5: Treatment of Nonpriority Unsecured Claims

Section 5.1 (general)

Comment BK-2014-0001-0021—Debbie Langehennig (Chapter 13 Trustee, W.D. Tex.): Clarify if the trustee is to pay all allowed claims, whether or not they are scheduled.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Delete this section. It is superfluous.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: This section provides for paying unsecured claims to the extent "allowed," but there is no discussion here or in the rules about how and when objections by the debtor would be resolved and how that resolution would relate to the claims filed.

Section 5.2 (nonpriority unsecured claims not separately classified)

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: The "best interest of creditors" number is helpful. But it fails to include payment to priority creditors in the liquidation value analysis. Debtors should explain how the best interest number was calculated.

Comment BK-2014-0001-0042—Mary Beth Ausbrooks (Attorney, Nashville, Tenn.): Delete the liquidation analysis. It is not part of a plan.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): This provision is unworkable.

Comment BK-2014-0001-0050—Dan Melchi (Attorney, Georgia), on behalf of Lueder, Larkin & Hunter, LLC: The third checkbox should be removed. An unsecured creditor should be told in unambiguous terms what that creditor's claim will receive under the plan.

Comment BK-2014-0001-0063—Camille Hope (Chapter 13 Trustee, M.D. Ga.): Unsecured creditors will not be able to tell whether they will receive a distribution if the plan is limited to 36 or 60 months. Fewer unsecured creditors will bother to file claims as a result, which will further reduce distributions to creditors.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): Provide more options for payment of nonpriority unsecured claims.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): Debtors are required to devote all disposable income for the applicable commitment period to the plan. Check boxes one and two appear to give debtors the option to pay a set sum or percentage to unsecured creditors without reference to what amount may be required to comply with the Code.

Check box three creates a conflict between the requirement of the Code that secured creditors be paid in equal monthly installments and with the payment in this section to unsecured creditors being paid after secured creditors. Trustees do not want to hold funds intended to be distributed to unsecured creditors to the end of the case. Change the language in this section to the following: "Funds not dedicated to payment for secured and priority claims or administration of the estate shall be distributed to the unsecured creditors."

Comment BK-2014-0001-0075—Barbara Foley (Chapter 13 Trustee, W.D. Wash.): Box #3 gives no useful information regarding proposed payments to general non-priority unsecured creditors.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): The liquidation test should include general and priority unsecured claims.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): The liquidation test should include general and priority unsecured claims.

Section 5.3 (interest)

Comment BK-2014-0001-0037—Margaret Burks (Chapter 13 Trustee, S.D. Ohio): This section is useful but should clarify that payment of interest may be elected by solvent estates.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): Code § 1325(a)(4) does not make reference to interest.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): Rename this section "present value calculation" and change the word interest to annual discount rate.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): APR should be explained. Use "projected" instead of "estimated."

Section 5.4 (maintenance and cure)

Comment BK-2014-0001-0037—Margaret Burks (Chapter 13 Trustee, S.D. Ohio): Indicate whether the trustee of the debtor will make disbursements on domestic support obligations.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): Delete this section. It will lead to mischief and improper discrimination in the treatment of unsecured claims.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): Check box two is unclear as to who will act as the disbursing agent on the arrearage amount, as either the trustee or the debtor may be a disbursing agent under a plan.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): This section should be combined with § 5.5.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: It is unclear why this provision is necessary. If it is included, it should provide space to describe the type of debt.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): Make clear that the trustee will pay the arrearage.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): Section 5.4 will create problems in the manner and timing of plan payments to these creditors.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- This section is troublesome and can lead to discrimination.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Combine §§ 5.4 and 5.5.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): This section does not explain why these obligations should be treated separately.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: This says arrearages will be paid under the plan but does not indicate how the claim for the arrearage is to be determined—whether plan or claim controls and, if claim, how it is implemented if the debtor objects to the amount as filed.

This appears to assume that all arrearages will be spread out over the entire duration of the plan? Section 1322(a)(5) says arrearages must be paid within a "reasonable time," which does not automatically equate to a 3-5 year pay-off period.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Clarify that the trustee will disburse payments on arrearages.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Clarify the language on whether debtor or trustee will make payments.

Section 5.5 (other separately classified nonpriority unsecured claims)

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): This provision runs afoul of the antidiscrimination provisions of Code § 1322(a)(3) and (b)(1).

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Combine §§ 5.4 and 5.5.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: Why is there even a suggestion that some claims might get interest, and that unsecured claims might be paid interest while priority claims do not receive interest? Section 1322(b)(10) only allows payment of interest on nondischargeable claims—and then only if all allowed claims are paid in full.

This is again a place where the drafter appears to choose a side in a dispute over separate classification of unsecured claims. It is probably a minority position to allow separate classification.

Comment BK-2014-0001-0131—David S. Yen (Attorney, Chicago): Clarify this section.

Part 6: Executory Contracts and Unexpired Leases

Comment BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: Consider reversing the presumption, so that a contract is assumed unless specifically rejected.

Comment BK-2014-0001-0021—Debbie Langehennig (Chapter 13 Trustee, W.D. Tex.): Clarify whether an executory contract or unexpired lease is assumed or rejected and how a cure or a default will be treated.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): This provision does not state how any default is to be cured, as required by § 365(b)(10)(B) and (b)(l)(B) and (C).

Comment BK-2014-0001-0063—Camille Hope (Chapter 13 Trustee, M.D. Ga.): By requiring the debtor to assume a lease, this section will force debtors to disclose that fact that they are in bankruptcy to their landlords, who will terminate leases of debtors as soon as permissible. The average consumer debtor is better off if the landlord does not know of the bankruptcy.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): Clarify that the trustee will pay arrearages, if any.

Comment BK-2014-0001-0075—Barbara Foley (Chapter 13 Trustee, W.D. Wash.): The default of rejection instead of assumption is risky and may be contrary to case law. All executory contracts should be listed and treated to avoid inadvertent omission.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): Make clear that the trustee will make payments on any arrearage.

The "treatment" column is not sufficiently descriptive.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): Section 6.1 will create problems in the manner and timing of plan payments to these creditors.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- This provision does not specify how any default is to be cured as required by Code § 365(b)(10)(B) and (b)(1) (B) and (C).

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Today, every debtor has executory contracts, which may be unrecognized by debtors and their lawyers. Include a reference to Schedule G, so that only those executory contracts and leases are rejected. Any others should remain in limbo until the debtor or counterparty take action.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Clarify whether the debtor or trustee will be disbursing agent on arrearages.

Comment BK-2014-0001-0125—Sheryl Ith, on behalf of Cooksey, Toolen, Gage, Duffy & Woog: Clarify this section.

Part 7: Order of Distribution of Trustee Payments

Comment—BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): Debtors could select improper priorities in distribution causing objections and delays in confirmation. Leaving the distribution sequence to the trustee is not transparent to creditors or debtors.

Comment BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: Delete Part 7.

Comment BK-2014-0001-0015—K. Michael Fitzgerald (Chapter 13 Trustee, W.D. Wash.): Part 7 will invite chaos instead of uniformity.

Comment BK-2014-0001-0019—Marilyn O. Marshall (Chapter 13 Trustee, N.D. Ill., Eastern Division): Part 7 should include a standard order of distribution.

Comment BK-2014-0001-0021—Debbie Langehennig (Chapter 13 Trustee, W.D. Tex.): Sometimes secured and priority and administrative claims are paid at the same time. How would that be shown in Part 7?

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: Delete Part 7.

Comment BK-2014-0001-0037—Margaret Burks (Chapter 13 Trustee, S.D. Ohio): Eliminate the reference to statutory trustee's fees. Debtors should not be permitted to select the order of payments. Priority is determined under Code § 507.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): Delete Part 7.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): Part 7 will draw objections. Debtors should not be permitted to select the order of payments.

Comment BK-2014-0001-0063—Camille Hope (Chapter 13 Trustee, M.D. Ga.): This section should not allow the debtor to determine the order of distribution to creditors. Debtors counsel will immediately put their fees first, resulting in litigation of issues already settled by standing orders in most districts.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): Delete Part 7.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): Delete Part 7.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): Delete Part 7.

Comment BK-2014-0001-0075—Barbara Foley (Chapter 13 Trustee, W.D. Wash.): The language is confusing. This section will not be completed with meaningful information for creditors or direction for trustees.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): Debtors should not set the order of distribution.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): The local form I operate under specifies the disbursements under the plan unless otherwise set out. Section 1326 requirements should be the minimum in this section.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- This provision would negatively affect the trustee's administration of cases and increase the overall time needed to review each plan.
- It might be better to designate minimum payments to be disbursed to each creditor. The reference to statutory trustee's fees can be eliminated. Debtors should not be permitted to select the order of payments. Priority is determined under § 507.

Comment BK-2014-0001-0097—John J. Talton (Chapter 13 Trustee, E.D. Tex.): It will cause an administrative nightmare if debtors can propose the order of distributions.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Delete Part 7.

Comment BK-2014-0001-0111—Kelley L. Skehen (Chapter 13 Trustee, D.N.M.): The Bankruptcy Code, not the debtors, should determine the order of distributions. There should be a set order of distributions.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: We continue to believe that Part 7 should have a default order of payments that controls absent a nonstandard provision.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Include a mandatory order of distributions.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Do not allow debtors to propose the order of distributions.

Comment BK-2014-0001-0124—O. Byron Meredith III (Chapter 13 Trustee, S.D. Ga.): Delete Part 7.

Comment BK-2014-0001-0127—Lonnie D. Eck (Chapter 13 Trustee, N.D. Ga.): Delete Part 7.

Part 8: Vesting of Property of the Estate

Comment BK-2014-0001-0021—Debbie Langehennig (Chapter 13 Trustee, W.D. Tex.): Does this imply that the plan is binding with respect to non-governmental claims that are timely filed after confirmation where the plan treatment is inconsistent?

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: By placing "at confirmation" as the first option, the form will lead debtors to think this is their best option. For most debtors, it is not.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): There is no space to describe when revesting will occur if "other" is selected.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: The NCBJ suggests adding a third specific option that is a common choice for revesting: "at discharge."

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): In many jurisdictions the revesting of property has been determined by the court on a jurisdiction wide basis. Debtors should be warned that the choices on the form may not be available in their district.

BK-2014-0001-0073—Albert Russo (Chapter 13 Trustee, D.N.J.), on behalf of the standing chapter 13 trustees of the D.N.J.: Vesting should be upon entry of discharge and not closing of the case.

Comment BK-2014-0001-0076—Frederick Schindler (Office of the Chief Counsel, IRS): Part 8 appears to take the position that a debtor may retain all of the debtor's property in the estate until the case is closed. The default is for revesting at confirmation. We acknowledge that Code § 1327(b) allows for revesting at different points in time. But there is no indication in the Code that retaining all the debtor's property in the estate until the close of the case is permissible. We see no other reason for a debtor to elect to do so other than to insulate the debtor from the collection efforts of postpetition creditors.

That election will force the IRS either to incur the time and expense of referring the case to the Department of Justice to object to the plan or seek relief from the stay, or simply halt any collection efforts until the stay ends. If the latter, the debtor will incur substantial interest and penalties that accrue during the bankruptcy case, increasing the difficulty for the debtor to pay and the IRS to collect.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): Delete this section. The Code sets the default for revesting. If debtors want to propose revesting at some other point, that should be a nonstandard provision in Part 9.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): For districts that specify in the confirmation order that property of the estate remains property of the estate following confirmation, Part 8 presents a false choice to the debtor and should be an optional provision for a district.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Revesting should occur upon discharge and not the closing of the case.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: Either the form or rules should include a default provision for what is meant by stating that property "shall revest" in the debtor.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): The current practice in Arkansas is for the property to remain property of the estate and revest in the debtor upon discharge or dismissal. Substitute "discharge" for "closing of the case," which is an administrative step that has nothing to do with vesting. To allow a debtor to choose a time for vesting would cause confusion and hamper trustee administration.

Comment BK-2014-0001-0124—O. Byron Meredith III (Chapter 13 Trustee, S.D. Ga.): The vesting provision may conflict with Georgia state law.

Comment BK-2014-0001-0126—Diana L. Erbsen, on behalf of the U.S. Department of Justice: See comment by the Office of the Chief Counsel, IRS.

Part 9: Nonstandard Plan Provisions

Comment BK-2014-0001-0019—Marilyn O. Marshall (Chapter 13 Trustee, N.D. Ill., Eastern Division): To respond to concerns about Part 9, I note that in our district, we have a local plan form with a nonstandard provision section. Generally, provisions in that section deal with late claims, attorney's fee priority, tax refund requirements, and surrender of property language. At first, some debtor's attorneys attempted to use the nonstandard provision section to re-write the substance of the plan form. We stopped that by educating the debtor bar through workshops with the aid and input of our bankruptcy judges. I anticipate that the same thing will happen nationally.

Comment BK-2014-0001-0030—Judge Janice Miller Karlin (Bankr. D. Kan.), on behalf of the bankruptcy judges of the D. Kan.: Part 9 should require debtors to indicate exactly which paragraph of the form they are modifying. We also recommend inclusion of a debtor/lawyer certification that the debtor/lawyer has made no changes other than in the nonstandard section.

Comment BK-2014-0001-0037—Margaret Burks (Chapter 13 Trustee, S.D. Ohio): The Cincinnati plan has provisions not included in the national plan form that the Advisory Committee should consider adopting.

Comment BK-2014-0001-0042—Mary Beth Ausbrooks (Attorney, Nashville, Tenn.): We have adopted the national plan form in our district. Every case has required additional provisions in Part 9, the most common being mortgage-specific language, payroll-deduction information, and treatment of post-petition claims.

Comment BK-2014-0001-0048—Jan Hamilton (Chapter 13 Trustee, D. Kan.): There should be a nonstandard provisions box after each section. One place for a hodgepodge of non-standard provisions seems counter to the apparent goals of a national form.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): The statement "These plan provisions will be effective only if the applicable box in Part 1 is checked" creates confusion if the plan is confirmed and the applicable box in Part 1 is not checked.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- The inclusion of only one place for nonstandard provisions is inadequate. If all nonstandard provisions are lumped into one section, the possibility of the tail wagging the dog will surely occur.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Add cross references to provisions that are being modified in Part 9.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): There is a very high risk that a plan will have unchecked boxes, and then, in essence, an entire local plan added in via Part 9. This renders the entire proposed national plan form a waste of paper.

Comment BK-2014-0001-0104—Paul Post (Attorney, Kansas): The "nonstandard" provisions will prove to be cumbersome. In our Kansas plan form, nonstandard provisions are allowed after each paragraph.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Reword the title—the word "plan" is not needed. Many nonstandard provisions will be needed to clarify ambiguities in the rest of the plan form.

Comment BK-2014-0001-0134—Linh Tran, Quantum3 Group, LLC: Clarify that an objection to a non-priority general unsecured proof of claim is not permitted under Part 9.

Part 10: Signatures

Comment BK-2014-0001-0011—Rod Danielson (Chapter 13 Trustee, C.D. Cal.), on behalf of the five chapter 13 trustees of the C.D. Cal.: If the plan is to have evidentiary value, the debtor's signature is necessary.

Comment BK-2014-0001-0015—K. Michael Fitzgerald (Chapter 13 Trustee, W.D. Wash.): The debtor's signature should be required.

Comment BK-2014-0001-0064—Richard Fink (Chapter 13 Trustee, W.D. Mo.): Include space for the attorney's contact information.

Comment BK-2014-0001-0069—Helen M. Morris (Chapter 13 Trustee, N.D. and S.D. W. Va.): Debtors' signatures should not be optional. The signature indicates that the debtors have read the plan, and if the plan provides for judicial lien avoidance or valuation of collateral, the signature would have an evidentiary value.

Comment BK-2014-0001-0070—Annette Crawford (Chapter 13 Trustee, M.D. La.): All debtors should have to sign chapter 13 plans. Otherwise, they can plead ignorance about the terms of plans. Requiring debtors' signatures also protects attorneys.

Comment BK-2014-0001-0084—Ryan W. Johnson (Clerk of Court, Bankr. N.D. W.Va.): The debtor's signature is required to give the plan evidentiary effect. Bankruptcy clerk's offices may be required to compare the signature page with Parts 3.2 and 3.4, and delay proceedings if the debtor's signature is required for evidentiary purposes.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): All debtors should sign the plan.

Comment BK-2014-0001-0116—Alberta Hultman, on behalf of Michael L. Zevitz, Esq., President, USFN: In order to strengthen the evidentiary weight of the plan, debtors should be require to sign the plan, even when they are represented by counsel.

Comment BK-2014-0001-0117—Lydia S. Meyer (Chapter 13 Trustee, N.D. Ill.): Require all debtors to sign the plan.

Comment BK-2014-0001-0120—Joyce Bradley Babin (Chapter 13 Trustee, E.D. Ark. and W.D. Ark.): Require debtors to sign the plan. Otherwise, the plan lacks evidentiary value, and the attorney is exposed to unnecessary liability.

Comment BK-2014-0001-0125—Sheryl Ith, on behalf of Cooksey, Toolen, Gage, Duffy & Woog: If the debtor can value collateral and avoid liens through the plan, the debtor should be required to sign the plan under penalty of perjury. The debtor (or the debtor's attorney) should also certify that the provisions of the plan do not conflict with the Bankruptcy Code.

Plan Exhibit (Estimated Amount of Trustee Payments)

Comment—BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): The trustee will have to object to confirmation to correct debtors' math. This will delay confirmation.

Comment BK-2014-0001-0042—Mary Beth Ausbrooks (Attorney, Nashville, Tenn.): Delete the exhibit. It is not necessary.

Comment BK-2014-0001-0075—Barbara Foley (Chapter 13 Trustee, W.D. Wash.): I like this very much.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees: The exhibit will cause confusion and discrepancies. The trustee will object to it. Based on experience, the exhibit will be wrong or inconsistent with the body of the plan in a large number of cases.

Comment BK-2014-0001-0093—Glenn Stearns (Chapter 13 Trustee, N.D. Ill.): Add a line to display the total estimated payments from § 2.5 and a warning that this number must equal or exceed the total of lines a through j.

Comment BK-2014-0001-0099—Peter C. Fessenden (Chapter 13 Trustee, D. Me.): Reword and rework this exhibit.

Comment BK-2014-0001-0109—Marie Elaina Massey (Chapter 13 Trustee, S.D. Ga.): This is a huge waste of time. Numbers in chapter 13 plans are always estimates.

Comments on the Amended Rules

General

Comment—BK-2014-0001-0009—Judge Keith Lundin (Bankr. MD. Tenn.): I support the proposed rule amendments. One word of caution: The bankruptcy community has learned from the recent changes to Bankruptcy Rule 3002.1 that even good changes can generate unforeseen opportunities for creditors to increase the cost of bankruptcy by charging debtors for compliance with new rules and forms. The Advisory Committee should address that issue with respect to this next round of rules and forms changes by signaling when rules and forms are designed to facilitate compliance without the services of an attorney.

Comment BK-2014-0001-0009—Judge Keith Lundin (Bankr. MD. Tenn.): I support the Official Form for chapter 13 plans and the accompanying rules.

Comment BK-2014-0001-0033—David Lander (Attorney, St. Louis, Mo.): I urge the Advisory Committee to adopt the proposed changes to the Bankruptcy Rules but to adopt the national plan form as a Director's Form instead of an Official Form.

Comment BK-2014-0001-0043—Nicholas Hahn (Law Clerk, Bankr. D. Haw.): I support adoption of the amended rules.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: The NCBJ submitted extensive comments on the rule amendments published in August 2013. To the extent that the republished rule amendments did not adopt the changes suggested by the NCBJ, we renew and restate those comments.

Comment BK-2014-0001-0082—Henry Hildebrand (Chapter 13 Trustee, M.D. Tenn.): I strongly support the proposed rule amendments that will facilitate the prompt and efficient administration of chapter 13 cases.

Comment BK-2014-0001-0091—Pennsylvania Bar Association: With the exception of the amendment to Rule 3002, we endorse adoption of the rule amendments if the plan form is adopted. The plan form and rule amendments (with the exception of Rule 3002) should be considered as a package.

Comment BK-2014-0001-0094—Ellie Bertwell, on behalf of Aderant CompuLaw: We urge the Advisory Committee to add an introductory note explaining how the rule amendments affect pending cases and proceedings.

Comment BK-2014-0001-0105—Hilary Bonial (Attorney, Dallas, Tex.), on behalf of Buckley Madole, P.C.: We are in favor of amendments to Rules 3002, 2002, 3015, 3007, 3012, 4003, 7001, and 9009, even if a national plan form is not approved. We suggest further clarification for some of the rule amendments.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: The proposed amendments to the Bankruptcy Rules would benefit the system but can be improved.

Comment BK-2014-0001-0116—Alberta Hultman, on behalf of Michael L. Zevitz, Esq., President, USFN: The rule amendments should be considered only in conjunction with adoption of the national chapter 13 plan form. Many creditors and their counsel have understood that the proposed amended rules, which weaken certain existing protections and due process, are in exchange for one consistent national plan form.

Comment BK-2014-0001-0126—Diana L. Erbsen, on behalf of the U.S. Department of Justice: If a national chapter 13 plan form is not adopted, we oppose adoption of the associated rule amendments.

We continue to have concerns about proposed amendments to Rules 3002(a), 4003(d), 5009(d), and 7001(2).

Comment BK-2014-0001-0133—Joelyn Pirkle (Attorney, Georgia): I oppose a mandatory national plan form. I do not oppose the rule changes.

Comment BK-2014-0001-0134—Linh Tran, Quantum3 Group, LLC: If the purpose of the proposed rules is to facilitate the implementation of the national chapter 13 plan form, it does not sense for the form to be adopted unless the proposed rules are also enacted.

Rule 2002

Comment BK-2014-0001-0091—Pennsylvania Bar Association: If the plan form is adopted, we endorse the amendment to this rule.

Rule 3002

Comment BK-2014-0001-0003—Traci Cotton: The time to file a proof of claim should not be shortened to sixty days, which is insufficient time for corporate and institutional creditors. If the bar date is shortened, 90 days would be more appropriate.

Comment BK-2014-0001-0004—Raymond Bell: The bar date should be 90 days instead of 60 days. If the debtor waits fourteen days to file schedules, a 60-day rule would leave only 45 days for creditors to file proofs of claim. Creditors would have to file extension requests.

Comment BK-2014-0001-0005 and BK-2014-0001-0006—Jeanette Gillman: Same as Raymond Bell.

Comment—BK-2014-0001-0009—Judge Keith Lundin (Bankr. MD. Tenn.): Some creditors will complain that the new timetables are too strict for the filing of claims. But this will lead to increased speed and accuracy of distributions in chapter 13 cases.

Comment BK-2014-0001-0010—Laurie Williams (Chapter 13 Trustee, D. Kan.): In some cases this gives the mortgage creditors even longer than the current requirement to meaningfully comply. Plan feasibility and distribution cannot be determined until all required documents are filed. The rule change will cause confirmation delay and will delay commencement of distributions to all creditors.

Comment BK-2014-0001-0013—Judge Joe Lee (Bankr. E.D. Ky.): Proposed subdivision (c)(6) is ambiguous. Practitioners and even some courts could reasonably misinterpret the amendment to settle the long-running dispute over whether bankruptcy courts may allow late-filed, tardily scheduled claims. The Committee Note is not clear on this point. I question the value of the amendment. The Advisory Committee could clarify the scope of (c)(6) by altering the Committee Note as follows:

> Subdivision (c)(6) is amended to ~~expand~~extend to all creditors, in the following limited circumstance, the exception to the bar date for cases in which a foreign 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). This amendment is not intended to address cases in which an incomplete list is timely filed. . .

. [Alternatively: This amendment is not intended to address cases in which individual creditors are omitted from a timely filed list or schedule.]

Comment BK-2014-0001-0044—Peter Greco: I oppose the proposal to shorten the time to file a proof of claim. In the alternative, the two-stage filing deadline in 3002(c)(7) for mortgage creditors should be made available to student loan creditors.

Comment BK-2014-0001-0061—Judge Marvin Isgur (Bankr. S.D. Tex.): See general comment on plan form.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: Regarding proposed Rule 3002(c)(6), the NCBJ believes that the standard in the current rule that applies to foreign creditors only is an appropriate standard for extension of the bar date and perceives no reason why creditors with foreign addresses should receive preferential treatment.

Comment BK-2014-0001-0076—Frederick Schindler (Office of the Chief Counsel, IRS): We continue to be concerned about the amendment to Rule 3002(a). The revised Committee Note does not address the concern that the new requirement in the first sentence of Rule 3002(a), mandating that secured creditors must file proofs of claim for the claim to be allowed, could have the effect of avoiding setoff rights when the secured creditor does not file a proof of claim. The problem is not that the final sentence of rule 3002(a) will affect setoff rights notwithstanding section 553, but rather that the first sentence will.

We recommend that the following sentence be added to the end of section 3002(a): "The failure of an entity to file a proof of claim does not waive a right of setoff if the debtor asserts a claim against that entity."

Comment BK-2014-0001-0077—Mary B. Grossman (Chapter 13 Trustee, E.D. Wisc.): While I am generally in favor of shortening the time for filing claims in Rule 3002(c), 60 days from the date of entry of the order for relief is too short, especially for small business or individual creditors. I recommend changing the deadline to the later of 60 days after the order for relief or 14 days after the § 341 meeting.

Comment BK-2014-0001-0082—Henry Hildebrand (Chapter 13 Trustee, M.D. Tenn.): Requiring secured creditors to participate in a process that, of necessity, operates only if all affected parties participate is a positive step. The deadline for the filing of claims in Rule 3002(c) will assist trustees in determining the feasibility of plans before they are presented to the court for confirmation. This is perhaps the most important rule you are considering and I urge its adoption, even if you elect to defer or reject the proposed plan form.

Comment BK-2014-0001-0091—Pennsylvania Bar Association: We oppose the amendment to Rule 3002. The shorter claims bar date will deprive creditors of a meaningful opportunity to protect their interests by filing a timely proof of claim. We do not think this amendment is integral to the national plan form.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees:

- In some cases, the amendment to Rule 3002(c) would give mortgage creditors more time than they have now to file a proof of claim with all supporting documents.

Comment BK-2014-0001-0093—Glenn Stearns (Chapter 13 Trustee, N.D. Ill.): I strongly favor the amendment to Rule 3002(a).

Comment BK-2014-0001-0094—Ellie Bertwell, on behalf of Aderant CompuLaw: The rule amendment does not address the deadline for proofs of claim when an involuntary chapter 11 case has been converted to a chapter 7 case. We recommend the following language: "In an involuntary chapter 11 case converted to chapter 7, a proof of claim is timely filed if it is filed no later than [60 or 90] days after the order for conversion is entered."

Rule 3002(c)(7)(A) should also be clarified. It could be revised to state, "[a] proof of claim filed by the holder of a claim that is secured by a security interest in the debtor's principal residence is timely filed if . . . the proof of claim . . . is filed not later than 60 days after the order for relief is entered in a voluntary case, and 90 days after the order for relief is entered in an involuntary chapter 7 case."

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): Because the proposed amendment to Rule 3002(a) states that failure to file a claim does not modify rights under any lien, the proposed amendment accomplishes nothing.

The proposed amendment to Rule 3002(c), changing the deadline to file a proof of claim to 60 days, may be beneficial. However, the proposal to give additional time to file attachments makes this improvement worthless, and in fact, is worse than the current practice.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: Rule 3002(a) should also say that a "lien is not void due only to the failure of any entity to file a proof of claim or to file such proof of claim in the time prescribed under these Rules." Whether a claim is not filed at all or is disallowed because it is late has no relationship to the merits of the lien.

We remain concerned about the reduction under proposed Rule 3002(c) in the time for filing claims in chapter 7 cases. While this provision does not apply to governmental claims, we are concerned about the time periods applicable to our citizens when they seek to file claims.

The provision in proposed Rule 3002(c)(6) for extending the date to file claims by 60 days does not adequately cover the potential scenarios. It should provide that in situations where the debtor (i) fails to file the list, (ii) omits a creditor(s) from the list, or (iii) lists the creditor(s) with an incorrect address (as well as where the mailing goes to a foreign address), the court should be allowed to extend the time to file.

Comment BK-2014-0001-0116— Alberta Hultman, on behalf of Michael L. Zevitz, Esq., President, USFN:

The change to Rule 3002(a) will impose increased costs for little benefit in chapter 7 cases. Creditors will be forced to file proofs of claim in all chapter 7 cases to preserve their

ability to assert an allowed claim in the case, in order to share in any potential dividends from the bankruptcy estate, or credit bid at a § 363 sale of property secured by their lien.

In Rule 3002(c), the 60 day bar date is too short. We oppose the bifurcated bar date, because a creditor should not file a proof of claim without having the supporting documents.

Comment BK-2014-0001-0123—Raymond Obuchowski, on behalf of the National Association of Bankruptcy Trustees:

As we commented upon initial publication, we support the proposed change to Rule 3002(a) to require secured creditors to file proofs of claim.

We also continue to support a shorter time for filing proofs of claim. We are concerned, however, that proposed Rule 3002(c) will conflict with the claims filing process in chapter 7, where most cases are not noticed for filing of claims until the trustee files a notice of assets, as provided in Rule 2002(e). We suggest changing the proposed amendment to reference Rule 2002(e)

Comment BK-2014-0001-0131—David S. Yen (Attorney, Chicago): Proposed Rule 3002(c)(6) should be more limited. Allowing a late claim is very disruptive.

Comment BK-2014-0001-0133—Joelyn Pirkle (Attorney, Georgia): I oppose a mandatory national plan form but do not oppose moving the claims deadline closer to confirmation.

Comment BK-2014-0001-0134—Linh Tran, Quantum3 Group, LLC: The time to file proofs of claim under proposed Rule 3002(c) is too short. There is still an average delay of more than 4 days from the bankruptcy petition date before the respective bankruptcy court electronically notifies the creditor of the bankruptcy filing. When paper notices are mailed by the bankruptcy court, the delay is even longer, at an average of over 19 days. Even though Proposed Rule 3002 permits a creditor to request extension of the claims bar date, the expense of filing a request for extension usually exceeds the potential chapter 13 plan payout for a general unsecured claim.

If the goal of the amendment is to reduce the amount of time from petition date to the deadline to file a claim, then a 90-day period for filing would better account for the time creditors to receive and process the petition notices.

Comment BK-2014-0001-0136—William Heitkamp (Chapter 13 Trustee, S.D. Tex.): The 60-day claims filing period in proposed Rule 3002(c) is too short.

Rule 3007

Comment BK-2014-0001-0014—Judge Austin Carter (Bankr. M.D. Ga.): I applaud the effort to clarify the rules for service of claim objections. However, the new proposed rule does not address the scenario in chapter 11 cases where a party in interest objects to a claim which is deemed allowed under Rule 3003(b)(1). In that instance, there would be no proof of claim on file, so subsection (a)(1) of the proposed Rule 3007 (requiring service on the "notice address" reflected on the proof of claim) could not be followed.

Include in the new Rule 3007 direction on how to serve an objection to a claim which is deemed allowed under Rule 3003, perhaps by serving the creditor at the address listed in the latest version of the debtor's schedules, and then also have proposed subdivisions (a)(1)(A) and (B) apply with respect to the federal government and insured depositories.

Comment BK-2014-0001-0082—Henry Hildebrand (Chapter 13 Trustee, M.D. Tenn.): I would encourage the Committee to consider the impact of proposed Rule 3007. Certified mailing to an insured depository institution imposes an unnecessary and significant cost on trustees, debtors, and their counsel when the creditor itself has identified the address to which notices can be sent on the face of the proof of claim form. Further, the rules should be modified to reflect use of electronic notice and service through the CM/ECF system.

Comment BK-2014-0001-0091—Pennsylvania Bar Association: If the plan form is adopted, we endorse the amendment to this rule.

Comment BK-2014-0001-0094—Ellie Bertwell, on behalf of Aderant CompuLaw: Proposed Rule 3007(a) requires notice of the deadline to request a hearing. However, when a local bankruptcy rule provides for notice and opportunity for hearing, the time to request a hearing generally is computed from the service or filing of the objection. Thus, it would not be useful or practical to compute the notice deadline from the "deadline for claimant to request a hearing," as proposed. We suggest the following changes: "An objection to the allowance of a claim and a notice of objection . . . shall be filed and served at least 30 days before any scheduled hearing ~~or any deadline for the claimant to request a hearing~~, unless a local rule authorizes an objecting party to provide notice and opportunity for hearing on the objection."

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): The proposed amendment to Rule 3007 is not only unnecessary, but damaging. Each court has significant experience with claims objections and what is best for their district.

Comment BK-2014-0001-0106—Stephanie Edmondson (Clerk of Court, Bankr. E.D.N.C.): Requiring Rule 7004 service for some but not all entities may be difficult for court staff to recall when reviewing proper service of objections.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: Proposed Rule 3007(a) provides for service upon the United States in accordance with the requirements of Rule 7004(b)(4) and (5), but ignores the similar provisions for giving notice to states and municipalities set out in Rule 7004(b)(6). The same considerations that warrant more specific notice for the United States also apply to other governmental entities and are not overly difficult to comply with.

Comment BK-2014-0001-0136—William Heitkamp (Chapter 13 Trustee, S.D. Tex.): Rule 3007(a)(1) should incorporate by reference Rule 2002(g), which specifies persons deemed to be designated to receive notice.

Comment BK-2014-0001-0050—Dan Melchi (Attorney, Georgia), on behalf of Lueder, Larkin & Hunter, LLC: The proposed amendments to Rules 3012 and 3015 are unconstitutional. In combination with § 3.2 of the plan form, they violate the Fifth Amendment by depriving creditors of due process and by taking their property without compensation. See general comments on plan form.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: The NCBJ gives qualified support to the changes in Rule 3012. The NCBJ continues to support the change in the rule that would permit valuation of secured claims to be combined with objections to the claims themselves and continues to take no position on the proposal to permit secured claims to be valued as part of the plan confirmation process. This is a very significant rule in bankruptcy practice and the proposed changes are substantial. Consequently, the NCBJ renews all of its other prior comments that were not adopted: (1) the need for the rule to address the treatment of claims in chapter 11 cases; and (2) the ambiguity in the rule regarding priority claims and the potential overexpansion of procedural vehicles for objecting to priority claims.

The NCBJ believes that the requirement that a motion or objection seeking a determination of the amount of a secured claim of a governmental unit be made after the expiration of the governmental unit's deadline for filing a claim is misguided.

The NCBJ suggests that Rule 3012 be revised to require service of a plan that provides for a determination of the amount of an allowed secured claim on either the person entitled to receive notice of a claims objection under Rule 3007 or any person who, on behalf of the affected creditor, has requested notices under Rule 2002, and on both if both are known. If neither person exists, Rule 7004 service should be required.

Comment BK-2014-0001-0091—Pennsylvania Bar Association: If the plan form is adopted, we endorse the amendment to this rule.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): The proposed amendments to Rule 3012 are a mistake. Even though I represent debtors, I can see that this has a potential for due process problems.

Comment BK-2014-0001-0106—Stephanie Edmondson (Clerk of Court, Bankr. E.D.N.C.): Allowing determination of the amount of a secured claim through a plan instead of by motion will mean that courts will lose statistical credit for the motions that would have been filed.

Resolution of an objection would require the filing of an amended plan, increasing costs for debtors.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys:

We have several questions about the proposed language in Rule 3012(b).

In proposed Rule 3012(c), determinations of the "amount" of a secured claim may only be made after the government has filed its proof of claim or the time to do so has expired. What

is the "amount" that is being determined? Is it the amount of the overall claim or the amount that can be deemed to be "secured" under § 506(a)?

Is the government still forced to object to the plan if the debtor uses different claim amounts or asset valuations than those the government believes are accurate and that it intends to eventually include in a proof of claim?

Comment BK-2014-0001-0131—David S. Yen (Attorney, Chicago): Proposed Rule 3012(b) is an improvement over the version published previously. I adhere to the concerns stated in my comments of February 2014.

Comment BK-2014-0001-0136—William Heitkamp (Chapter 13 Trustee, S.D. Tex.): Governmental units should not be excluded in Rule 3012(c).

Rules 3015 and 3015.1

General Comments

Comment BK-2016-0001-0003 – **Jeanette Hines** – Sees no problem with the proposal.

Comment BK-2016-0001-0004 – **Ryan W. Johnson** (Clerk, Bankr. N.D.W.Va.) – By allowing various types of relief to be sought in the plan, the rules may create statistical coding problems for the clerk's office.

Comment BK-2016-0001-0006 – **Judge Marvin Isgur** (Bankr. S.D. Tex.) – Strongly supports adoption of the two rules. They will enhance uniformity while also allowing flexibility in each district.

Comment BK-2016-0001-0009 – **Bankruptcy Judges Roger Efremsky and Marvin Isgu**r (joint prepared testimony) – The rules should be adopted. The adoption of a mandatory national plan would cause problems, but the adoption of Rule 3015 and 3015.1 provides a compromise that reduces the confusion caused by multiple plans within a single district.

Comment BK-2016-0001-0011 – **K. Michael Fitzgerald** (chapter 13 trustee) – The proposed rules should be adopted. They represent a creative and well-conceived resolution of the debate over a national plan form. They allow districts to continue to use conforming plans that are already working well.

Comment BK-2016-0001-0012 – **James "Ike" Shulman** (prepared testimony) – Opposes Rule 3015.1 because it permits local plans that curtail debtors' rights or impose unjustified burdens on debtors or debtors' attorneys. The national plan form should be adopted and made mandatory instead. It provides a better balance between debtors and creditors.

Comment BK-2016-0001-0013 – **Norma Hammes** (prepared testimony) – Opposes an opt-out provision for local plan forms. A review of local plans shows that many required provisions and procedures substantially abridge debtors' bankruptcy rights and enlarge creditors'

rights in violation of 28 U.S.C. § 2075 and Rule 9029. Although debtors have a statutory right to propose a plan, in some districts only certain provisions are allowed, and plans with any nonstandard provisions won't be confirmed. Model plans should just provide structure for the provisions, not mandate content.

Comment BK-2016-0001-0014 – Jenny L. Doling (prepared testimony) – Opposes Rule 3015.1 because even districts with a single plan may have different rules regarding its implementation. Orders confirming plans take a debtor's estimate of the percentage payout to unsecured creditors and convert it into a fixed amount over a fixed term. Nonstandard provisions are stricken by the chapter 13 trustee. There should be a remedy to enforce compliance with the requirements of Rule 3015.1.

Comment BK-2016-0001-0015 – National Conference of Bankruptcy Judges – Supports proposed Rules 3015 and 3015.1 if certain changes are made.

Comment BK-2016-0001-0017 – Bankruptcy Judge Robert F. Grant (on behalf of N.D. Ind. Bankruptcy Judges) – Unanimously oppose Rules 3015(c) and (e) and Rule 3015.1. Mandating the use of a form chapter 13 plan, whether national or local, exceeds rulemaking authority.

Comment BK-2016-0001-0019 – Marlene Martel (Ford Motor Credit Company) – Opt-out proposal is a reasonable compromise.

Comment BK-2016-0001-0020 – Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys) – The rules would give an official imprimatur to local plans, which in some cases do not allow debtors to include provisions that are consistent with the Bankruptcy Code. The right of the debtor to propose his or her plan as desired must be preserved. The opt-out proposal should be rejected.

Rule 3015(c)

Comment BK-2016-0001-0015 – National Conference of Bankruptcy Judges – Rule 3015(c) (incorrectly placed nonstandard provisions are void) should be deleted because it exceeds rulemaking authority and is inconsistent with the Supreme Court's *Espinosa* decision.

Comment BK-2016-0001-0017 – Bankruptcy Judge Robert F. Grant (on behalf of N.D. Ind. Bankruptcy Judges) – Unanimously oppose Rule 3015(c). Mandating the use of a form chapter 13 plan, whether national or local, exceeds rulemaking authority. These rules attempt to override § 1325 by imposing additional confirmation requirements.

Rule 3015(d)

Comment BK-2016-0001-0004 – Ryan W. Johnson (Clerk, Bankr. N.D.W.Va.) – Plans are mailed to creditors, not served. Rule 3015(d) should therefore direct the debtor to mail the plan if the clerk's office does not.

Comment BK-2016-0001-0007 – **Shmuel Klein –** Rule 3015(d) should allow notice by ECF if creditor has so elected.

Comment BK-2016-0001-0008 – **Eva Roeber** (chair, Bankruptcy Noticing Working Group) – Rule 3015(d) should impose the cost of sending the plan to parties on the debtor, not the court. Debtors should be allowed to send a plan summary rather than the entire plan, so long as any nonstandard provisions are pointed out. Substitute "give notice of" for "serve" because formal service is not generally required.

Rule 3015(f)

Comment BK-2016-0001-0005 – **Thomas Dickenson –** Rule 3015(f) is problematic. The requirement that an objection to confirmation be made at least 7 days before the 341 meeting will be difficult for many creditors to satisfy. Because the 341 meeting can be held as early as 21 days after the order for relief, this rule could require a creditor to object within 14 days after the case commences. That time frame is unreasonable.

Comment BK-2016-0001-0007 – **Shmuel Klein –** The time allowed under Rule 3015(f) for filing an objection is too short. It should extend until 14 days after the plan is filed.

Comment BK-2016-0001-0010 – **Ellie Bertwell** (Aderant CompuLaw) – Supports Rule 3015(f) now that it is qualified by "unless the court orders otherwise." With that change from an earlier version, the rule is clear that local bankruptcy courts may set a different deadline.

Rule 3015(g)(1)

Comment BK-2016-0001-0007 – **Shmuel Klein –** Rule 3015(g)(1) should be reworded as follows: "The secured claim amount stated in the confirmed plan 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".

Comment BK-2016-0001-0015 – **National Conference of Bankruptcy Judges** – Rule 3015(g)(1) should be deleted because it is not a procedural rule.

Comment BK-2016-0001-0016 – **Michael Zevitz** (USFN) – Rule 3015(g)(1) may result in a flood of objections by creditors based solely on minor discrepancies in arrearage amounts. The rule should state that the proof of claim controls as to arrearage amounts.

Rule 3015(g)(2)

Comment BK-2016-0001-0004 – **Ryan W. Johnson** (Clerk, Bankr. N.D.W.Va.) – It is unclear whether a request for relief from the stay in a plan regarding surrendered collateral requires a motion and the payment of a filing fee. Also the proposed rules may create procedures regarding relief from the stay that are inconsistent with the statutory requirements of § 362(d) and (e).

Comment BK-2016-0001-0015 – National Conference of Bankruptcy Judges – Rule (g)(2) should be deleted because it is unnecessary. Plan provisions do not request relief. No rule is necessary to give effect to the plan provision if the plan is confirmed.

Rule 3015(h)

Comment BK-2016-0001-0008 – Eva Roeber (chair, Bankruptcy Noticing Working Group) – Rule 3015(h) should impose the cost of sending the proposed modification or summary to parties on the debtor, not the court.

Rule 3015.1 – General Comments

Comment BK-2016-0001-0020 – Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys) – Districts should have until June 1, 2018 to adopt a local plan form if they opt out. The Committee Notes to the rules should include various reminders: local plan forms should be short and easy to read; they should not include statements of the law or excessive notices to creditors; they should not include worksheets that impose a formula for calculating disposable income and the best interest of creditors test; they must be reviewed for compliance with §§ 1321, 1322, and 1325(a) and (b).

Rule 3015.1(a)

Comment BK-2016-0001-0020 – Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys) – Rule 3015.1(a) should specify requirements for the notice and comment procedure for adopting a local plan form and should require notice and comment for making a decision to opt out. Rule 9029 should apply. The Committee Note should provide that there is an expectation that members of the consumer bankruptcy bar will be solicited to participate in the local form development process.

Rule 3015.1(c)

Comment BK-2016-0001-0019 – Marlene Martel (Ford Motor Credit Company) – Rule 3015.1(c) should require a local form to have a checkbox to indicate an amended plan and which sections have been changed.

Rule 3015.1(c)(2)

Comment BK-2016-0001-0018 – Steven Thomas (Kay Casto & Chaney PLLC) – Rules should specify that plans with a provision limiting the amount of a secured claim must be served on the affected creditor in the manner provided by Rule 7004.

Rule 3015.1(c)(3)

Comment BK-2016-0001-0007 – Shmuel Klein – Rule 3015.1(c)(3) should be stricken because plans frequently reclassify secured claims as unsecured.

Rule 3015.1(d)

Comment BK-2016-0001-0007 – Shmuel Klein – Rule 3015.1(d) should have additional paragraphs to allow for the separate treatment of student loans and to state that creditors are subject to Code § 524(i).

Comment BK-2016-0001-0019 – Marlene Martel (Ford Motor Credit Company) – Rule 3015.1(d) should require a separate paragraph for the treatment of claims secured by personal property, for the treatment of nonpriority unsecured claims, and for the treatment of executory contracts and unexpired leases.

Comment BK-2016-0001-0020 – Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys) – Rule 3015.1(d) should include as a mandatory plan provision the debtor's right to seek a determination of the amount of a secured claim and to avoid a lien under § 522(f) in the plan. It should also provide the debtor options for specifying the dividend on general unsecured claims and all of the revesting options permitted by § 1322(b)(9).

Rule 3015.1(d)(2)

Comment BK-2016-0001-0015 – National Conference of Bankruptcy Judges – Rule 3015.1(d)(2) should be removed because there is no reason for this issue to be provided for separately.

Rule 3015.1(d)(3)

Comment BK-2016-0001-0015 – National Conference of Bankruptcy Judges – Rule 3015.1(d)(3) should be removed because there is no reason for this issue to be provided for separately.

Rule 3015.1(d)(4)

Comment BK-2016-0001-0004 – Ryan W. Johnson (Clerk, Bankr. N.D.W.Va.) – It is unclear whether a request for relief from the stay in a plan regarding surrendered collateral requires a motion and the payment of a filing fee. Also the proposed rules may create procedures regarding relief from the stay that are inconsistent with the statutory requirements of § 362(d) and (e).

Comment BK-2016-0001-0015 – National Conference of Bankruptcy Judges – The requirement that a local plan have a provision for requesting relief from the stay for surrendered collateral should be deleted; it exceeds rulemaking authority.

Comment BK-2016-0001-0019 – Marlene Martel (Ford Motor Credit Company) – Rule 3015.1(d)(4) should specify the statutory sections under which the stay may be terminated.

Comment BK-2016-0001-0020 – **Norma Hammes (on behalf of National Association of Consumer Bankruptcy Attorneys) –** Rule 3015.1(d)(5) [sic] should not require that a debtor request that the stay be terminated if collateral is surrendered. This requirement is not imposed by the Code. Section 362(e) and Rule 7004 will be triggered.

Rule 3015.1(e)

Comment BK-2016-0001-0012 – **James "Ike" Shulman** (prepared testimony) – If Rule 3015.1 is adopted, it should contain language providing that the inclusion of certain nonstandard provisions should not cause undue delay of confirmation.

Rule 3015.1(e)(1)

Comment BK-2016-0001-0015 – **National Conference of Bankruptcy Judges** – Rule 3015.1(e)(1) should be deleted because it exceeds rulemaking authority.

Comment BK-2016-0001-0017 – **Bankruptcy Judge Robert F. Grant (on behalf of N.D. Ind. Bankruptcy Judges)** – Rule 3015(e)(1) is contrary to § 1327 and *United Student Aid Funds, Inc. v. Espinosa* because it declares certain plan provisions ineffective.

Rule 4003

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: Regarding Rule 4003, the NCBJ expresses the same concern regarding Rule 7004 service as in its comment to Rule 3012.

Comment BK-2014-0001-0106—Stephanie Edmondson (Clerk of Court, Bankr. E.D.N.C.): Allowing avoidance of liens impairing exemptions through a plan under Rule 4003(d) instead of by motion will mean that courts will lose statistical credit for the motions that would have been filed.

Comment BK-2014-0001-0126—Diana L. Erbsen, on behalf of the U.S. Department of Justice: The Department's concerns about the proposed amendment to Rule 4003(d) are similar to our concerns about amended Rule 5009(d). The proposed amendment does not provide adequate notice.

Clarify that lien avoidance is limited to judicial liens and non-purchase money security interests in limited kinds of property, as set forth in Code § 522(f).

We recommend eliminating the language allowing a plan to extinguish a lien encumbering exempt property. In the alternative, include a government exception.

Comment BK-2014-0001-0076—Frederick Schindler (Office of the Chief Counsel, IRS): As explained above, § 3.2 of proposed Official Form 113 provides: "The holder of any claim listed below as having value in the column headed Amount of secured claim will retain the lien until the earlier of . . . discharge under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor." Proposed Rule 5009(d), in combination with proposed § 3.2, therefore requires that the lien be released by the creditor, and that the court can enter an order to that effect. Assuming that debtors and courts follow the rule and the plan form, there may be no problem with the rule. But we note that debtors and courts may not understand the interaction between the plan and the rule, resulting in orders determining that tax liens were released when in fact they were not released by the IRS, as when the underlying tax was nondischargeable. Even assuming the rule works as intended, we question the usefulness of a court order that merely finds that a creditor had already released its lien.

We recommend that the amendment be dropped altogether, or that the Committee Notes be clarified to make clear the relation to the provision of the plan form.

Comment BK-2014-0001-0091—Pennsylvania Bar Association: If the plan form is adopted, we endorse the amendment to this rule.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): The idea of allowing a lien to be avoided or "stripped" in a plan is fine, but this would effectively require an additional motion with very bad timing. The motion to confirm that a lien is "satisfied" could become effectively mandatory. However, it runs up against the practice in some districts (including the Eastern District of Pennsylvania) of issuing most chapter 13 discharges simultaneously with the case closing orders. Because a wholly unsecured second mortgage is not deemed to be "stripped" until the discharge issues, this would effectively mandate yet another motion, at least one month prior to closing, to hold open the case to allow the motion to confirm satisfaction.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: We do not oppose the concept of this provision, but we believe it would be more appropriately brought as an adversary proceeding to ensure better notice.

Comment BK-2014-0001-0126—Diana L. Erbsen, on behalf of the U.S. Department of Justice: A "release" of a lien extinguishes a statutory lien from all property, including property that is not part of the estate. It does not simply discharge the lien from certain property. Before a declaration that a secured claim has been satisfied and a lien released, we believe that debtors should not be entitled to make such a request by motion. An adversary proceeding is essential to protect creditor rights.

This proposal potentially conflicts with non-bankruptcy law, and it may be invalid for federal tax liens and other liens of the United States. In addition, the tax exception to the Declaratory Judgement Act prohibits declaratory judgments regarding federal taxes.

Rule 7001

Comment BK-2014-0001-0091—Pennsylvania Bar Association: If the plan form is adopted, we endorse the amendment to this rule.

Rule 9009

Comment BK-2014-0001-0022—Judge Robert Grant (Bankr. N.D. Ind.), on behalf of the bankruptcy judges of the N.D. Ind.: See comments under Rule 3015.

Comment BK-2014-0001-0045—Keith Rucinski (Chapter 13 Trustee, N.D. Ohio): Proposed Rule 9009 should be altered to allow local courts to remove parts of the plan form that do not apply in their districts.

Comment BK-2014-0001-0046—Judge Terrence L Michael (Bankr. N.D. Okla.): I oppose amended Rule 9009.

Comment BK-2014-0001-0062—Judge Robert E. Nugent (Bankr. D. Kan.), on behalf of the National Conference of Bankruptcy Judges: The NCBJ continues to oppose the amendment to Rule 9009. If the requirement of a rigid adherence to the Official Forms is driven by the expectation that the national chapter 13 plan form will be adopted, the restrictions should be stated in Rule 3015 and limited to modifications of the national chapter 13 plan form.

Comment BK-2014-0001-0083—Pam Bassel (Chapter 13 Trustee, N.D. Tex.): I oppose the amendment to Rule 9009. Leave current Rule 9009 as it is.

Comment BK-2014-0001-0088—Scott Ford (Clerk of Court, N.D. Ala.), on behalf of the Bankruptcy Clerks Advisory Group: This rule amendment would have an impact on districts where forms are modified to add language at the request of the U.S. Trustee, or language referring to local rules or to deadlines that affect parties' rights.

There is a concern that clerks' offices will be tasked with quality control to check for compliance with this rule.

Comment BK-2014-0001-0089—Ray Hendren (Chapter 13 Trustee, W.D. Tex.): Do not revise Rule 9009.

Comment BK-2014-0001-0091—Pennsylvania Bar Association: If the plan form is adopted, we endorse the amendment to this rule.

Comment BK-2014-0001-0092—Jon Waage, on behalf of the National Association of Chapter Thirteen Trustees: Amend Rule 9009 to allow local bankruptcy courts and districts to maintain the order of presenting information but to allow deletion from a form of options that are not available in a jurisdiction.

Comment BK-2014-0001-0102—Michael W. Gallagher (Attorney, East Norriton, Pa.): The current forms system, which mandates substantial compliance, has been effective and should be retained.

Comment BK-2014-0001-0113—James C. Jacobsen, on behalf of the States' Association of Bankruptcy Attorneys: We understand a suggestion has been made to allow retention of "conforming" district plans (with only a single plan per district). Although we continue to believe strongly that the goal should be to arrive at a single national plan form with adequate provision for some local options, we do agree that the new compromise proposal is a step in the right direction.

Comment BK-2014-0001-0123—Raymond Obuchowski, on behalf of the National Association of Bankruptcy Trustees: NABT supports the concept of consistency in Official Forms and their use without modification. We support the NCBJ's comments regarding the proposed changes to Rule 9009, except to the extent directed to the issue of a national form for chapter 13 plans, on which NABT takes no position.

Comment BK-2014-0001-0124—O. Byron Meredith III (Chapter 13 Trustee, S.D. Ga.): Because I oppose the mandatory plan form, I oppose the amendment to Rule 9009.

Comment BK-2014-0001-0127—Lonnie D. Eck (Chapter 13 Trustee, N.D. Ga.): I oppose the proposed national plan form and changes to Rule 9009.

TAB 5C

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Meeting of the Advisory Committee on Bankruptcy Rules
November 14, 2016, Washington D.C. - DRAFT

The following members attended the meeting:

Circuit Judge Sandra Segal Ikuta, Chair
Circuit Judge Thomas L. Ambro
District Judge Pamela Pepper
District Judge Amul R. Thapar
Bankruptcy Judge Stuart M. Bernstein
Bankruptcy Judge Dennis Dow
Bankruptcy Judge A. Benjamin Goldgar
Bankruptcy Judge Melvin S. Hoffman
Diana Erbsen, Esquire
Jeffrey Hartley, Esquire
Richardo I. Kilpatrick, Esquire
Thomas Moers Mayer, Esquire
Jill Michaux, Esquire
Professor David Skeel

The following persons also attended the meeting:

Professor S. Elizabeth Gibson, reporter
Professor Michelle Harner, associate reporter
District Judge David G. Campbell, Chair of the Committee on Rules of Practice and Procedure (the Standing Committee)
Circuit Judge Susan P. Graber, liaison from the Standing Committee
Rebecca Womeldorf, Secretary, Standing Committee and Rules Committee Officer
Bankruptcy Judge Erithe Smith
Bankruptcy Judge Eugene R. Wedoff
Bankruptcy Judge David Sims Crawford
Ramona D. Elliot, Esq., Deputy Director/General Counsel, Executive Office for U.S. Trustee
Kenneth Gardner, Clerk, U.S. Bankruptcy Court for the District of Colorado
Molly Johnson, Senior Research Associate, Federal Judicial Center
Bridget Healy, Esq., Administrative Office
Scott Myers, Esq., Administrative Office
Jon M. Waage, Chapter 13 Trustee, Middle District of Florida
Nancy Whaley, National Association of Chapter 13 Trustees

I. Introductions

Judge Sandra Ikuta welcomed the new members to the Advisory Committee on Bankruptcy Rules (the Committee). She also introduced Judge David Campbell, the new chair of the Standing Committee, and Judge Susan Graber, the new liaison from the Standing Committee.

II. Minutes from April 2016 Meeting

The minutes from the minutes of the April 2016 meeting of the Bankruptcy Rules Committee were approved.

III. Report from the June 2016 meeting of the Standing Committee

Professor Michelle Harner reported that all of the Committee's action items were approved. In addition, there were two information items reported, including several technical changes to the bankruptcy forms.

IV. Report on the November 2016 Meeting of the Advisory Committee on Civil Rules

Judge Benjamin Goldgar reported on the items discussed at the Civil Rules Committee meeting that were of interest to the Committee. First, the Civil Rules Committee is studying the method of serving subpoenas (service by mail versus in person). Second, the Civil Rules Committee is considering possible changes to Rule 30(b)(6) for depositions of corporate representatives. Third, the Civil Rules Committee decided not to go forward at this time with possible amendments to Rule 5.2, although the amendments may be reconsidered. The Civil Rules Committee did not find the same issues with personal identifiers in civil cases as may occur in bankruptcy cases. The other rules committees have also considered similar amendments, and each committee decided not to proceed. Judge Goldgar will monitor developments on proposed amendments to Civil Rules 45(b)(1) and 30(b)(5).

V. Report on the October 2016 Meeting of the Advisory Committee on Appellate Rules

Judge Pamela Pepper advised that the majority of the discussion at the Appellate Rules Committee meeting was unrelated to bankruptcy. Many of the potential amendments under consideration relate to electronic filing and service. The Appellate Rules Committee is continuing to discuss the proper language for bonds and security instruments in several rules. Also, they discussed potential changes to the civil class action rules and whether any Appellate Rule amendments were needed as a result. The Appellate Rules Committee discussed a suggestion to require additional disclosures in bankruptcy appeals, and asked that the Committee work with the Appellate Rules Committee on the issue. The Committee agreed to work with the Appellate Rules Committee, and the matter was assigned to the Privacy, Public Access, and Appeals Subcommittee.

VI. Report on the June 2016 Meeting of the Committee on the Administration of the Bankruptcy System

Judge Erithe Smith reported that the Bankruptcy Administration Committee considered several issues related to fees at the meeting, concurring with fee proposals submitted by the Committee on Court Administration and Case Management (CACM). Also, the judgeship vacancy pilot project is moving forward. Under the project, one judge has been sworn in to the District of South Dakota and will sit in the Middle District of Florida for five years, and another judge has been sworn in to the Northern District of Iowa and will sit in the Eastern District of Michigan. In addition, the horizontal coordination pilot project was approved by the Judicial Conference earlier this year, and the Bankruptcy Administration Committee is working on finding districts to participate in the project. Judge Stuart Bernstein added that there is concern regarding temporary judgeships, as most temporary judgeship positions will expire in May 2017 without action from Congress.

Judge Ikuta advised of the letter from the Committee to the Bankruptcy Administration Committee regarding the suggestion for a Notice of Change of Address form, and Judge

Smith advised that it will be considered at the Bankruptcy Administration Committee's December 2016 meeting.

VII. Business Subcommittee Report

Professor Harner provided the report of the subcommittee's review of noticing issues. She explained that the review focuses on formal noticing suggestions submitted to the Committee over the years, with several concerning the mode of noticing and ways to better utilize technology, electronic filing, and service. Although research is ongoing, Professor Harner noted that the many of the materials reviewed by the subcommittee suggest inefficiencies in the system and the high burden and cost associated with noticing under the Bankruptcy Rules. With the proposed amendments to Rule 5005 there is a movement toward default electronic filing, but this does not include noticing. The subcommittee generally agreed that permitting broader use of electronic noticing and service may be warranted, but that it needed to analyze further certain issues relating to non-individual parties who are not represented in bankruptcy cases.

The Committee discussed various issues relating to the suggestions regarding electronic noticing and service. One member advised that some creditors would prefer to receive notices by mail because they lack the ability to process everything electronically, or they have systems set up to accept bankruptcy notices that are not electronic. The Committee discussed the potential value to phasing in any changes to the mode of noticing and service through an opt-in mechanism. The Committee also noted the need to consider the potential impact of Civil Rule 5(b).

Professor Harner then explained two other issues identified in the noticing project. First, a few suggestions raise issues with the special service of process requirements for certain entities under Rules 7004(b)(3) and (h). The Committee discussed the need for, and challenges to, any amendments to the service of process rules. It also recognized the need to coordinate with other rules committees and other groups within the bankruptcy community before proposing any changes. Second, the noticing project considered certain issues involving claims objections. The proposed amendment to Rule 3007(a) clarifies that service of an objection may be made upon the creditor by first-class mail at the address set forth in the proof of claim. There is a question as to whether this procedure should be extended to claims for which no proof of claim is required.

Although the noticing project is ongoing, the Committee decided to focus on one issue at this time. Specifically, the Committee is exploring an amendment to the bankruptcy rules that would allow businesses, financial institutions, and other non-individual parties that hold claims against the debtor, but that are not registered users of CM/ECF, to opt into electronic noticing and service in bankruptcy cases. The Committee would 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.

VIII. Subcommittee on Privacy, Public Access, and Appeals

A. Conforming technical amendments to Rule 8011

Professor Elizabeth Gibson reported that the amendments to Rule 8011 conform to the proposed amendments to Federal Rule of Appellate Procedure 25 (currently out for publication). The proposed amendments would also be consistent with the proposed

amendments to Rule 5005, Civil Rule 5, and Criminal Rule 49 (currently out for publication). Rule 8011 currently does not specifically address electronic filing, but the recent amendments to the Part VIII rules generally favored electronic transmission by and to represented parties. Professor Gibson noted that minor changes to the proposed amendments (to Rule 8011) may be required depending on the comments received on the published proposed amendments to Appellate Rule 25. Any changes will be presented at the spring 2017 meeting. The Committee discussed service requirements. Local rules often require additional service, although this practice could continue, even with a rule amendment. In addition, the Committee agreed that, because the proposed amendments mirror the pending amendments to the appellate rules on electronic service and proof of service, publication of the proposed amendments to Rule 8011 would serve no additional purpose. It also noted the value to having the amendments to Rule 8011 approved on the same timetable as those being made to Appellate Rule 25, Rule 5005, Civil Rule 5, and Criminal Rule 49. A motion was made and approved to move forward with the proposed amendments, subject to any minor amendments or corrections based on comments received during the publication period, and to request that the Standing Committee approve the proposed amendments without prior publication.

B. Suggestion 16-BK-E (Mandate Procedure in Bankruptcy Appeals)

Professor Gibson provided the report, explaining that the suggestion is to require a mandate in bankruptcy appeals to clarify when authority revests with the bankruptcy court. The subcommittee previously chose not to pursue the issue, but now recommended that it be considered for further study. Current Rule 8024(b) does not require a mandate, unlike Federal Rule of Appellate Procedure 41(c). The subcommittee intends to survey bankruptcy judges and practitioners to determine if the lack of a mandate causes problems.

Professor Gibson advised the group that a number of bankruptcy appellate panels have local rules regarding mandates from bankruptcy appeals. Also, the mandate under Appellate Rule 41(c) can be withdrawn under certain circumstances and district courts can take actions without the mandate. Some members questioned whether a rule is necessary, suggesting that a better solution may be to encourage communication between the courts to prevent potential issues. The subcommittee will consider whether to propose a rule that when the Court of Appeals remands an action to the district court, the court would have a certain amount of time (30 or 60 days) to hold a status conference to determine whether the district court or bankruptcy court should move forward with the case. The Committee discussed that such a rule would likely not be necessary when a district court enters a judgment.

IX. Information Items

Professor Harner explained that there are four items under consideration. The Business Subcommittee initially considered all of the items. The first suggestion relates to noticing of plans under Rule 2002(f)(7), and whether chapter 13 plans should be added to that rule. The suggestion was considered and rejected in the past, but the grounds for rejection are unclear. The Consumer Subcommittee will look at this issue. The second suggestion relates to the parties entitled to receive notices in chapter 13 cases under Rule 2002. The Business Subcommittee referred this suggestion to the Consumer Subcommittee. The third issue is a suggestion regarding disclosures under Rule 4001(c). The Business Subcommittee also referred this suggestion to the Consumer Subcommittee. The final issue concerns service of a motion to compel abandonment under Rule 6007(b) and whether such requirements should mirror the service required for a trustee's notice of abandonment under Rule 6007(a). The

Business Subcommittee will present additional information on this suggestion at the spring meeting.

X. Coordination Issues

Scott Myers provided some background regarding the need for coordination between the rules committees. There are often conforming amendments needed to retain uniformity within the federal rules. He noted that most of the issues included in his memo (in the agenda materials) were already discussed, but highlighted that certain amendments will be needed if the Appellate Rules Committee decides to amend its rules regarding supersedes bonds. Also, the Criminal Rules Committee proposed an amendment to its disclosure rule (Rule 12.4) and the Appellate Rules Committee is considering similar amendments. The Privacy, Public Access, and Appeals Subcommittee will consider whether any changes are needed to the bankruptcy disclosure rules and report at the spring 2017 meeting.

XI. Forms Subcommittee

Judge Dennis Dow provided an overview of the subcommittee's work on amended Rule 3015 and new Rule 3015.1. The rules were published for comment in August 2015. Several comments were submitted and a hearing was held in September 2016. There was general support for the approach in the proposed rules, although there was some opposition. There were specific suggestions for edits to the proposed amendments. The subcommittee considered all of the comments.

He advised that the subcommittee determined that proposed Rules 3015 and 3015.1 permit the Committee to achieve the goals of uniformity while still permitting local variations where necessary. Districts will have only one plan form; even if it is not the national form, it will be a local form with more national uniformity. The proposed form plan and related rules are procedural rather than substantive.

Judge Dow detailed the comments and testimony. Some of the opposition focused on specific disputes regarding substantive chapter 13 issues rather than those that could be resolved by a form or procedural rule. Noticing was an issue raised in some of the comments, and these issues are being considered as part of the noticing project. Several commenters voiced concerns about the automatic stay provisions, but the subcommittee determined not to make any changes to the rule, although some explanatory language will be added to the Committee Note in response to one of these comments. Several other changes to the Committee Notes were made in response to comments, and there was one minor edit to proposed Rule 3015.1(d)(4) to add relevant statutory references.

The subcommittee also made stylistic edits to Form 113, including conforming the header and signature lines to the remainder of the modernized forms and standardizing references throughout the form. In addition, a few minor edits were made to the Committee Note for the form. The Committee approved a motion to approve Rule 3015, Rule 3015.1, the revised version of Form 113, and the Committee Note for Form 113. Professor Gibson reminded the group that the Director's Form for adequate protection needs to be issued by December 2017.

XII. Referral to Other Committees

Professor Gibson reported on an item referred to CACM regarding redaction of personally identifiable information. For redaction, the issue is with third party services that provide

court dockets to paid users and the potential for protected information to appear on those dockets. CACM thanked the Bankruptcy Rules Committee for the information. Professor Gibson also reported that the suggestion regarding a Notice of Change of Address form was forwarded to the Bankruptcy Administration Committee. Letters regarding both issues were included in the agenda materials.

XIII. Five-Year Review Questionnaire

Judge Ikuta explained that the Committee is asked to respond to the questionnaire, and that the responses from 2007 and 2012 are included in the agenda materials. She advised that she would like to include a few sentences regarding the Committee's coordination efforts, and made the suggestion that current liaison positions be entitled to vote. Finally, she added her support for the idea that Committee members have some bankruptcy experience prior to being part of the Committee. Committee members voiced support for these suggestions. Judge Campbell will coordinate responses from all Advisory Committees.

XIV. Consent Agenda

The consent agenda, reproduced below, was approved by motion by the Committee. The consent agenda materials, as well as other supporting agenda materials, are also available at http://www.uscourts.gov/rules-policies/archives/agenda-books/advisory-committee-rules-bankruptcy-procedure-november-2016.

1. Not assigned to a subcommittee

(A) Recommendation of no action regarding Suggestion 13-BK-J to require that the Rule 2016(b) statement (Disclosure of Compensation Paid or Promised to Attorney for Debtor) be filed with the petition instead of within 14 days after the petition is filed.

(B) Recommendation to approve Suggestion 14-BK-F for technical amendment to Rule 7004(a)(1).

2. Subcommittee on Consumer Issues

(A) Recommendation of no action regarding Suggestion 15-BK-I concerning various suggestions in dealing with pro se filers and redaction of social security numbers.

(B) Recommendation to approve Suggestion 16-BK-B to amend question number 11 on Official Form 101 (Individual Debtor Petition) with proposed December 1, 2017 effective date.

3. Subcommittee on Business Issues.

(A) Recommendation of no action regarding Suggestion 16-BK-G that Rule 7004(e) to provide at least 14 days for service of summons and complaint.

4. Subcommittee on Privacy, Public Access, and Appeals

(A) Recommendation of no action regarding Suggestion 16-BK-F to eliminate the requirement of a request for permission to take a direct appeal when the court certifies the appeal.

XVII. Conclusion

The spring 2017 meeting will be held in Nashville, Tennessee on April 7, 2017. The meeting was adjourned at 1:40 PM.

Respectfully submitted,

Michelle Harner, associate reporter