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January 25, 2018

To the Advisory Committee on Rules of Bankruptcy Procedure

Re: Suggestions for a change to Official Form 113 and Fed. R. Bankr. Pro. 3015.1.

I. Background:

Currently, Official Form 113 (Chapter 13 Plan) includes the following language on page 1:

*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.*

The matters referred to in the language above are whether the plan includes valuation of collateral, lien avoidance, or nonstandard provisions. The intent of the provision is to provide ample notice to creditors that their certain rights may be affected by confirmation of the plan, and in response to the Supreme Court's decision in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

II. Suggestion 1:

Amend the language on page 1 of Official Form 113 to the following:

***If an item is checked as "Not Included" or if no box is checked or if both boxes are checked, the provision will be ineffective if set out later in the plan.***

This change would address the one scenario not already covered by the current language.

III. Suggestion 2:

The Official Form is mandatory except when a district has adopted one local form for use throughout the district. Fed. R. Bankr. Pro. 9009. Any local form must "include[] an initial

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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 ...". Fed. R. Bankr. Pro. 3015.1.

At least one local form I have encountered does not contain Official Form 113's notice that if a box is not checked, any provision set out later in the plan is ineffective,\* and Bankruptcy Rule 3015.1 does not require such a notice. It could therefore be argued that a provision in a confirmed plan is effective even if the box on the first page is not checked. At the very least, the effectiveness of such a provision in a confirmed plan could lead to unnecessary challenges to the validity of the provision.

It is recommended that Rule 3015.1 be amended to require a local form include a notice similar to that already in Official Form 113, amended as suggested above. This amendment will prevent any debate over whether a provision in a confirmed plan is effective if a box on the first page is not checked.

Thank you for your consideration.

Respectfully,

BECKET & LEE LLP

BY: /s/ Alane A. Becket  
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\*<http://www.njb.uscourts.gov/sites/default/files/forms/Chapter%2013%20Plan%20and%20Motions%2012-1-17.pdf>