

**ADVISORY COMMITTEE  
ON  
BANKRUPTCY RULES**

**Washington, D.C.  
October 1-2, 2015**

**Addendum with Chapter 13-related Materials**

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# TAB 1

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## MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES  
FROM: SUBCOMMITTEES ON CONSUMER ISSUES AND FORMS  
SUBJECT: CHAPTER 13 PLAN FORM AND RELATED RULES AMENDMENTS  
DATE: SEPTEMBER 14, 2015

At the fall meeting the Committee will once again be discussing the proposed national form for chapter 13 plans (Official Form 113) and related rule amendments. To assist in those discussions, this memorandum provides background information regarding the origins and history of this project and the Subcommittees' deliberations over the summer. It then presents the following recommendations:

- 1) The Forms Subcommittee's recommendations for rule amendments to give districts the authority to opt out of the national form under specified circumstances and for a change in the deadline for filing a proof of claim;
- 2) The Consumer Subcommittee's recommendations regarding revisions to other published rule amendments in response to comments submitted after the 2014 republication; and
- 3) The Forms Subcommittee's recommendations regarding the timing of (a) a decision about any additional publication and (b) the remaining steps in the promulgation process.

### Background

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, and the Committee approved the creation of a working group to pursue the suggestions. A proposed chapter 13 plan form and proposed amendments to nine related rules were published for public comment in

August 2013. Because the Committee made significant changes to the form in response to comments it received, the revised form and rules were published again in August 2014.

At last spring's Advisory Committee meeting, in response to comments that were submitted after republication, 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").<sup>1</sup> 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 would allow districts to opt out of the use of the Official Form if certain conditions were met.

After the spring meeting, the Chair referred the matter to these Subcommittees to study and refine an opt-out proposal and to obtain further input from a broad spectrum of the bankruptcy community. The Subcommittees were also asked to consider the detailed substantive comments submitted on the republished Official Form and related rules. The Subcommittees' charge was to report at the fall meeting on recommendations regarding (1) the implementation of

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



an opt-out proposal, (2) substantive revisions to the Official Form and related rules, and (3) the need for republication of the proposed form or any of the rules.

### The Subcommittees' Deliberations

At the beginning of the summer, the chairs of the Subcommittees agreed on a work plan that divided the tasks between the two Subcommittees. The Forms Subcommittee, joined by Judge Wedoff and chapter 13 trustee Jon Waage, took on the tasks of considering how best to implement an opt-out compromise 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 compromise proposal). The Consumer Subcommittee agreed to consider the comments submitted on Rules 2002, 3007, 3012, 4003, 5009, and 7001. The two Subcommittees worked through these tasks during a series of conference calls in June, July, and August.

The Forms Subcommittee shared its proposed revisions of Official Form 113 and Rules 3002 and 3015 with Judges Isgur and Efremsky, who in turn circulated the materials to other members of the compromise group. Subcommittee member Jill Michaux shared the same drafts with some members of the consumer debtor bar, and trustee Jon Waage shared them with some other chapter 13 trustees. In a final conference call, the Forms Subcommittee considered the feedback it had received from those groups, as well as additional comments and suggestions from Subcommittee members, and it made some additional proposed changes to the form and Rule 3015.

In mid-August, Judge Sutton and Judge Ikuta received a letter from Edward Boltz, who is the president of the National Association of Consumer Bankruptcy Attorneys (“NACBA”). He expressed concern that no representatives of consumer debtors had been involved in drafting the

initial compromise proposal from the compromise group and that the Advisory Committee might approve a version of that compromise without publishing it for public comment. He urged the Committee to publish any new proposal for chapter 13 plans. His letter is attached to this memorandum.

Shortly thereafter Judge Sutton and Judge Ikuta received a letter 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. They recited information they had received from NACBA about the Committee's consideration of a compromise proposal, including the possibility that the compromise proposal might be adopted without republication. The Congressmen requested an explanation of how the "compromise rule and form would satisfy the requirements under the [Rules Enabling] Act and Section 440 [of the Guide to Judiciary Policy] regarding public notice and comment given the likely far-reaching effects that these documents may have." Their letter is also attached.<sup>2</sup>

Judge Sutton and Judge Ikuta responded to the two letters, indicating that the Committee would take the views expressed into account as it decides how to proceed on the chapter 13 plan form and rules. After the Forms Subcommittee incorporated its final round of changes to the plan and rules, Judge Dow sent copies of the drafts of Official Form 113, a Director's Form for prepetition adequate protection payments, and Rules 3002 and 3015 to the presidents of NACBA, the National Association of Chapter 13 Trustees ("NACTT"), and the National Conference of Bankruptcy Judges ("NCBJ"), seeking the organizations' input on the documents.

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<sup>2</sup> In addition to this letter, Rebecca Womeldorf, the Rules Committee Officer at the AO, received inquiries from the offices of Senator Christopher Coons and Senator Dick Durbin, members of the Senate Judiciary Committee, largely repeating NACBA's concerns about republication.

## Proposed Changes to Implement an Opt-Out Proposal

The opt-out proposal would be implemented primarily by further amending Rule 3015 (Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case).<sup>3</sup> The copy of the rule that follows this memorandum in the agenda materials identifies the published amendments in red and the additional amendments now being proposed in blue.

As published in 2014, Rule 3015 included amendments to subdivision (c) that required the use of the Official Form for a chapter 13 plan and declared ineffective any nonstandard provisions that were not placed in the section specified for such provisions or that were not identified as the Official Form required. To allow for an opt-out, proposed subdivision (c)(1) would now allow use of either the Official Form or a Local Form meeting the rule's requirements. It would also make applicable to Local Forms the requirements for the placement and identification of nonstandard provisions. A definition of "nonstandard provision" has been added to the end of subdivision (c)(1).

A key part of the Forms Subcommittee's proposed revision to Rule 3015 to allow for an opt-out by districts is the addition of subdivision (c)(2). This paragraph, which is composed of several subparagraphs, sets out the requirements for a Local Form. It also overrides, with respect to Local Forms, the command of Rule 9029 that local rules not prohibit or limit the use of Official Forms. The provision includes the following requirements:

- Only one Local Form can be used in a district, and it must be adopted after public notice and an opportunity for comment.
- A Local Form must have numbered paragraphs with titles in boldface type.

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<sup>3</sup> The only proposed change to Official Form 113 related to the compromise is the revision of Part 1 to require that the debtor indicate whether three types of provisions are included or are not included in the plan. Previously, the form required checking boxes only if those provisions were included.

- A Local Form must have an initial paragraph that states whether the plan does or does not contain three types of provisions: nonstandard provisions, ones limiting the amount of an allowed secured claim based on valuation of the collateral, and one avoiding security interests or liens.
- A Local Form must have separate paragraphs for curing and maintaining home mortgage payments, paying domestic support obligations, providing for “hanging paragraph” claims,<sup>4</sup> and surrendering collateral with a request that the stay be terminated as to that property.
- A Local Form must have a final paragraph for nonstandard provisions with a statement that such provisions placed elsewhere in the plan are void, and it must require a certification by the debtor’s attorney or an unrepresented debtor that the plan does not contain any nonstandard provisions other than those in the final paragraph.

Because of the increased length of the revised Rule 3015, the Forms Subcommittee is also suggesting that most of the opt-out provisions in Rule 3015 be put into a new rule, Rule 3015.1. Included in the materials following the memorandum are a draft of a new Rule 3015.1 and a companion Rule 3015. Under this approach, the requirements for a Local Form, rather than being in Rule 3015(c)(2), would be placed in new Rule 3015.1 (Requirements for a Local Form for Plans Filed in a Chapter 13 Case). Rule 3015 would be revised to take account of that shift in location.

The only other post-publication change being proposed in response to the compromise group’s comment is an amendment to Rule 3002 (Filing Proof of Claim or Interest). As published, the rule required a proof of claim in a chapter 7, 12, or 13 case to be filed no later than

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<sup>4</sup> These are secured claims covered by the last paragraph of § 1325(a) of the Bankruptcy Code, which requires payment in full of the allowed claim regardless of the value of the collateral.

60 days after the order for relief. That time limit would be changed to 70 days under the Subcommittee's proposed revision.

The drafts of the proposed revisions of Rules 3015 and 3002, along with the revised plan form, were sent to Judges Isgur and Efremsky on August 6, and they shared them with other members of the compromise group. After their review of the drafts, Judge Isgur responded to Judge Dow with some additional suggestions for changes to Rule 3015. He stated, however, that members of the compromise group "will support the proposed compromise, even if you are unable to accept the few changes in this letter." Two of the four suggested changes were accepted by the Subcommittee.

#### Proposed Changes in Response to Substantive Comments Submitted After the 2014 Publication

After the 2014 republication of proposed Official Form 113 and related rules, 138 comments were submitted. Summaries of the comments were included in Appendix A to the agenda book for the spring 2015 meeting and can be accessed here:

<http://www.uscourts.gov/rules-policies/archives/agenda-books/advisory-committee-rules-bankruptcy-procedure-april-2015>.

The Subcommittees reviewed the comments this summer and propose a number of changes to the form and to Rules 3002, 3007, 3015, and the Committee Note to Rule 7001. No additional changes are proposed for Rules 2002, 3012, 4003, 5009, and 9009. The draft of Official Form 113 that is included in these materials after the memorandum shows the changes made after publication in red. Changes made to the rules after publication are shown in blue (and the previously published amendments are in red). The following discussion highlights the most significant of the proposed changes.

*Official Form 113.*

Part 1 (Notices). In order to emphasize that the form provides a variety of options, some of which may not be allowed in a particular district, 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” to clarify that this subpart applies to maintenance of payments on a long-term debt even when there was no prepetition default. 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. The plan’s statement of the amounts of the current installment payment and arrearage will then control.

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. This change brings the form language into conformity with §§ 362(d) and 1301(c) of the Code, which authorize the court to grant relief from the stay only on request of a party in interest.

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" to make clear that prepetition interest on priority claims must be paid as part of the allowed claim.

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. Thus the amounts included in the plan are merely the debtor's estimates.

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) was deleted because it was unnecessary, and subpart 5.3 (Interest on allowed nonpriority unsecured claims not separately classified) was deleted because of its infrequent applicability. If a plan does propose to pay postpetition interest on unsecured claims, a nonstandard provision to that effect can be included in Part 8. 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. The Code and Bankruptcy Rules do not specify an order of distribution in chapter 13, and local practices vary. Accordingly, the order of distribution will not be specified in the Official Form, and the matter will be left up to local rules and practices.

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.” Case closing is an administrative function that is unrelated to when property of the estate vests in the debtor.

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. If the plan is confirmed, this ineffectiveness provision will be binding on the debtor and all creditors pursuant to Code § 1327(a).

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.

Director's Form for Adequate Protection Payments Order, Notice, and Order. Section 1326(a)(1)(C) requires the payment of preconfirmation adequate protection payments to creditors holding allowed claims secured by personal property. Several comments urged that a provision for these payments be included in Official Form 113. The Forms Subcommittee declined to do so because provisions of a plan become effective only upon confirmation, which is when the payments under § 1326(a)(1)(C) cease. The Subcommittee has instead approved a Director's Form for the debtor's notice of proposed adequate protection payments and the court's order. It is included in the materials that follow. As a Director's Form, it is not mandatory and it does not require Committee approval for the AO to issue it.

*Rule 3002 (Filing Proof of Claim or Interest).*

The comments submitted on this rule were reviewed by the Forms Subcommittee. In addition to the change in the deadline for filing a proof of claim, the Subcommittee made two changes to subdivision (c) to clarify the impact of conversion to another chapter on the filing deadlines.

The first provision that was revised states that in a voluntary chapter 7, 12, or 13 case, “a proof of claim is timely filed if it is filed within 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.” The Subcommittee added the phrase “under that chapter.” Here's why: Under Rule 1019, when a case is converted to chapter 7 from chapter 11, 12, or 13, a new time period for filing a claim

commences under Rule 3002. Because the trigger event for the time period under proposed Rule 3002(c) is the order for relief, the rule needs to clarify which date to look to in a converted case—the original filing date (which is the date of the order for relief) or the date of the order for relief under chapter 7. Code § 348(a) says that conversion of a case from one chapter to another constitutes an “order for relief *under the chapter* to which the case is converted,” but that it does not effect a change in “the date of . . . the order for relief” (emphasis added). The addition of “under that chapter” to Rule 3002(c) allows the time to start running at the date of conversion to chapter 7.

The same phrase—“under that chapter”—was also added to the sentence in subdivision (c) that addresses involuntary chapter 7 cases. As revised, it provides that a proof of claim is timely filed in such a case if it is filed within 90 days after the order for relief under that chapter. As now worded, it would cover an involuntary chapter 11 case that is converted to chapter 7 (thus making it an involuntary chapter 7 case). The 90-day time period would start running upon conversion.

*Rule 3007 (Objections to Claims).* The Consumer Subcommittee reviewed the comments to this rule.<sup>5</sup> It reorganized subdivision (a), breaking it into separate paragraphs addressing the time of service of objections and the manner of service. It added a new provision, subdivision (a)(2)(B), to fill in a gap in the rule. Because subdivision (a)(2) generally provides for service of an objection to a claim on the person listed on the proof of claim at the address given there, a rule is needed for situations in which no proof of claim is filed because the claim was scheduled

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<sup>5</sup> This rule was included in the chapter 13-plan-form package because, as published in 2013, subdivision (a) would have been amended to include a cross-reference to Rule 3015. That provision was later determined to be unnecessary. The remaining amendments were proposed in response to suggestions that were not specific to chapter 13. The Consumer Subcommittee recommends that its proposed revision of subdivision (a) be reviewed by the Business Subcommittee before final approval is sought from the Standing Committee.

in a chapter 9 or 11 case as undisputed, noncontingent, and liquidated. As revised, the rule provides in that situation that an objection to the claim must be served on the creditor at the address listed in the schedule of liabilities. A change was also made to subdivision (a)(2)(C) to require, when applicable, service of an objection on an entity that filed the proof of claim under Rule 3005 (Filing of Claim . . . by Guarantor, Surety, Indorser, or Other Codebtor).

*Rule 3015 (Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case).* The Forms Subcommittee reviewed the comments on this rule. In addition to the proposed revisions to implement the opt-out, the Subcommittee made a change in subdivision (f) to provide courts greater flexibility in the timing of confirmation hearings. The provision requires that objections to confirmation be filed no later than seven days before the scheduled date of the confirmation hearing, but it now provides that the court can order otherwise. This authority would allow courts in districts that have early confirmation hearings to shorten the time between the filing of objections and the confirmation hearing. A court could do so by order in a specific case or by local rule.

*Rule 7001 (Scope of Rules of Part VII).* The Consumer Subcommittee made no changes to the rule itself, but it revised the Committee Note in two respects. It revised the first sentence to describe more accurately a proceeding under Rule 4003(d), and it deleted the example of a proceeding to determine the amount of a secured claim. The example included in the published version—the elimination of a wholly unsecured junior lien in a chapter 12 or 13 plan—may have been called into question by the Supreme Court’s recent decision in *Bank of America, N.A. v. Caulkett*, 135 S. Ct. 1995 (2015) (holding that § 506(d) does not authorize the strip-off of a wholly unsecured junior mortgage in chapter 7).

#### The Forms Subcommittee’s Recommendations

Given the concerns recently expressed by NACBA and some members of Congress, the Subcommittee recommends that the Committee not seek expedited approval by the Supreme Court of the Official Form and related rules, as it had discussed at the spring meeting as a possible option.<sup>6</sup> That means that the Committee has until its spring 2016 meeting to finalize Official Form 113 and related rules, as well as to determine whether republication should be sought for all or any part of the package. In the interim, the Subcommittee recommends that it continue to vet the proposed revisions to implement the opt-out with NACBA, NACTT, NCBJ, and other affected constituencies in order to obtain as much support as possible for the proposal.

The options regarding republication include the following: (1) no republication; (2) republication of the Official Form and related rules; and (3) republication of only Rule 3015 (or Rule 3015.1 and the shortened version of Rule 3015 if the Committee prefers that approach). Even if the proposed revisions to implement an opt-out are determined at the spring meeting to constitute a substantial change for which republication would assist the Committee,<sup>7</sup> there is likely to be no reason to republish the form itself or the rules that have been revised in only minor ways in response to comments submitted after the 2014 publication. Assessment of the input the Subcommittee receives from outside groups regarding the opt-out revisions will help the Committee decide in the spring whether to seek republication at all.

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<sup>6</sup> This possible scenario involved seeking approval without republication by the Standing Committee in January 2016, approval by the Judicial Conference in March, and promulgation by the Supreme Court by May 1, leading to an effective date of December 1, 2016.

<sup>7</sup> According to § 440.20.50(b) of the Guide to Judiciary Policy, “If the advisory committee makes substantial changes, the proposed rule should be republished for an additional period of public comment unless the advisory committee determines that republication would not be necessary to achieve adequate public comment and would not assist the work of the rules committees.” *Available at* <http://www.uscourts.gov/rules-policies/about-rulemaking-process/laws-and-procedures-governing-work-rules-committees-0>.

The Subcommittee suggests that if the Committee does seek republication, there will be two possible schedules to consider:

- **Regular schedule.** This option would consist of publication in August 2016, receipt of comments by sometime in February 2017, Advisory Committee and Standing Committee approval in spring 2017, Judicial Conference approval in September 2017, Supreme Court promulgation by May 1, 2018, and an effective date of December 1, 2018.
- **Truncated schedule.** Under this option, the Committee would seek permission to publish on a truncated schedule pursuant to § 440.20.40(d) of the Guide to Judiciary Policy.<sup>8</sup> The Committee might suggest publication in August 2016, receipt of comments sometime in November 2016, Advisory Committee approval in December 2016, Standing Committee approval in January 2017, Judicial Conference approval in March 2017, and (with permission) Supreme Court issuance by May 1, 2017, leading to an effective date of December 1, 2017.

If the Committee determines that republication is needed, the Subcommittee favors republication of only Rule 3015 (or the alternative 3015/3015.1 version) on a truncated schedule, leading to a December 2017 effective date.

Finally, in order to narrow the focus of any remaining Committee deliberations and any discussions with outside groups, the Subcommittee recommends that the Committee give final approval at this meeting to Official Form 113 and the proposed amendments to Rules 2002, 3002, 3007, 3012, 4003, 5009, 7001, and 9009. (The Subcommittee recommends that the approval of Rule 3007 be subject to subsequent review and approval by the Business

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<sup>8</sup> This policy provision states, “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.” *Id.*

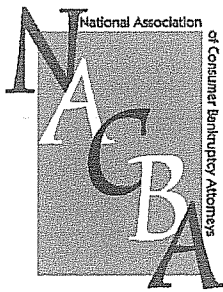
Subcommittee.) The form and the listed rules would not be submitted to the Standing Committee until the June 2016 meeting, but approval in October would allow the attention of the Committee and outside constituencies to be focused on the terms of the proposed opt-out provisions in Rule 3015.

Attachments

# TAB 1.1

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**August 11, 2015**

**The Honorable Jeffrey S. Sutton**  
**United States Court of Appeals**  
**260 Joseph P. Kinneary United States Courthouse**  
**85 Marconi Boulevard**  
**Columbus, OH 43215**

**The Honorable Sandra Segal Ikuta**  
**United States Court of Appeals**  
**Richard H Chambers Court of Appeals Building**  
**124 South Grand Avenue, Room 305**  
**Pasadena, CA 91105-1621**

**Dear Judges Sutton and Ikuta:**

As you know from our previous comments, the National Association of Consumer Bankruptcy Attorneys ("NACBA") has been closely following the Advisory Committee's consideration of promulgating a national form chapter 13 plan.

NACBA filed comments to both versions of the form expressing a concern that any form not undermine the Code's dictate, in accord with the fact that chapter 13 is completely voluntary, that it is the debtor, not the court or the chapter 13 trustee, who is to propose the plan. 11 U.S.C. § 1321.

NACBA did not take a position on whether a national form plan should be promulgated. Some NACBA members opposed the form because of fears that it would restrict debtors' statutory options. Others supported it because of concerns that many local form plans already purported to restrict debtors' rights.

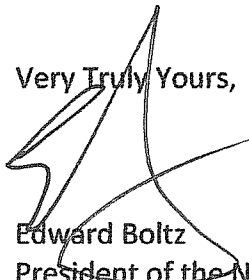
It is our understanding that, at its most recent meeting, the Advisory Committee decided not to promulgate a national form that would be required in all judicial districts, largely because of a letter from 144 bankruptcy judges opposing the form. Instead, it began considering a "compromise" proposal formulated by a group of bankruptcy judges, chapter 13 trustees, and creditor representatives. Notably, despite an offer to participate, no representatives of consumer debtors, the parties who under the statute are to propose a plan, were involved in drafting the original "compromise" proposal. It is our understanding that the proposal (which may have gone through further iterations) would make the national plan optional,

with a judicial district permitted to require a local form plan instead. This would be the first time the rules gave an official *imprimatur* to local form plans.

NACBA has very serious concerns about this proposal, in light of the danger that it could be read to permit local forms to impinge on chapter 13 debtors' rights. We have heard that the Advisory Committee is considering promulgating the new proposal without publishing it for comment, despite the fact that both the proposal for local plans and the rule amendments it entails have never been published for comment.

Every change in the rules and forms, other than those that are purely technical or stylistic, should be published for comment. It should go without saying that a proposal so controversial and far-reaching should be no exception. We urge the Advisory Committee to publish for comment the newest proposed changes to the Bankruptcy Rules and Official Forms with respect to chapter 13 plans.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Edward Boltz', written over a printed name.

Edward Boltz  
President of the National Association of Consumer Bankruptcy Attorneys

cc: Professor S. Elizabeth Gibson  
Reporter, Advisory Committee on Bankruptcy Rules  
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# TAB 1.2

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# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515-6216  
One Hundred Fourteenth Congress

August 24, 2015

The Honorable Jeffrey S. Sutton, Chair  
Standing Committee on Rules of Practice and Procedure  
Judicial Conference of the United States  
Washington, DC 20544

The Honorable Sandra Segal Ikuta, Chair  
Advisory Committee on Bankruptcy Rules  
Judicial Conference of the United States  
Washington, DC 20544

Dear Judge Sutton and Judge Segal Ikuta:

As you know, we serve on the Judiciary Committee, which has jurisdiction over bankruptcy. In that capacity, we write to you regarding certain proposed amendments to the Federal Rules of Bankruptcy Procedure concerning chapter 13 bankruptcy practice that are being considered by the Advisory Committee on Bankruptcy Rules. These proposed changes, which would mandate the use of a national form chapter 13 plan, have been considered over the last several years and have been quite controversial.

Recently, we have been informed by representatives of the National Association of Consumer Bankruptcy Attorneys (NACBA) that the Advisory Committee is considering a variety of revisions to these proposed rules and plan as well as a “compromise” proposal that was initiated by certain judges, trustees, and creditor representatives but, notably, no representatives of consumer debtors.

Pursuant to a memorandum issued by the Advisory Committee on May 6, 2015, it appears that the Committee is considering the possibility of adopting the compromise proposal without publishing it for comment. We are advised by NACBA that the revised proposal is substantively different than the proposed rule and plan that were previously published. It is our understanding that the Rules Enabling Act, 28 U.S.C. § 2073 (the Act), and Section 440 of the Guide to Judiciary Policy, typically require publication of any proposed rule change in the Federal Register and allow for a public comment period.

Although Section 440.20.40(d) authorizes expedited procedures that include the shortening or elimination of the public notice and comment period under certain circumstances, NACBA is concerned that those circumstances do not appear to be warranted in light of the fact that the revised proposal adopts a fundamentally different approach than that taken in the earlier published versions. NACBA further advises that

Letter to Judge Sutton  
August 24, 2015  
Page 2

the concept of a national rule dictating the form and substance of local chapter 13 model plans, rather than adoption of a national plan form, has not been raised during the multi-year consideration of the earlier proposal, and it has never been published for comment.

Accordingly, we would appreciate an explanation of how this compromise rule and form would satisfy the requirements under the Act and Section 440 regarding public notice and comment given the likely far-reaching effects that these documents may have.

Sincerely,



John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary



Henry C. "Hank" Johnson, Jr.  
Ranking Member  
Subcommittee on Regulatory Reform,  
Commercial and Antitrust Law

cc: The Honorable Bob Goodlatte, Chairman, House Committee on the Judiciary

# TAB 2

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Draft August 28, 2015

Debtor \_\_\_\_\_

United States Bankruptcy Court for the: \_\_\_\_\_

[Bankruptcy district]

Case number: \_\_\_\_\_

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

12/16

## Part 1: Notices

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

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

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

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

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

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

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

## Part 2: Plan Payments and Length of Plan

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

\$ \_\_\_\_\_ per \_\_\_\_\_ for \_\_\_\_\_ months

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

If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in Parts 3 through 6 of this plan.

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

Check all that apply.

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

2.3 Income tax refunds.

Check one.

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

\_\_\_\_\_

\_\_\_\_\_

2.4 Additional payments.

Check one.

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

\_\_\_\_\_

\_\_\_\_\_

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

**Part 3:** Treatment of Secured Claims

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

Check one.

- None. If "None" is checked, the rest of § 3.1 need not be completed or reproduced.
- The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the debtor, 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.

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

Insert additional claims as needed.

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

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

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

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

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

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

- (a) payment of the underlying debt determined under nonbankruptcy law, or
- (b) discharge of the underlying debt under 11 U.S.C. § 1328, at which time the lien will terminate and be released by the creditor. See Bankruptcy Rule 3015.

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
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	____%	\$ _____	\$ _____

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

Check one.

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

The claims listed below were either:

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

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed either by the trustee or directly by the debtor, 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.

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

Insert additional claims as needed.

**3.4 Lien avoidance.**

Check one.

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

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

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

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

*Insert additional claims as needed.*

**3.5 Surrender of collateral.**

Check one.

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

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

Name of creditor	Collateral
_____	_____
_____	_____

*Insert additional claims as needed.*

**Part 4: Treatment of Fees and Priority Claims**

**4.1 General**

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

**4.2 Trustee's fees**

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

**4.3 Attorney's fees**

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

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

*Check one.*

- None.** *If "None" is checked, the rest of § 4.4 need not be completed or reproduced.*
- The debtor estimates the total amount of other priority claims to be \_\_\_\_\_.

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

*Check one.*

- None.** *If "None" is checked, the rest of § 4.5 need not be completed or reproduced.*
- The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4). *This plan provision requires that payments in § 2.1 be for a term of 60 months; see 11 U.S.C. § 1322(a)(4).*

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

*Insert additional claims as needed.*

**Part 5: Treatment of Nonpriority Unsecured Claims**

**5.1 Nonpriority unsecured claims not separately classified.**

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

- The sum of \$\_\_\_\_\_.
- \_\_\_\_\_% of the total amount of these claims, an estimated payment of \$\_\_\_\_\_.
- The funds remaining after disbursements have been made to all other creditors provided for in this plan.

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

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

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

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

*Insert additional claims as needed.*

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

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

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

*Insert additional claims as needed.*

**Part 6:** Executory Contracts and Unexpired Leases

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

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

**Assumed items.** Current installment payments will be disbursed either by the trustee or directly by the debtor, 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.

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

*Insert additional contracts or leases as needed.*

**Part 7:** Vesting of Property of the Estate

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

*Check the applicable box:*

- plan confirmation.
- entry of discharge.
- other: \_\_\_\_\_.

**Part 8:** Nonstandard Plan Provisions

**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.**

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**Part 9:** Signatures

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**X** \_\_\_\_\_ Date \_\_\_\_\_

**Signature of Attorney for Debtor(s)**

**X** \_\_\_\_\_ Date \_\_\_\_\_

**X** \_\_\_\_\_ Date \_\_\_\_\_

**Signature(s) of Debtor(s) (required if not represented by an attorney; otherwise optional)**

**By filing this document, the Attorney for Debtor(s) or Debtor(s) themselves, if not represented by an attorney, 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

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

**Total of lines a through j**

\$ _____
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## 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)(1) 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.

*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 amount listed on the creditor's 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. 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 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) of the Code.**

*Part 5.* This part provides for the treatment of unsecured claims that are not entitled to priority status. In § 5.1, the plan may propose to pay nonpriority unsecured claims in accordance with several options. One or more options may be selected. For example, the plan could propose simply to pay unsecured creditors any funds remaining after disbursements to other creditors, or **it could** also provide that a defined percentage of the total amount of unsecured claims will be paid. **In § 5.2, the plan may**

propose to cure any arrearages and maintain periodic payments on long-term, nonpriority unsecured debts pursuant to § 1322(b)(5) of the Code. In § 5.3, the plan may provide for the separate classification of nonpriority unsecured claims (such as co-debtor claims) as permitted under Code § 1322(b)(1).

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

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

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

*Part 8.* This part gives the debtor or debtors the opportunity to propose provisions that are not otherwise in, or are contrary to, 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.

*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.

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# TAB 3

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*Preliminary Discussion Draft of Forms for Pre-confirmation Adequate Protection Payments*

(CAPTION)

**Motion, Notice and Order for Adequate Protection Payments  
and Opportunity to Object**

The Debtor states as follows:

1. On \_\_\_\_\_, the Debtor(s) filed a petition under Title 11 commencing a Chapter 13 case.
2. The debtor proposes to make adequate protection payments, pursuant to §1326 (a) (1) (c) beginning no later than 30 days after the petition date, to the holders of the allowed secured claims and in the amounts specified below:

Secured Creditor	Collateral Description	Adequate Protection Payment

3. The Debtor will make the adequate protection payments, until the debtor’s plan is confirmed, in the following manner:
  - (a) The Trustee will disburse the payments monthly from the plan payments received from the debtor.
  - (b) The debtor will disburse the payments monthly, and will (1) reduce the plan payments made to the Trustee and (2) provide evidence of such payment to the Trustee, such as a copy of a check or money order, that includes the date and amount of the payment.
  - (c) Other: \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_ Debtor

By: \_\_\_\_\_ Counsel

(CAPTION)

**Preliminary Order for Adequate Protection Payments and Opportunity to Object**

This case coming before the Court on the Debtor's notice of Proposed Adequate Protection Payments, It is hereby ordered that the Debtor or Trustee must make the Adequate Protection Payment as set for therein.

THIS ORDER WILL BECOME FINAL UNLESS THE TRUSTEE, A CREDITOR, OR OTHER PARTY IN INTEREST FILES AN OBJECTION TO THE ADEQUATE PROTECTION PAYMENTS DETAILED IN THIS ORDER WITHIN 21 DAYS OF THE DATE OF THIS ORDER.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge

I, \_\_\_\_\_, Counsel for the Debtor, hereby certify that I have today, the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, mailed a copy of (this) (the foregoing) Notice of Adequate Protection and Order \_\_\_\_\_ to the following Creditor(s) in the following manner: (Name and address of creditors served)

# TAB 4

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

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

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

11 (c) TIME FOR FILING. In a voluntary chapter 7  
12 ~~liquidation~~case, chapter 12 ~~family—farmer’s—debt~~  
13 ~~adjustment~~case, or chapter 13 ~~individual’s—debt~~  
14 ~~adjustment~~case, a proof of claim is timely filed if it is filed  
15 not later than ~~90~~6070 days after the order for relief under  
16 that chapter or the date of the order of conversion to a case  
17 under chapter 12, or chapter 13. In an involuntary chapter  
18 7 case, a proof of claim is timely filed if it is filed not later

19 | than 90 days after the order for relief under that chapter is  
20 | entered.~~the first date set for the meeting of creditors called~~  
21 | ~~under § 341(a) of the Code, except as follows:~~ But in all  
22 | these cases, the following exceptions apply:

23 | \* \* \* \* \*

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

34 | (A) the notice was insufficient under the  
35 | circumstances to give the creditor a reasonable  
36 | time to file a proof of claim because the debtor



37 failed to timely file the list of creditors' names  
38 and addresses required by Rule 1007(a); or

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

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

46 (A) the proof of claim, together with the  
47 attachments required by Rule 3001(c)(2)(C), is  
48 filed not later than ~~60~~70 days after the order for  
49 relief is entered; and

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

## Committee Note

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

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the § 341 meeting of creditors to ~~60~~70 days after the petition date. If a case is converted to chapter 12 or chapter 13, the ~~60~~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.

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# TAB 5

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Proposed revision – published amendments in red;  
revisions in blue (newest revisions in darker blue)

1 **Rule 3007. Objections to Claims**

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

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

15 (2) *Manner of Service.*

16 (A) **The objection and notice shall be**  
17 **served on the a claimant by first-class mail to the**

Proposed revision – published amendments in red;  
revisions in blue (newest revisions in darker blue)

18 person most recently designated on the  
19 claimant’s original or amended proof of claim as  
20 the person to receive notices, at the address so  
21 indicated; and

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

28 (ii) if the objection is to a claim  
29 of an insured depository institution,  
30 in the manner provided by Rule  
31 7004(h); ~~and.~~

32 (B) If, as authorized by Rule 3003(b)(1),  
33 no proof of claim was filed, ~~or a proof of claim~~  
34 ~~was filed by an entity other than the creditor~~  
35 ~~under Rule 3004 or 3005,~~ the objection and



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revisions in blue (newest revisions in darker blue)

36 notice shall be served on the creditor by first-  
37 class mail at the address contained in the  
38 schedule of liabilities and, if applicable, in the  
39 manner provided in subdivision (a)(2)(A)(i) or  
40 (a)(2)(A)(ii).

41 (C) Service of the objection and notice  
42 shall ~~{also}~~ be made by first-class mail or other  
43 permitted means on the debtor or debtor in  
44 possession, and on the trustee, and, if applicable,  
45 the entity filing the proof of claim under Rule  
46 3005 by first class mail or other permitted  
47 means.

48 \* \* \* \* \*

#### 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

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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.

Subdivision (a)(2)(B) applies when a claim objection is made but ~~the creditor did not file a no~~ proof of claim was filed. This situation occurs when the creditor is not required to file a proof of claim in a chapter 9 or chapter 11 case because the claim was scheduled and not listed as contingent, disputed, or unliquidated, *see* Rule 3003, ~~or when someone other than the creditor filed the proof of claim under Rule 3004 or Rule 3005. In th~~atose situations ~~the creditor will not have designated on a proof of claim the person to receive notices, so~~ service on the creditor must be made at the address listed on the schedule of liabilities. In addition, if the creditor 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.

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

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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.

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# TAB 6.1

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

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

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

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

21 13 PLAN.

22 (1) Official or Local Form. If there is an  
23 Official Form for a plan filed in a chapter 13 case, that  
24 form must be used unless a Local Form has been  
25 adopted under paragraph (2). With either the Official  
26 Form or a Local Form, nonstandard Pprovisions not  
27 otherwise included in the Official Form or deviating  
28 from it are effective only if they are included in a  
29 section of the Official Fform designated for  
30 nonstandard provisions and are also identified in  
31 accordance with any other requirements of the  
32 Official Fform. As used in this rule and the Official  
33 Form or a Local Form, “nonstandard provision”  
34 means a provision not otherwise included in the  
35 Official or Local Form or deviating from it.



36                   (2) Requirements for a Local Form.  
37                   Notwithstanding Rule 9029, a district may require that  
38                   a Local Form be used instead of the Official Form if  
39                   the following conditions are satisfied:  
40                   (A) A single Local Form is adopted for the  
41                   district after public notice and an opportunity for  
42                   public comment.  
43                   (B) Each paragraph of the Local Form is  
44                   numbered and labeled in boldface type with a  
45                   title stating the general subject matter of the  
46                   paragraph.  
47                   (C) The Local Form includes an initial  
48                   paragraph stating that the plan does or does  
49                   not—  
50                   (i) contain any nonstandard provision;

51 (ii) limit the amount of a secured claim  
52 based on a valuation of the collateral for the  
53 claim; or  
54 (iii) avoid a security interest or lien.  
55 (D) The Local Form contains separate  
56 paragraphs for—  
57 (i) the cure of any default and maintenance  
58 of payments on a claim secured by the  
59 debtor’s principal residence;  
60 (ii) payment of a domestic support  
61 obligation;  
62 (iii) payment of a claim described in the  
63 final paragraph of § 1325(a) of the  
64 Bankruptcy Code; and  
65 (iv) surrender of property securing a claim  
66 with a request that the stay be terminated as  
67 to the surrendered collateral.

68                   (E) The Local Form contains a final paragraph  
69                   for the placement of nonstandard provisions,  
70                   with a statement that any nonstandard provision  
71                   placed elsewhere in the plan is void, and requires  
72                   a certification by the debtor’s attorney or by an  
73                   unrepresented debtor that the plan contains no  
74                   nonstandard provision other than those set out in  
75                   the final paragraph.

76                   (d) ~~NOTICE AND COPIES.~~ If the plan ~~The plan or~~  
77                   ~~a summary of the plan shall be~~ is not ~~included with~~ the ~~each~~  
78                   ~~notice of the hearing on confirmation mailed pursuant to~~  
79                   ~~Rule 2002,~~ the debtor shall serve the plan on the trustee and  
80                   all creditors when it is filed with the court. ~~If required by~~  
81                   ~~the court, the debtor shall furnish a sufficient number of~~  
82                   ~~copies to enable the clerk to include a copy of the plan with~~  
83                   ~~the notice of the hearing.~~

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

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

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

102 (g) EFFECT OF CONFIRMATION. Upon the  
103 confirmation of a ~~In a~~ chapter 12 or chapter 13 ~~case plan~~,

104 (1) ~~a~~Any determination made in the plan in  
105 accordance with Rule 3012 of the amount of a secured  
106 claim under § 506(a) of the Code is binding on ~~its~~ the  
107 holder of the claim, even if the holder files a contrary  
108 proof of claim under Rule 3002 or the debtor  
109 schedules that claim under § 521(a) of the Code, and  
110 regardless of whether an objection to the claim has  
111 been filed under Rule 3007.

112 (2) Any request in the plan for termination of  
113 the stay imposed by § 362(a), § 1201(a), or § 1301(a)  
114 is granted.

115 ~~(g)~~(h) MODIFICATION OF PLAN AFTER  
116 CONFIRMATION. A request to modify a plan pursuant to

117 § 1229 or § 1329 of the Code shall identify the proponent  
118 and shall be filed together with the proposed modification.  
119 The clerk, or some other person as the court may direct,  
120 shall give the debtor, the trustee, and all creditors not less  
121 than 21 days' notice by mail of the time fixed for filing  
122 objections and, if an objection is filed, the hearing to  
123 consider the proposed modification, unless the court orders  
124 otherwise with respect to creditors who are not affected by  
125 the proposed modification. A copy of the notice shall be  
126 transmitted to the United States trustee. A copy of the  
127 proposed modification, or a summary thereof, shall be  
128 included with the notice. ~~If required by the court, the~~  
129 ~~proponent shall furnish a sufficient number of copies of the~~  
130 ~~proposed modification, or a summary thereof, to enable the~~  
131 ~~clerk to include a copy with each notice.~~ If a copy is not  
132 included with the notice and the proposed modification is  
133 sought by the debtor, a copy shall be served on the trustee

134 and all creditors in the manner provided for service of the  
135 plan by subdivision (d) of this rule. Any objection to the  
136 proposed modification shall be filed and served on the  
137 debtor, the trustee, and any other entity designated by the  
138 court, and shall be transmitted to the United States trustee.  
139 An objection to a proposed modification is governed by  
140 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 subdivision (c)(2). Subdivision (c)(1) provides ~~The amended rule 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 (c)(2) sets out features required for all Local Forms in order to promote consistency among them. Local Forms may, but need not, require that valuation and lien avoidance occur through the plan confirmation process.

Subdivision (d) is amended to ensure that the trustee and creditors are served with the plan in advance of 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. ~~The seven-day notice period may be altered in a particular case by the court under Rule 9006.~~

Subdivision (g) is amended ~~to provide 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 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 amended to clarify that service of a proposed plan modification must be made in accordance with subdivision (d) of this rule. 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.

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# TAB 6.2

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1 **Rule 3015. Filing, Objection to Confirmation, Effect of**  
2 **Confirmation, and Modification of a Plan**  
3 **in a Chapter 12 or a Chapter 13 Case**

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

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

17 (c) FORM OF CHAPTER 13 PLAN. If there is an  
18 Official Form for a plan filed in a chapter 13 case, that  
19 form must be used unless a Local Form has been adopted in

20 compliance with Rule 3015.1. With either the Official  
21 Form or a Local Form, nonstandard provisions are effective  
22 only if they are included in a section of the form designated  
23 for nonstandard provisions and are also identified in  
24 accordance with any other requirements of the form. As  
25 used in this rule and the Official Form or a Local Form,  
26 “nonstandard provision” means a provision not otherwise  
27 included in the Official or Local Form or deviating from it.

28 (d) NOTICE. If the plan is not included with the  
29 notice of the hearing on confirmation mailed pursuant to  
30 Rule 2002, the debtor shall serve the plan on the trustee and  
31 all creditors when it is filed with the court.

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

37           (f) OBJECTION TO CONFIRMATION;  
38 DETERMINATION OF GOOD FAITH IN THE  
39 ABSENCE OF AN OBJECTION. An objection to  
40 confirmation of a plan shall be filed and served on the  
41 debtor, the trustee, and any other entity designated by the  
42 court, and shall be transmitted to the United States trustee,  
43 at least seven days before the date set for the hearing on  
44 confirmation, unless the court orders otherwise. An  
45 objection to confirmation is governed by Rule 9014. If no  
46 objection is timely filed, the court may determine that the  
47 plan has been proposed in good faith and not by any means  
48 forbidden by law without receiving evidence on such  
49 issues.

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

52                   (1) Any determination made in the plan in  
53 accordance with Rule 3012 of the amount of a secured

54 claim under § 506(a) of the Code is binding on the  
55 holder of the claim, even if the holder files a contrary  
56 proof of claim under Rule 3002 or the debtor  
57 schedules that claim under § 521(a) of the Code, and  
58 regardless of whether an objection to the claim has  
59 been filed under Rule 3007.

60 (2) Any request in the plan for termination of  
61 the stay imposed by § 362(a), § 1201(a), or § 1301(a)  
62 is granted.

63 (h) MODIFICATION OF PLAN AFTER  
64 CONFIRMATION. A request to modify a plan pursuant to  
65 § 1229 or § 1329 of the Code shall identify the proponent  
66 and shall be filed together with the proposed modification.  
67 The clerk, or some other person as the court may direct,  
68 shall give the debtor, the trustee, and all creditors not less  
69 than 21 days' notice by mail of the time fixed for filing  
70 objections and, if an objection is filed, the hearing to



71 consider the proposed modification, unless the court orders  
72 otherwise with respect to creditors who are not affected by  
73 the proposed modification. A copy of the notice shall be  
74 transmitted to the United States trustee. A copy of the  
75 proposed modification, or a summary thereof, shall be  
76 included with the notice. If a copy is not included with the  
77 notice and the proposed modification is sought by the  
78 debtor, a copy shall be served on the trustee and all  
79 creditors in the manner provided for service of the plan by  
80 subdivision (d) of this rule. Any objection to the proposed  
81 modification shall be filed and served on the debtor, the  
82 trustee, and any other entity designated by the court, and  
83 shall be transmitted to the United States trustee. An  
84 objection to a proposed modification is governed by Rule  
85 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 in advance of 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 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 amended to clarify that service of a proposed plan modification must be made in accordance with subdivision (d) of this rule. 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.

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# TAB 6.3

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

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

8 (a) A single Local Form is adopted for the district  
9 after public notice and an opportunity for public  
10 comment.

11 (b) Each paragraph of the Local Form is numbered  
12 and labeled in boldface type with a title stating the  
13 general subject matter of the paragraph.

14 (c) The Local Form includes an initial paragraph for  
15 the debtor to indicate that the plan does or does not—

16 (1) contain any nonstandard provision;

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

19 (3) avoid a security interest or lien.

20 (d) The Local Form contains separate paragraphs  
21 for—

22 (1) the cure of any default and maintenance of  
23 payments on a claim secured by the debtor's  
24 principal residence;

25 (2) payment of a domestic support obligation;

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

28 (4) surrender of property securing a claim with a  
29 request that the stay be terminated as to the  
30 surrendered collateral.

31 (e) The Local Form contains a final paragraph for  
32 the placement of nonstandard provisions, as defined in  
33 Rule 3015(c), with a statement that any nonstandard  
34 provision placed elsewhere in the plan is void; and  
35 requires a certification by the debtor's attorney or by  
36 an unrepresented debtor that the plan contains no



37 nonstandard provision other than those set out in the  
38 final paragraph.

### **Committee Note**

This rule is new. It sets out features required for all Local Forms for plans in chapter 13 cases. A Local Form not in compliance with this rule 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.

In order 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 valuation of

the collateral, or avoids a lien. 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. 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.

Local Forms may, but need not, require that valuation and lien avoidance occur through the plan confirmation process.

# TAB 7

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Proposed revision – published amendments in red;  
revisions in blue

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

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

4 \* \* \* \* \*

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

8 \* \* \* \* \*

**Committee Note**

Subdivision (2) is amended to provide that the determination of the amount of a secured claim under Rule 3012, ~~or the validity, priority, or extent of 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. ~~Thus, a debtor may propose to eliminate a wholly unsecured junior lien in a chapter 12 or chapter 13 plan without a separate adversary proceeding. Similarly, the avoidance of a lien on exempt property may be sought through a chapter 12 or chapter 13 plan in accordance with Rule 4003(d).~~ An adversary proceeding continues to be required for lien avoidance not governed by Rule 4003(d).

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# TAB 8

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**PROPOSED AMENDMENTS TO THE FEDERAL  
RULES OF BANKRUPTCY PROCEDURE 2002,  
3012, 4003, 5009, 9009\***

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

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

13 \* \* \* \* \*

---

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

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

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

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

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

27 (1) for filing objections and the hearing to  
28 consider approval of a disclosure statement or, under  
29 §1125(f), to make a final determination whether the

30 plan provides adequate information so that a separate  
31 disclosure statement is not necessary; ~~and~~

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

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

37 \* \* \* \* \*

### 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.

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

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

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

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

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

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

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

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

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### **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.

1 **Rule 4003. Exemptions**

2 \* \* \* \* \*

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

**Committee Note**

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

## 8 FEDERAL RULES OF BANKRUPTCY PROCEDURE

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.



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

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

14 \* \* \* \* \*

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

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

**Committee Note**

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

Other changes to this rule are stylistic.

1

1 **Rule 9009. Forms**

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

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

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

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

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

19 nothing to report on that question or category.

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

21 Administrative Office of the United States Courts may

22 issue additional forms for use under the Code.

23 (c) CONSTRUCTION. The forms shall be

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

**Committee Note**

This rule is amended and reorganized into separate subdivisions.

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

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

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