

The Chapter 13 Model Plan

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**A conversation on the proposed
Official Form for Chapter 13 plans
and accompanying rule
amendments**

Today's program

- 1. Materials
- 2. Timing
- 3. Why the Rules Committee is doing this
- 4. The proposed rule amendments
- 5. The proposed plan form

Please ask questions or make
comments at any time!

1. Materials

- The complete set of proposed rule changes and proposed forms are expected to be published for comment beginning on August 15.
 - Copies of these materials—and of today’s slides—can be sent to you by email. Send a request to eugene_wedoff@ilnb.uscourts.gov
 - Copies of the proposed plan form have been distributed for this program.
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2. Timing

The time cycle for rules and forms

- Year 1: Propose and publish for comment
 - Year 2: Review and submit to Standing Committee/JCUS; forms finished
 - Year 3: For rules: Supreme Court issuance and possible Congressional changes
 - December 1 effective date; rules and forms.
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2. Timing

- Comment period will open on August 15.
- To submit a comment, see www.uscourts.gov/RulesAndPolicies/rules/proposed-amendments.aspx

- **Submit and Review Comments Electronically:**

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- [Submit or Review Comments on the Proposed Amendments to the Federal Rules of Bankruptcy Procedure](#)

2. Timing

- August 15, 2014:
 - New comment period for both the rule amendments and the plan form
 - February 15, 2015:
 - Comment period ends
 - December 1, 2016:
 - Rule amendments and form effective
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3. Why the Committee is doing this

- We know change is a problem, but it—
 - advances the goal of uniform procedure
 - allows for lower costs
 - allows more effective education
 - makes decisions more useful
 - responds to *Espinosa*
 - reflects input of all interested groups, mini-conference, comments to publication
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4. The proposed rule amendments

- A. Make the form effective
 - B. Make plan confirmation final
 - C. Provide adequate notice
 - D. Allow for an order declaring a lien satisfied
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4. The proposed rule amendments

A. Make the form effective

- Prohibit local form variations
 - Require use of the form
 - Require special placement of non-standard provisions
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4A. Make the form effective

Prohibit local modification

- Current Rule 9009(a)
 - The Official Forms prescribed by the Judicial Conference of the United States shall be used “with alterations as may be appropriate”
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4A. Make the form effective

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 - The Official Forms prescribed by the Judicial Conference of the United States shall be used “without alteration, except
 - as otherwise provided in these rules,
 - in a particular Official Form,
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- Proposed Rule 9009(a)—and:
 - Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that
 - (1) expand the prescribed areas for responses in order to permit complete responses;
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 - Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that
 - (3) delete items requiring detail . . . if the filer indicates—either by checking “no” or “none” or by stating in words—that there is nothing to report on that question or category.
-

4A. Make the form effective

Make use of the form mandatory

- Rule 3015(c):
 - If there is an Official Form for plans filed in chapter 13 cases, that form must be used.
-

4A. Make the form effective

Special place for nonstandard provisions

- Rule 3015(c):
 - Provisions not otherwise included in the Official Form or deviating from the Official Form are effective only if they are included in a section of the Official Form designated for nonstandard provisions and are also identified in accordance with any other requirements of the Official Form.
-

4. Changes in the rules

B. Make plan confirmation final

- All non-governmental claims are to be filed before confirmation
 - Treatment of priority and secured claims may be determined at confirmation
 - Lien avoidance through the plan
-

4B. Make plan confirmation final

All non-governmental claims to be filed before confirmation

•Rule 3002:

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

4B. Make plan confirmation final

All non-governmental claims to be filed before confirmation

•Rule 3002:

(c) TIME FOR FILING. In a voluntary chapter 7 liquidation case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 60 days after the date the petition is filed . . . except as follows:

4B. Make plan confirmation final

All non-governmental claims to be filed before confirmation

- Rule 3002:

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

(B) any attachments required by Rule 3001(c)(1) [copy of the writing] and (d) [evidence of perfection] are filed as a supplement to the holder's claim not later than 120 days after the entry of the order for relief.

4B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012

- [A] request to determine the amount of a secured claim may be made by motion, in a claim objection, or in a plan filed in a chapter 12 or 13 case. . . . A request to determine the amount of a claim entitled to priority may be made only by motion made after the filing of the claim or in a claim objection.

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(c) CLAIMS OF GOVERNMENTAL UNITS.

A request to determine the amount of a secured claim of a governmental unit may be made by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired.

4B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3007(a):

A claim objection on 30 days notice is required “[e]xcept to the extent that a determination of the amount of a claim is made under Rule 3012 in connection with plan confirmation in a chapter 12 or 13 case”

4B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

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(g) EFFECT OF CONFIRMATION. Any determination made under Rule 3012 of the amount of a secured claim under § 506(a) of the Code in a chapter 12 or 13 case shall be binding on the holder of the claim notwithstanding any contrary proof of claim filed by the holder in accordance with Rule 3001 or any scheduling of that claim by the debtor pursuant to § 521(a) of the Code, whether or not any objection has been filed to the claim under Rule 3007.

4B. Make plan confirmation final

Lien avoidance done through the plan

•Rule 4003

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be commenced by motion in the manner provided for by in accordance with Rule 9014 or by a chapter 12 or 13 plan

4. Changes in the rules

C. Provide sufficient notice

- Heightened service for claim modification
 - Service of the full plan
 - Adequate time for objection
-

4C. Provide adequate notice

Heightened service for claim modification

- Rule 3012(b), allowing for stripdown of secured claims through the plan,
- and Rule 4003(d), allowing for lien avoidance,

both require service “in the manner provided for service of a summons and complaint by Rule 7004.”

4C. Provide adequate notice

Service of the full plan

- Rule 3015(d):

“NOTICE AND COPIES. If the plan ~~or a summary of the plan~~ is not included with each notice of the hearing on confirmation mailed pursuant to Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.”

4C. Provide adequate notice

Adequate time for objection

- Rule 2002(b)(3): 28 days notice of the hearing on confirmation
 - Rule 2002(a)(9): 21 days notice of deadline for objections to confirmation
 - Rule 3015(f): objections to confirmation must be filed 7 days before the hearing
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4D. Order of Lien Satisfaction

- Rule 5009(d):
 - ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim that was secured by property of the estate is subject to a lien under applicable nonbankruptcy law, the debtor may request entry of an order declaring that the secured claim has been satisfied and the lien has been released under the terms of a confirmed plan.
-

5. The Proposed Plan Form

Overall approach

- 10 parts (not all used in every case)
 - “None” boxes allowing content of used sections to be omitted = shorter form
 - 1 Exhibit (estimated payments by the trustee; a check on feasibility)
 - Designed to include all significant options (even if not available in every court)
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5. The Proposed Plan Form

The 10 parts:

1. Notices
 2. Payments to trustee
 3. Secured debt
 4. Priority claims
 5. Unsecured claims
 6. Executory contracts & unexpired leases
 7. Distribution order
 8. Property vesting
 9. Nonstandard provisions
 10. Signatures
-

5. The Proposed Plan Form

Significant provisions

- Part 1: Notice to Interested Parties
 - First item in the form: warning to debtors that options in the form don't guarantee confirmation

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 jurisdiction.

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- Part 1: Notice to Interested Parties
 - Next, warning for creditors:
 - Checkboxes for claim modification, lien avoidance, and non-standard provisions, ineffective if not checked.
 - Advice regarding legal rights
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- Part 2: Plan Payments and Length of Plan
 - Allows payments to trustee in other than monthly installments
 - Allows debtor to specify payroll control (but does not prevent the court from ordering payroll control not chosen by the debtor)
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- Part 2: Plan Payments and Length of Plan
 - Gives options for turnover of tax refunds
 - Provides for other possible sources of funding, such as property sales
 - Estimates total payments from the debtor to the trustee
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5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - Five sections with separate treatments
 - All sections in this part are collapsible— if no claims are covered, a check box for “None” allows the remainder of the section to be omitted from the filing.
-

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.1: Cure arrearage and maintain current payments
 - Proof of claim controls unless court rules otherwise (on claim objection)
 - As default: relief from stay terminates secured treatment (only in § 3.1)
-

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.1: Cure arrearage and maintain current payments
 - Option for current payment to be made by debtor (subject to local practice)
 - Arrearage payments made by trustee
-

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.1: Cure arrearage and maintain current payments

Current installment payment (including escrow)	Amount of arrearage	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)				

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.2 Valuation of security and claim modification (506(a) bifurcation)
 - Only effective if warning box checked
 - Plan controls secured value unless court rules otherwise (on conf. objection)
 - States when lien terminates (1325)(a)(5))

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.3 Hanging paragraph claims
 - States grounds for applying the paragraph
 - Allows choice of direct payment by debtor
-

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.4 Lien avoidance
 - Requires check in warning box
 - Calculation set out
 - § 3.5 Surrender
 - Contains consent to stay relief
-

5. The Proposed Plan Form

Significant provisions

- Part 4: Trustee's Fees and Priority Claims
 - Five sections: for amounts, not timing
 - § 4.1 General rule: full payment
 - § 4.2 Amount of trustee fees
 - § 4.3 Amount of unpaid attorney fees
-

5. The Proposed Plan Form

Significant provisions

- Part 4: Trustee's Fees and Priority Claims
 - Five sections: for amounts, not timing
 - § 4.4 Amount of other priority claims
 - “None” box
 - Estimate only; actual amount determined by proofs of claim
-

5. The Proposed Plan Form

Significant provisions

- Part 4: Trustee's Fees and Priority Claims
 - Five sections: for amounts, not timing
 - § 4.5 DSO claims assigned or owed to a governmental unit paid less than in full (under § 1322(a)(4))
 - “None” box; provides for detail
-

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
-

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.1 General rule: payment as specified in Part 5, but only to the extent claims are *allowed*
 - All of the remaining sections include the “None” box
-

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.2 Claims not specially classified
 - Three options; more than one can be chosen
 - If so, option with highest payment applies
 - Best interest test of § 1325(a)(4) sets minimum

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

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.3 Interest
 - Allows choice of no interest or interest at a rate chosen by debtor
 - Again references best interest test of § 1325(a)(4) (usual reason for any interest)
-

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.4 Cure arrearage and maintain current payments (commonly for student loans)
 - Detail list
 - Direct pay option (subject to local practice)
 - Arrearage always paid through trustee
-

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.5 Specially classified claims
 - Detail list

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
_____	_____	\$ _____	_____ %	\$ _____

5. The Proposed Plan Form

Significant provisions

- Part 6: Executory Contracts and Unexpired Leases
 - One section: rejected unless listed
 - “None” box
 - Detail list set out
 - Choice for direct pay of current obligations on listed contracts and leases

5. The Proposed Plan Form

Significant provisions

- Part 7: Order of Distribution of Trustee Payments
 - Trustee fees specified; others open
 - If left blank, distribution order would be determined by the trustee

The trustee will make the monthly payments required in Parts 3 through 6 in the following order, with payments other than those listed to be made in the order determined by the trustee:

a. Trustee's fees

b. _____

c. _____ *Insert additional lines if needed.*

5. The Proposed Plan Form

Significant provisions

- Part 8: Vesting of Property of the Estate
 - Gives vesting options (subject to court order under § 1327(b))

Check the applicable box:

Plan confirmation

Closing of case

Other: _____

5. The Proposed Plan Form

Significant provisions

- Part 9: Nonstandard Plan Provisions
 - Open for any provisions contrary to or in addition to those set out in the form
 - Not effective unless the warning box in Part 1 is checked
-

5. The Proposed Plan Form

Significant provisions

- Part 10: Signatures
 - Debtor signatures required only if not represented by an attorney

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)

5. The Proposed Plan Form

Exhibit page

- Estimated amounts of trustee payments
 - Should be automatic through software
 - Will check feasibility
-

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- C. Provide adequate notice
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Lien avoidance done through the plan

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(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be commenced by motion in the manner provided for by in accordance with Rule 9014 or by a chapter 12 or 13 plan

4. Changes in the rules

C. Provide sufficient notice

- Heightened service for claim modification
- Service of the full plan
- Adequate time for objection

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- Rule 2002(b)(3): 28 days notice of the hearing on confirmation
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|---|---------------------------|
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Significant provisions

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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 jurisdiction.

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 - § 3.1: Cure arrearage and maintain current payments
 - Proof of claim controls unless court rules otherwise (on claim objection)
 - As default: relief from stay terminates secured treatment (only in § 3.1)

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.1: Cure arrearage and maintain current payments
 - Option for current payment to be made by debtor (subject to local practice)
 - Arrearage payments made by trustee

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.1: Cure arrearage and maintain current payments

Current installment payment (including escrow)	Amount of arrearage	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage	Estimated total payments by trustee
\$ _____	\$ _____	_____ %	\$ _____	\$ _____

Disbursed by:
 Trustee
 Debtor(s)

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.2 Valuation of security and claim modification (506(a) bifurcation)
 - Only effective if warning box checked
 - Plan controls secured value unless court rules otherwise (on conf. objection)
 - States when lien terminates (1325)(a)(5))

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.3 Hanging paragraph claims
 - States grounds for applying the paragraph
 - Allows choice of direct payment by debtor

5. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.4 Lien avoidance
 - Requires check in warning box
 - Calculation set out
 - § 3.5 Surrender
 - Contains consent to stay relief

5. The Proposed Plan Form

Significant provisions

- Part 4: Trustee's Fees and Priority Claims
 - Five sections: for amounts, not timing
 - § 4.1 General rule: full payment
 - § 4.2 Amount of trustee fees
 - § 4.3 Amount of unpaid attorney fees

5. The Proposed Plan Form

Significant provisions

- Part 4: Trustee’s Fees and Priority Claims
 - Five sections: for amounts, not timing
 - § 4.4 Amount of other priority claims
 - “None” box
 - Estimate only; actual amount determined by proofs of claim

5. The Proposed Plan Form

Significant provisions

- Part 4: Trustee’s Fees and Priority Claims
 - Five sections: for amounts, not timing
 - § 4.5 DSO claims assigned or owed to a governmental unit paid less than in full (under § 1322(a)(4))
 - “None” box; provides for detail

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.1 General rule: payment as specified in Part 5, but only to the extent claims are *allowed*
 - All of the remaining sections include the “None” box

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.2 Claims not specially classified
 - Three options; more than one can be chosen
 - If so, option with highest payment applies
 - Best interest test of § 1325(a)(4) sets minimum

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

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.3 Interest
 - Allows choice of no interest or interest at a rate chosen by debtor
 - Again references best interest test of § 1325(a)(4) (usual reason for any interest)

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.4 Cure arrearage and maintain current payments (commonly for student loans)
 - Detail list
 - Direct pay option (subject to local practice)
 - Arrearage always paid through trustee

5. The Proposed Plan Form

Significant provisions

- Part 5: Nonpriority Unsecured Claims
 - Five sections
 - § 5.5 Specially classified claims
 - Detail list

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
_____	_____	\$ _____	_____ %	\$ _____

5. The Proposed Plan Form

Significant provisions

- Part 6: Executory Contracts and Unexpired Leases
 - One section: rejected unless listed
 - “None” box
 - Detail list set out
 - Choice for direct pay of current obligations on listed contracts and leases

5. The Proposed Plan Form

Significant provisions

- Part 7: Order of Distribution of Trustee Payments
 - Trustee fees specified; others open
 - If left blank, distribution order would be determined by the trustee

The trustee will make the monthly payments required in Parts 3 through 6 in the following order, with payments other than those listed to be made in the order determined by the trustee:

- a. Trustee's fees _____
- b. _____
- c. _____ Insert additional lines if needed.

5. The Proposed Plan Form

Significant provisions

- Part 8: Vesting of Property of the Estate
 - Gives vesting options (subject to court order under § 1327(b))

Check the applicable box:

- Plan confirmation
- Closing of case
- Other: _____

5. The Proposed Plan Form

Significant provisions

- Part 9: Nonstandard Plan Provisions
 - Open for any provisions contrary to or in addition to those set out in the form
 - Not effective unless the warning box in Part 1 is checked

5. The Proposed Plan Form

Significant provisions

- Part 10: Signatures
 - Debtor signatures required only if not represented by an attorney

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)

5. The Proposed Plan Form

Exhibit page

- Estimated amounts of trustee payments
 - Should be automatic through software
 - Will check feasibility

Any other questions or comments?
