THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: June 20, 2014

G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In the matter:

James Rogers Smith, Sr., and Gloria Jean Smith,	Case No. 14-20281-GMH
Debtors.	Chapter 13

ORDER OVERRULING U.S. BANK NATIONAL ASSOCIATION'S OBJECTION TO CONFIRMATION OF THE DEBTORS' PROPOSED CHAPTER 13 PLAN

U.S. Bank National Association objects to confirmation of the Smiths' proposed chapter 13 plan, arguing that the plan proposes to modify its rights in a manner that is permitted neither by 11 U.S.C. §1322(b)(2) or 11 U.S.C. §1322(c)(2). Because I conclude that the proposed modification is authorized by §1322(c)(2), U.S. Bank's objection is overruled. [1]

I

The underlying material facts are not in dispute. U.S. Bank holds a note that is secured by a first-mortgage lien on the Smiths' principal residence. The note, which

[1] U.S. Bank filed an objection on February 21, 2014, see CM-ECF No. 11, and renewed its objection on June 13, 2014, see CM-ECF No. 31, after the Smiths filed an amended chapter 13 plan that did not address U.S. Bank's concerns, see CM-ECF No. 17.This order resolves both objections.

matured on December 1, 2009, before the Smiths filed their bankruptcy petition, provides for interest at 13.99%.

To satisfy U.S. Bank's claim, the Smiths' chapter 13 plan provides that "the debtors[] will pay the principal balance due, which is $33,220.00[,] . . . at the rate of 4.25% interest [over the life of the plan] for a final payout of $36,930.00." CM-ECF No. 2, at 7. U.S. Bank objects that the proposed reduction of the interest rate paid on its claim from the note's rate of 13.99% to 4.25% is a modification prohibited by §1322(b)(2) because the bank holds a claim that is secured only by the Smiths' principal residence. See 11 U.S.C. §1322(b)(2).

U.S. Bank is correct about §1322(b)(2): it provides that a chapter 13 plan may not "modify the rights of holders of secured claims . . . [if the] claim [is] secured only by a security interest in real property that is the debtor[s'] principal residence". *Id*. But there are statutory exceptions to §1322(b)(2)'s antimodification provision. See 11 U.S.C. §1322(b)(5), (c) & (e). Pertinent to U.S. Bank's objection, §1322(c)(2) provides:

> Notwithstanding [§1322(b)(2)] and applicable nonbankruptcy law . . . in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor[s'] principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of [ ] title [11].

U.S. Bank does not contest that §1322(c)(2) applies to its claim, presumably content that the note's pre-bankruptcy maturation amounts to maturation "before the date on which the final payment under the plan is due". §1322(c)(2). U.S. Bank instead contends that the Smiths' chapter 13 plan cannot modify the note's interest rate because §1322(c)(2) only allows modification of the *payment* of its claim. As a result, says U.S. Bank, the Smiths are still required to pay through their chapter 13 plan the full claim amount plus 13.99% interest.

There is no controlling precedent regarding whether §1322(c)(2) allows a chapter 13 plan to modify the interest rate paid on a creditor's claim that is secured only by a debtor's principal residence. Indeed, U.S. Bank provides no authority to support its contention that §1322(c)(2) requires the Smiths' plan to pay its claim with interest at the

note rate, and nothing in the Code's text or structure commands that interpretation. The text instead suggests that the Smiths' plan can provide for the claim by paying the claim amount plus interest at a rate allowed under §1325(a)(5).[2]

II

The plain language of §1322(c)(2) provides that "the plan may provide for the payment of [a] claim as modified pursuant to [11 U.S.C. §1325(a)(5)]." §1322(c)(2). Section 1325(a)(5) allows chapter 13 plans to treat allowed secured claims in three ways: (i) provide any treatment as long as the holder of the claim "accept[s] the plan", (ii) distribute to the creditor property that is worth at least the amount of the creditor's allowed secured claim, or (iii) surrender the property securing the claim to the creditor. See 11 U.S.C. §1325(a)(5). To distribute property worth the amount of the creditor's claim—the option on which the Smiths' plan relies—§1325(a)(5) requires that the plan (a) provide that the holder of the claim retain its lien until the debt is paid in full or the debtors receive a chapter 13 discharge; (b) provide that "the value . . . of [the] property . . . distributed under the plan on account of [the creditor's] claim is not less than the allowed amount of such claim"; and (c) provide that any periodic payments provided for in the plan are made in equal monthly amounts. §1325(a)(5)(B).

U.S. Bank does not contest that the Smiths' plan satisfies (a) and (c); its objection is that their plan does not satisfy (b). The plan, according to U.S. Bank, pays it less than the value of its allowed secured claim because the plan does not pay it interest at the note rate. U.S. Bank argues that it is entitled to interest at the note rate because §1322(c)(2)'s exception to §1322(b)(2)'s antimodification provision is a narrow one, allowing a plan to modify the *payment* of a claim pursuant to §1325(a)(5) but not to modify the *claim* itself. Any modification of the note's interest rate is forbidden, says the bank, because such a modification would amount to a modification of the *claim* rather than a modification of the *payment* of the claim. Under this reading of §1322(c)(2), the Smiths' plan may only

[2] The Smiths' chapter 13 plan purports to pay the full amount owed to U.S. Bank under the note. See CM-ECF No. 2, at 7. U.S. Bank has not objected to the principal balance listed in the Smiths' chapter 13 plan, see CM-ECF No. 11 & 31, and U.S. Bank has not filed a proof of claim. This order only resolves whether §1322(c)(2) allows the Smiths to pay U.S. Bank's claim through the plan by distributing funds equal to the amount of its claim plus interest at a rate other than the note rate. This decision does not address whether the Smiths can provide for U.S. Bank's claim in their plan by only paying the allowed amount of U.S. Bank's secured claim as defined by 11 U.S.C. §506(a); nor does it address U.S. Bank's ability to collect post-petition interest as part of its allowed claim under 11 U.S.C. §506(b).

alter the note's due date, payment schedule, and the amount of monthly installment payments. U.S. Bank maintains that when §1322(c)(2) allows the modification of the payment of a claim secured by a debtor's principal residence pursuant to §1325(a)(5), the "allowed amount of such claim" for purposes of §1325(a)(5)(B)(ii) is the full amount of the claim as determined under nonbankruptcy law, including the note's interest rate.

U.S. Bank's argument that its claim includes future interest at the note's interest rate is untenable. The Code defines "claim" as a "right to payment". See 11 U.S.C. §101(5)(A). It directs that a creditor's claim is only allowed in the "amount of such claim in lawful currency of the United States *as of the date of the filing of the petition*," 11 U.S.C. §502(b) (emphasis added), and that such amount may not include any unmatured interest, see §502(b)(2). As a result, U.S. Bank's *claim* only includes the amount due under the note as of the petition date.

Again, U.S. Bank would enjoy the right to collect the full payment of its claim at the note's interest rate if §1322(b)(2) applied. It would enjoy this right not because payment of the note's interest rate is included in the "allowed amount of [its] claim" under §1325(a)(5)(B)(ii), but because the right to be paid interest at the note rate is one of the "rights of holders of secured claims" protected by §1322(b)(2)'s antimodification provision. See *Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 329 (1993); see also *In re Owens*, 36 B.R. 661, 663 (Bankr. Tenn. 1984). Notwithstanding §1322(b)(2), however, §1322(c)(2) allows a debtor's plan to "provide for the payment of [a] claim as modified pursuant to section 1325(a)(5)". §1322(c)(2).

U.S. Bank's contention that the "allowed amount of [its] claim" under §1325(a)(5)(B)(ii) includes the note rate is contrary to the Supreme Court's interpretation of §1325(a)(5). The Supreme Court has made clear that post-confirmation interest payments on secured claims under §1325(a)(5)(B)(ii) are not part of the "allowed amount of such claim" but are part of "the value . . . of property to be distributed under the plan". See *Till v. SCS Credit Corp.*, 541 U.S. 465, 469–70 & 473–74 (2004); see also *Rake v. Wade*, 508 U.S. 464, 472 n.8 (1993). "[T]he 'present value' confirmation requirement," i.e., the interest for which the plan must provide to comply with §1325(a)(5)(B)(ii), "technically[] is not considered part of the creditor's bankruptcy 'claim'[.]" *In re Smith*, 463 B.R. 756, 765 n.18 (Bankr. E.D. Pa. 2012).

The amount paid through the chapter 13 plan must equal the value of the creditor's allowed secured claim, and the promise of receiving money tomorrow is worth less than receiving money today. See *Till*, 541 U.S. at 473–74. Thus, §1325(a)(5)(B)(ii) only requires a debtor to pay interest sufficient to compensate the creditor for the cost of not getting paid the full amount of its allowed secured claim at confirmation. And the interest rate necessary to make the plan's promise of future payments equal to the value of the creditor's allowed claim is determined by increasing the prime national interest rate to account for the risk of nonpayment. See *id.* at 478–81.

The Smiths' proposed plan appears to provide interest as required by §1325(a)(5)(B)(ii): it proposes to pay the amount of U.S. Bank's claim plus 4.25% interest—the prime national interest rate plus one percent. The Smiths' plan thus treats U.S. Bank's claim as allowed by §1322(c)(2), because it pays that claim as modified by §1325(a)(5).

III

For these reasons, IT IS ORDERED that U.S. Bank National Association's objection to confirmation of the debtors' proposed chapter 13 plan is OVERRULED.