

The Proposed Chapter 13 National Model Plan
A Lou Jones Breakfast Club Presentation
May 14, 2013
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The judicial conference is considering establishing a National Mandatory Model Plan for Chapter 13. The process has begun and numerous issues have arisen. If the process moves forward and the normal timeline prevails a mandatory Model Plan may be implemented by 2015.

I. How the Rulemaking Process Works

The Federal Rules of Practice and Procedure govern the conduct of trials, appeals, and cases under Title 11 of the United States Code. The system of federal rules began with the Rules Enabling Act of 1934 ([28 U.S.C. § 2071-2077](#)). The Act authorized the Supreme Court to promulgate rules of procedure, which have the force and effect of law.

Over time, the work and oversight of the rulemaking process was delegated by the Court to committees of the [Judicial Conference](#), the principal policy-making body of the U.S. Courts. In 1988, amendments to the Rules Enabling Act formalized this committee process. Today, the Judicial Conference's Committee on Rules of Practice and Procedure, ("Standing Committee") and its five advisory rules committees "carry on a continuous study of the operation and effect" of the federal rules as directed by the Rules Enabling Act.

Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules evaluate suggestions (i.e. proposals) for rules amendments in the first instance. If an advisory committee pursues a proposal, it may seek permission from the Standing Committee to publish a draft of the contemplated amendment. Based on comments from the bench, bar, and general public, the advisory committee may then choose to discard, revise, or transmit the amendment as contemplated to the Standing Committee. The Standing Committee independently reviews the findings of the advisory committees and, if satisfied, recommends changes to the Judicial Conference, which in turn recommends changes to the Supreme Court. The Court considers the proposals and, if it concurs, officially promulgates the revised rules by order before May 1, to take effect no earlier than December 1 of the same year unless Congress enacts legislation to reject, modify, or defer the pending rules.

II. Bankruptcy Committee Notes and Plan Form

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES

FROM: CHAPTER 13 FORM PLAN WORKING GROUP

RE: NATIONAL CHAPTER 13 FORM PLAN PROJECT

DATE: AUGUST 22, 2012

In the course of preparing a national chapter 13 form plan, the Working Group concluded that amendments to bankruptcy rules would be helpful—if not essential—to an effective national form. This memorandum discusses the Working Group’s recommendations for rule amendments and the group’s proposal for the timing of formal consideration of these amendments by the Advisory Committee. A draft model plan and redlined version of the proposed rule amendments, showing all changes made from the current rules text, are set out as an appendix.

The Timing of Proposed Amendments

The Working Group has made substantial progress in drafting a model plan and proposed rule amendments. The Working Group brings them to the Advisory Committee at this meeting for a preliminary review. Subject to the approval of the Consumer and Forms Subcommittees, the Advisory Committee will be asked at the spring meeting to request the Standing Committee to publish the rule amendments for public comment in August 2013.

The process of drafting language for the rules discussed in this memorandum and developing the model plan has revealed the importance of seeking additional input before publication. Following the fall meeting, the Working Group would like to solicit the input of a broad cross section of interested parties. One potential approach for doing so would be modeled on the process used in the Forms Modernization Project—that is, seeking the views of lawyers (for debtors and creditors), trustees, and judges in workshop-style sessions. The Working Group

therefore requests the Advisory Committee's approval to solicit input from interested parties about the specific rule amendment language and draft model plan.

Rule Changes Proposed by the Working Group

1. Rule 3002

One of the major functions of a chapter 13 plan is dealing with secured claims. In order for a debtor or the standing trustee to have the relevant information about a secured claim, including the total claim amount and the amount of any claimed arrearage, it would be helpful to have a proof of claim from each secured creditor filed before the confirmation hearing. That way, any differences between the debtor's plan and the proof of claim could be addressed at the confirmation hearing.

A proposed rule amendment requiring proofs of claim to be filed by secured creditors was considered by the Advisory Committee meeting in March. Although general approval of the rule change was expressed, the question of whether the change should apply in chapter 11 cases was referred to the Business Subcommittee. The Working Group's proposal as currently drafted would apply in all cases.

In addition to requiring that proofs of claim be filed by secured creditors under Rule 3002(a), the Working Group also recommends that the deadline for filing proofs of claim under Rule 3002(c)—which deals with claims in chapters 7, 12, and 13—be reduced from 90 days after the first date set for the § 341 meeting of creditors to 60 days after the filing of the petition. A different time period is set out for involuntary chapter 7 cases.

This change would set the filing deadline to occur before the chapter 13 confirmation hearing date established by § 1324(b) of the Code. That subsection generally requires the confirmation hearing to be between 20 and 45 days after the § 341 meeting, which, under Rule

2003(a), must be at least 21 days after the order for relief in chapter 13. Thus, the court could always set the confirmation hearing more than 60 days after the order for relief, the proposed general deadline for filing proofs of claim. The deadline would also result in the filing of claims before the hearing on confirmation of a chapter 12 plan, which must generally be filed within 90 days of the order for relief under § 1221. Governmental creditors would be excepted from the deadline, consistent with the limitation in § 502(b)(9) of the Code.

The Working Group did not initially suggest any amendment to the exceptions to the deadline set out in Rule 3002(c). After further consideration, however, the Working Group has proposed a limited exception for creditors who were not timely listed in the mailing list required by Rule 1007(a)(1) to contain the name and address of creditors included or to be included in the debtor's schedules.

The proposed language is as follows:

Rule 3002. Filing Proof of Claim or Interest

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

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

(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 60 days after the date of the filing of the petition, and in an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the entry of the order for relief, except as follows:

* * *

(6) If the debtor fails to include a creditor on the list required by Rule 1007(a)(1), filed with the petition, or if notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days from the date of the court's determination if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

2. Rule 3007

Among the rule amendments published for public comment last August was an amendment of Rule 3007(a), which addresses the time and manner of serving objections to claims. Rather than proceed with the published amendment of Rule 3007(a), the Advisory Committee decided in March to postpone further action on the amendment until a unified approach to the service of claim objections and claim determinations through plans can be proposed. Although this unified approach has not yet been developed, the Working Group proposes an amendment to Rule 3007 that would provide an exception to the need to file a claim objection if the determination of the allowance of a claim is made under proposed Rule 3012 in connection with plan confirmation in a chapter 12 or 13 case. The proposed language is as follows:

Rule 3007. Objections to Claims

(a) OBJECTIONS TO CLAIMS. An objection to the allowance of a claim shall be in writing and filed. Except to the extent that a determination of the allowance of a claim is made under Rule 3012 in connection with plan confirmation in a chapter 12 or 13 case, a copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing.

3. Rule 3012

Just as the amendment to Rule 3002 will assist in determining the proper treatment of secured claims under a form chapter 13 plan, an amendment to Rule 3012 will clarify that the amount of an allowed secured claim, as well as the amount of a claim subject to priority, may be specified in a proposed plan, subject to objection and resolution at the confirmation hearing. Current Rule 3012 provides for the valuation of secured claims by motion only, and there is no rule governing the determination of priority claim amounts. However, the secured and priority status of claims must often be determined at the time of plan confirmation in chapter 13, because of a need for these claims to be given special treatment under § 1322(a)(2) (full payment of priority claims), § 1322(b)(2) and (5) (special treatment for homestead-only mortgages), and § 1325(a)(5) with the “hanging paragraph” (treatment of certain other secured claims). Similarly, because of the importance of curing mortgage arrears under § 1322(b)(5), the Working Group decided, after the initial proposed revision was drafted, to add the determination of arrearage amounts to the matters that could be determined through the confirmation process. Finally, because of the importance of these determinations to secured and priority creditors, a further amendment is proposed to require that these creditors receive notice consistent with the requirement of Rule 7004 for service of an adversary proceeding.

In recognition that a claim of a governmental unit may be timely filed after confirmation, the proposed rule also provides that determinations with respect to such a claim may be made only after the claim is filed or after the time for filing the claim has expired.

Objections to claims under § 502(b) of the Code are not affected by this amendment and would continue to be governed by Rule 3007. Section 502(b) generally requires that any proof of claim be “allowed” unless an objection is brought under one of the grounds listed in that

subsection. Those grounds do not include insufficiency of collateral to support a secured claim or the absence of a basis for priority. Thus, a claim can be “allowed” in its full amount, with secured or priority status determined separately. The determination of the allowed amounts of general unsecured claims is generally not required at the time of plan confirmation. Similarly, the procedures for confirmation of chapter 11 plans are also not affected by the amendment. A Committee Note to the amendment would reflect these limitations.

The amendment of Rule 3012 as proposed to deal with the valuation issues and notice is as follows:

Rule 3012. Determination of the Amount of Secured and Priority Claims

On request of a party in interest and after notice—to the holder of the claim and any other entity designated by the court—and a hearing, the court may determine

- (a) the amount of an allowed secured claim under § 506(a) of the Code,
- (b) the amount necessary to cure any default as of the date of the petition,
- or
- (c) the amount of a claim entitled to priority under § 507 of the Code.

The request may be made by motion, in a plan filed in a chapter 12 or 13 case, or in a claim objection. The request shall be served on the holder of the claim and any other entity designated by the court in the manner provided for service of a summons and complaint by Rule 7004. Determinations under this rule may be made with respect to a claim of a governmental unit only after a proof of claim has been filed by the governmental unit or after the time for filing a proof of claim under Rule 3002(c)(1) has expired.

4. Rule 3015

The most extensive proposed amendments are to Rule 3015, which deals with filing, objections to, and modification of a chapter 13 plan. In addition to several stylistic

changes, the proposed amendment introduces, in Rule 3015(c), the requirement that an official form be used for all chapter 13 plans. The rule further provides that non-standard provisions will be ineffective unless they are set out in the section of the official form specifically designated for such provisions and are identified in accordance with the requirements of the official form.

Rule 3015(d) would be amended to assure that creditors receive a copy of the plan prior to confirmation.

Rule 3015(f) would establish a default deadline for objections to confirmation at seven days before the confirmation hearing. This new deadline would create the need for extended notice of plan confirmation under Rule 2002(b)(2), which provides for 28-day notice of both the hearing on confirmation of a chapter 13 plan and the deadline for filing objections to confirmation. If a single notice is provided, it would need to be sent at least 35 days before the confirmation hearing, in order to give 28-days notice of the deadline for filing objections. A Committee Note could point this out. However, the Working Group may wish to consider an amendment to Rule 2002(b)(2) to provide either for 21 days' notice of the deadline for filing objections or 35 days' notice of the confirmation hearing.

A new Rule 3015(g) is added, which provides, consistent with *United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367 (2010), that the confirmation of a chapter 13 plan controls over any contrary proof of claim, and so effectuates the amendments to Rule 3012.

Finally, former Rule 3015(g), now designated as Rule 3015(h), is amended to provide more effective notice of proposed plan modifications.

The proposed language of the amendments is as follows:

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

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

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

(c) FORM OF CHAPTER 13 PLAN. The plan filed in a chapter 13 case shall be prepared as prescribed by the appropriate Official Form. Provisions not otherwise included in the Official Form or deviating from provisions of the Official Form shall not be effective unless they are included in a section of the Official Form that is designated for non-standard provisions and are also identified in accordance with any other requirements of the Official Form.

(d) NOTICE. If the plan is not included with the 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.

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

(f) OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION. An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, at least seven days before the hearing on confirmation, unless otherwise ordered by the court. An objection to confirmation is governed by Rule 9014. If no objection is timely

filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) EFFECT OF CONFIRMATION. Any determination made under Rule 3012 of the validity, amount and treatment of a claim filed 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.

(h) MODIFICATION OF PLAN AFTER CONFIRMATION. A request to modify a plan pursuant to § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. If a copy is not included with the notice and the proposed modification is sought by the debtor, a copy shall be served on the trustee and all creditors in the manner provided for service of the plan by subdivision (d) of this rule. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

5. Rule 4003

Rule 4003(d) is amended, consistent with Rule 3012, to make clear that chapter 12 and 13 plans may provide for avoidance of liens pursuant to § 522(f) of the Code. Again, to assure that a creditor affected by the avoidance has proper notice of the plan, the plan would have to be served on that creditor in accordance with Rule 7004. The proposed language is as follows:

Rule 4003. Exemptions

* * *

(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 Rule 9014 or by a chapter 12 or 13 plan served in the manner provided by Rule 7004 for service of a summons and complaint. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion or chapter 12 or 13 plan provision filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

6. Rule 5009

Another issue considered by the Working Group is whether there should be a procedure for the debtor to obtain an order confirming that a secured claim has been satisfied. The primary concern is that a debtor may need documentation for title purposes of the elimination of an unsecured second mortgage or other lien. Because requests for such orders are likely to be made at the time the case is being closed, the Working Group is proposing that the procedure be added as an amendment to Rule 5009. However, the rule would allow a debtor to request an order at any time after the lien has been satisfied. The language is drafted to avoid taking a position on whether a chapter 13 discharge must be entered before a request for an order may be made.

Rule 5009. Closing Chapter 7, Chapter 12, and Chapter 13 Cases; Order Declaring Lien Satisfied

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

(b) ORDER DECLARING LIEN SATISFIED. In a chapter 12 or chapter 13 case, if a claim is subject to a lien under applicable nonbankruptcy law, and the debtor contends that (1) any portion of the claim that is an allowed secured claim has been fully paid, and (2) any other portion of the claim has been discharged, the debtor may request entry of an order determining that the lien has been satisfied. The request shall be made by motion and shall be served on the holder of the claim and any other entity designated by the court in the manner provided by Rule 7004 for service of a summons and complaint. An order entered under this subdivision shall be effective as a release of the lien.

7. Rule 7001

Rule 7001 lists a number of matters that are required to be conducted by adversary proceeding. Included in this list, in Rule 7001(2) are certain proceedings “to determine the validity, priority, or extent of a lien or other interest in property.” This item would be amended to clarify that confirmation of a chapter 12 or chapter 13 plan, rather than an adversary proceeding, may determine secured and priority status under Rule 3012, as well as § 522(f) lien avoidance under Rule 4003(d). The Committee Note would point out that lien avoidance not governed by Rule 4003(d) would continue to require an adversary proceeding.

The Committee Note would also point out that the amendments to Rules 3012, 4003, and 7001 resolve a conflict in the reported decisions as to the proper procedure for eliminating, through a chapter 12 or 13 plan, a second mortgage unsupported by any equity in the debtor’s home. *See In re Bennett*, 466 B.R. 422 (Bankr. S.D. Ohio 2012) (collecting conflicting authorities). The amendments make clear that an adversary proceeding is not required and that the second mortgage may be eliminated through a chapter 12 or 13 plan.

The amendment to Rule 7001 is as follows:

Rule 7001. Scope of Rules of Part VII

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

* * *

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

8. Rule 9009

The final amendment is to Rule 9009, which governs forms generally. The amendment would address two concerns involving the current provision that official forms may be “used with alterations as may be appropriate” and with “their contents rearranged.” To make all of the forms—and particularly the chapter 13 plan form—consistent in use, these provisions would be eliminated, and the only modifications allowed would be in the omission of form provisions and responses that, by the terms of the form, are inapplicable. The proposed amended language is as follows:

Rule 9009. Forms

Except as otherwise provided in Rule 3016(d), the Official Forms prescribed by the Judicial Conference of the United States shall be observed and accepted for filing. If a form indicates that answers to particular questions are not required by the person completing the form, those questions need not be reproduced in the document filed with the court. Specific questions and instructions may not be changed, except that on the schedules the debtor may omit spaces for responses once the debtor has either indicated that the debtor has nothing to report for the category or has scheduled all information pertinent to the category. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code. The forms shall be construed to be consistent with these rules and the Code.

Appendix: Redlined version, showing language modifying existing rules

Rule 3002. Filing Proof of Claim or Interest

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

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

(c) TIME FOR FILING. In a **voluntary** chapter 7 ~~liquidation~~ **case**, chapter 12 ~~family farmer's debt adjustment~~ **case**, or chapter 13 ~~individual's debt adjustment~~ case, a proof of claim is timely filed if it is filed not later than ~~90~~ **60** days after ~~the~~ **date of the filing of the petition**, and in an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the entry of the order **for relief**, ~~the date first set for the meeting of creditors under § 341(a) of the Code~~ except as follows:

* * *

(6) **If the debtor fails to include a creditor on the list required by Rule 1007(a)(1), filed with the petition, or if** ~~If~~ notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days **from the date of the court's determination** if the court finds that the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim.

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

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

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

~~(c) DATING. Every proposed plan and any modification thereof shall be dated.~~
FORM OF CHAPTER 13 PLAN. The plan filed in a chapter 13 case shall be prepared as prescribed by the appropriate Official Form. Provisions not otherwise included in the Official Form or deviating from provisions of the Official Form shall not be effective unless they are included in a section of the Official Form that is designated for non-standard provisions and are also identified in accordance with any other requirements of the Official Form.

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

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

(f) **OBJECTION TO CONFIRMATION; DETERMINATION OF GOOD FAITH IN THE ABSENCE OF AN OBJECTION.** An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated

32 by the court, and shall be transmitted to the United States trustee, ~~before~~
33 ~~confirmation of the plan~~ **at least seven days before the hearing on confirmation,**
34 **unless otherwise ordered by the court.** An objection to confirmation is governed
35 by Rule 9014. If no objection is timely filed, the court may determine that the
36 plan has been proposed in good faith and not by any means forbidden by law
37 without receiving evidence on such issues.

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

44 ~~(g)~~ **(h) MODIFICATION OF PLAN AFTER CONFIRMATION.** A request to
45 modify a plan pursuant to § 1229 or § 1329 of the Code shall identify the
46 proponent and shall be filed together with the proposed modification. The clerk,
47 or some other person as the court may direct, shall give the debtor, the trustee, and
48 all creditors not less than 21 days' notice by mail of the time fixed for filing
49 objections and, if an objection is filed, the hearing to consider the proposed
50 modification, unless the court orders otherwise with respect to creditors who are
51 not affected by the proposed modification. A copy of the notice shall be
52 transmitted to the United States trustee. A copy of the proposed modification, or a
53 summary thereof, shall be included with the notice. ~~If required by the court, the~~
54 ~~proponent shall furnish a sufficient number of copies of the proposed~~
55 ~~modification, or a summary thereof, to enable the clerk to include a copy with~~
56 ~~each notice.~~ **If a copy is not included with the notice and the proposed**
57 **modification is sought by the debtor, a copy shall be served on the trustee and all**
58 **creditors in the manner provided for service of the plan by subdivision (d) of this**
59 **rule.** Any objection to the proposed modification shall be filed and served on the
60 debtor, the trustee, and any other entity designated by the court, and shall be
61 transmitted to the United States trustee. An objection to a proposed modification
62 is governed by Rule 9014.

1 **Rule 4003. Exemptions**

2 * * *

3 (d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY.

4 A proceeding by the debtor to avoid a lien or other transfer of property exempt
5 under § 522(f) of the Code shall **be commenced** by motion **in the manner provided**
6 **for by** ~~in accordance with~~ Rule 9014 **or by a chapter 12 or 13 plan served in the**
7 **manner provided by Rule 7004 for service of a summons and complaint.**

8 Notwithstanding the provisions of subdivision (b), a creditor may object to a
9 motion or chapter 12 or 13 plan provision filed under § 522(f) by challenging the
10 validity of the exemption asserted to be impaired by the lien.

1 **Rule 5009. Closing Chapter 7 ~~Liquidation~~, Chapter 12 ~~Family Farmer's Debt~~**
2 **~~Adjustment~~, and Chapter 13 ~~Individual's Debt Adjustment~~ Cases; **Order Declaring****
3 ****Lien Satisfied****

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

10 **(b) ORDER DECLARING LIEN SATISFIED.** In a chapter 12 or chapter 13 case,
11 **if a claim is subject to a lien under applicable nonbankruptcy law, and the debtor**
12 **contends that (1) any portion of the claim that is an allowed secured claim has been**
13 **fully paid, and (2) any other portion of the claim has been discharged, the debtor**
14 **may request entry of an order determining that the lien has been satisfied. The**
15 **request shall be made by motion and shall be served on the holder of the claim and**
16 **any other entity designated by the court in the manner provided by Rule 7004 for**
17 **service of a summons and complaint. An order entered under this subdivision**
18 **shall be effective as a release of the lien.**

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

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

4 * * *

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

8 * * *

1 **Rule 9009. Forms**

2 Except as otherwise provided in Rule 3016(d), the Official Forms prescribed by the Judicial
3 Conference of the United States shall be observed and ~~used with alterations as may be~~
4 ~~appropriate~~ **accepted for filing.** ~~Forms may be combined and their contents rearranged to permit~~
5 ~~economies in their use.~~ **If a form indicates that answers to particular questions are not required**
6 **by the person completing the form, those questions need not be reproduced in the document filed**
7 **with the court. Specific questions and instructions may not be changed, except that on the**
8 **schedules the debtor may omit spaces for responses once the debtor has either indicated that the**
9 **debtor has nothing to report for the category or has scheduled all information pertinent to the**
10 **category.** The Director of the Administrative Office of the United States Courts may issue
11 additional forms for use under the Code. The forms shall be construed to be consistent with these
12 rules and the Code.

United States Bankruptcy Court

_____ District of _____

In re:

Case No: _____

Debtor(s)

☐ Check if this is an amended plan

Official Form XXXX
Chapter 13 Plan

Date: _____

Check all that apply:

- ☐ The plan seeks to limit the amount of a secured claim, which may result in a creditor's lien receiving a partial payment or no payment at all, as set out in Part 2, Section 7.
- ☐ The plan requests the avoidance of a judicial lien as set out in Part 2, Section 9.
- ☐ The plan requests the avoidance of a nonpossessory, nonpurchase-money security interest as set out in Part 2, Section 10.
- ☐ The plan sets out non-standard provisions in Part 10.

Notice to Interested Parties: Your rights may be affected. Your claim may be reduced, modified, or eliminated.

You should read these papers carefully and discuss them 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 treatment of your claim or any provision of this Plan, you or your lawyer must file an objection to confirmation at least seven days before 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.

Part 1: Plan Payments and Length of Plan

1. Debtor(s) will pay to the trustee \$ _____ per month for _____ months, and
\$ _____ per month for _____ months.
2. Payments to the trustee will be made from future earnings in the following manner:
 - ☐ Debtor(s) will agree to entry of a payroll deduction order.
 - ☐ Debtor(s) will make payments directly to the trustee.

3. Additional payments to the trustee will be made as follows (check all that apply):

☐ Debtor(s) will turn over to the trustee:

☐ any tax refunds received during the plan term

☐ any tax refunds in excess of \$ _____ received during the plan term

☐ Other sources of funding, including the sale of property (describe source, amount and date when available):

4. The estimated total amount of plan payments is \$ _____.

5. The estimated term of the plan is _____ months.

Part 2: Treatment of Secured Claims

6. **Cure of Default and Maintenance of Payments.** The debtor(s) will cure the default and maintain the contractual installment payments on the secured claims listed below. The allowed claim for the arrearage amount, if any, will be paid under the plan, with interest if specified, at the rate stated.

| Name of creditor | Collateral | Current installment payment (including escrow payment) | Interest rate on arrearage (if applicable) | Amount of arrearage to be paid | Monthly plan payment on arrearage or other payment arrangement |
|------------------|------------|---|--|--------------------------------|--|
| | | Payment: \$_____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s) | | | |
| | | Payment: \$_____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s) | | | |

7. **Determination of Allowed Secured Claims and Claim Modification.** The claims listed below are allowed secured claims only to the extent of the value of the creditor's interest in the collateral as provided under 11 U.S.C. § 506(a). Unless a creditor timely objects to confirmation, the value of the creditor's interest in the collateral shall be the amount of the allowed secured claim listed below, and it will be paid in full under the plan with interest at the rate stated below. The portion of any allowed claim that exceeds the amount of the allowed secured claim shall be treated as an unsecured claim under Part 4 of this plan. If the amount of a creditor's allowed secured claim is listed below as having no value, the creditor's allowed claim shall be treated in its entirety as an unsecured claim under Part 4 of this plan. The holder of any allowed secured claim, other than a mortgage treated in Part 2, Section 6, shall retain the lien until the earlier of (a) payment of the underlying debt determined under nonbankruptcy law, or (b) discharge under 11 U.S.C. § 1328(a), at which time the lien shall terminate and be released by the creditor. See Bankruptcy Rule 3015.

| Name of creditor | Amount of creditor's claim | Collateral | Value of collateral | Amount of claims senior to creditor's claim | Interest rate | Amount of creditor's secured claim to be paid | Monthly plan payment |
|------------------|----------------------------|------------|---------------------|---|---------------|---|----------------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

8. **Secured Claims Not Subject to 11 U.S.C. § 506.** 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 or (2) incurred within one 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.

Check if applicable:

- ☐ Other secured claims not subject to 11 U.S.C. § 506 that are not listed below are provided for in Part 10 below.

| Name of creditor | Collateral | Interest rate | Amount of claim to be paid | Monthly plan payment |
|------------------|------------|---------------|----------------------------|----------------------|
| | | | | |
| | | | | |

9. **Judicial Lien Avoidance.** The judicial liens securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U. S. C. § 522(b). A judicial lien securing a claim listed below shall be avoided to the extent that the lien impairs such exemptions upon entry of the order confirming the plan. The amount of the lien that is avoided will be treated as an unsecured claim in Part 4. The amount of the lien 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).

| Name of creditor | Collateral | Judgment date and date of lien recording | Lien recording information | Amount of lien not avoided and paid as secured claim | Interest rate (if applicable) | Monthly plan payment (if applicable) |
|------------------|------------|--|----------------------------|--|-------------------------------|--------------------------------------|
| | | | | a. Amount of judicial lien \$ _____ b. Amount of all other liens \$ _____ c. Value of claimed exemptions + \$ _____ d. Total. Add a, b, and c \$ _____ e. Value of debtor's interest in property \$ _____ Extent of exemption impairment (check applicable box): <input type="checkbox"/> Line d is greater than Line e. The entire lien is avoided. <input type="checkbox"/> Line d is less than Line e. A portion of the lien is avoided. Amount of lien not avoided: \$ _____ | | |
| | | | | a. Amount of judicial lien \$ _____ b. Amount of all other liens \$ _____ c. Value of claimed exemptions + \$ _____ d. Total. Add a, b, and c \$ _____ e. Value of debtor's interest in property \$ _____ Extent of exemption impairment (check applicable box): <input type="checkbox"/> Line d is greater than Line e. The entire lien is avoided. <input type="checkbox"/> Line d is less than Line e. A portion of the lien is avoided. Amount of lien not avoided: \$ _____ | | |

10. **Nonpossessory, Nonpurchase-money Security Interest Avoidance.** The 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). A security interest securing a claim listed below shall be avoided to the extent that the security interest impairs such exemptions upon entry of the order confirming the plan. The amount of the security interest that is avoided will be treated as an unsecured claim in Part 4. The amount of the 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).

| Name of creditor | Collateral | Amount of security interest not avoided and paid as secured claim | Interest rate (if applicable) | Monthly plan payment (if applicable) |
|------------------|------------|---|-------------------------------|--------------------------------------|
| | | a. Amount of security interest \$ _____ b. Amount of all other liens \$ _____ c. Value of claimed exemptions + \$ _____ d. Total. Add a, b, and c \$ _____ e. Value of debtor's interest in property \$ _____ Extent of exemption impairment (check applicable box): <input type="checkbox"/> Line d is greater than Line e. The entire security interest is avoided. <input type="checkbox"/> Line d is less than Line e. A portion of the security interest is avoided. Amount of security interest not avoided: \$ _____ | | |

| | | |
|--|--|--|
| | <p>a. Amount of security interest \$ _____</p> <p>b. Amount of all other liens \$ _____</p> <p>c. Value of claimed exemptions + \$ _____</p> <p>d. Total. Add a, b, and c \$ _____</p> <p>e. Value of debtor's interest in property \$ _____</p> <p>Extent of exemption impairment (check applicable box):</p> <p><input type="checkbox"/> Line d is greater than Line e. The entire security interest is avoided.</p> <p><input type="checkbox"/> Line d is less than Line e. A portion of the security interest is avoided.</p> <p>Amount of security interest not avoided: \$ _____</p> | |
|--|--|--|

11. **Surrender of Collateral.** The debtor(s) elect to surrender to the creditors listed below the personal or real property that is collateral for the claim. The debtor(s) consent to termination of the stay with respect to the collateral upon confirmation of the plan. Any allowed unsecured claim resulting from the disposition of the collateral will be treated in Part 4 below.

| Name of creditor | Collateral |
|------------------|------------|
| | |
| | |

Part 3: Treatment of Administrative and Other Priority Claims

12. **Trustee's Fees.** Fees of the standing trustee will be paid in full, without interest. These fees are estimated to be _____% of plan payments; and during plan term, they are estimated to total \$_____.
13. **Attorney's Fees.** Fees of the attorney, in the amount of \$_____, will be paid in full, without interest.
14. **Other Priority Claims.** The allowed priority claims listed below will be paid in full.

| Name of creditor | Basis for priority treatment | Amount to be paid |
|------------------|------------------------------|-------------------|
| | | |
| | | |

15. **Domestic Support Obligations Paid Less than Full Amount.** The allowed priority claims listed below based on a domestic support obligation will be paid less than the full amount of the claim in accordance with 11 U.S.C. § 1322(a)(4).

| Name of creditor | Amount to be paid |
|------------------|-------------------|
| | |
| | |

16. **Interest.** Interest on allowed priority claims listed in line 15 will (check the applicable box):

☐ Not be paid

☐ Be paid at an annual percentage rate of _____ % in accordance with 11 U.S.C. § 1325(a)(4), and is estimated to total \$ _____.

Part 4: Treatment of Nonpriority Unsecured Claims

17. **Cure of Default and Maintenance of Payments.** The debtor(s) will cure the default and maintain the contractual installment payments on the unsecured claims listed below on which the last payment is due after the final plan payment. The allowed claim for the arrearage amount will be paid under the plan.

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

18. **Separately Classified Nonpriority Unsecured Claims.** The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows:

| Name of creditor | Basis for separate classification | Treatment | Amount to be paid |
|------------------|-----------------------------------|-----------|-------------------|
| | | | |

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

19. **Nonpriority Unsecured Claims.** Nonpriority unsecured allowed claims that are not separately classified will be paid not less than (check the applicable box):

- ☐ The sum of \$_____ to be distributed on a *pro rata* basis
- ☐ _____ percent of allowed claims
- ☐ The funds remaining after disbursements have been made to all other creditors provided for in this plan, to be distributed on a *pro rata* basis.

20. **Interest.** Interest on allowed unsecured claims, including separately classified claims, will (check the applicable box):

- ☐ Not be paid
- ☐ Be paid at an annual percentage rate of _____ % in accordance with 11 U.S.C. § 1325(a)(4), and is estimated to total \$ _____.

Part 5: Executory Contracts and Unexpired Leases

21. All executory contracts and unexpired leases are rejected, except those listed below, which are assumed and will be treated as provided for below or under another specified provision of the plan.

| Name of creditor | Property description | Treatment (refer to other plan section if applicable) | Current installment payment | Amount of arrearage to be paid |
|------------------|----------------------|---|---|--------------------------------|
| | | | Payment: \$_____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s) | |
| | | | Payment: \$_____ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s) | |

Part 6: Order of Distribution

22. The trustee will pay allowed claims in the following order:

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____
- 6) _____
- 7) _____

Part 7: Summary of Plan Disbursements

23. From the payments received from the debtor(s), the trustee will make the following estimated disbursements on allowed claims:

- | | |
|--|-----------------|
| 1) Current installment payments on secured claims (Part 2, Section 6 total): | \$ _____ |
| 2) Arrearage payments on secured claims (Part 2, Section 6 total): | \$ _____ |
| 3) Allowed secured claims (Part 2, Section 7 total): | \$ _____ |
| 4) Secured claims not subject to 11 U.S.C. § 506 (Part 2, Section 8 total): | \$ _____ |
| 5) Judicial liens not avoided (Part 2, Section 9 total): | \$ _____ |
| 6) Security interests not avoided (Part 2, Section 10 total): | \$ _____ |
| 7) Administrative and other priority claims (Part 3 total): | \$ _____ |
| 8) Current installment payments on unsecured debts (Part 4, Section 17 total): | \$ _____ |
| 9) Arrearage payments on unsecured debts (Part 4, Section 17 total): | \$ _____ |
| 10) Separately classified unsecured claims (Part 4, Section 18 total): | \$ _____ |
| 11) Nonpriority unsecured claims (Part 4, Section 19 total): | \$ _____ |
| 12) Interest on allowed unsecured claims (Part 4, Section 20 total): | \$ _____ |
| 13) Total of (1) through (12) above: | \$ _____ |

Part 8: Claims of Governmental Units

24. This plan is not binding with respect to any claim of a governmental unit that is (a) timely filed after confirmation of this plan, and (b) inconsistent with the treatment of such claim under this plan.

Part 9: Vesting of Property of the Estate

25. Property of the estate shall revert in the debtor(s) upon (check the applicable box):

☐ Plan confirmation

☐ Closing of case

☐ Other: _____

Part 10: Non-standard Plan Provisions

In accordance with Bankruptcy Rule 3015(c), non-standard provisions are required to be set forth below.

Part 11: Signatures

Debtors (sign only if not represented by an attorney)

_____ Date _____

_____ Date _____

Debtors' Attorney

_____ Date _____

III. January Agenda

Attachment 3
Agenda for the Conference on an Official Form Chapter 13 Plan and
Related Amended Rules:
Topics, Schedule, and Panel Assignments

8:30 - 8:45 **Welcome and Introductions**

8:45 – 10:30 **Panel 1. *The Draft Form Plan***

Panelists: Glenn Stearns, Judge Connelly, Billy Brewer, Mary Beth Ausbrooks, Kathy Huffman, Lawrence Friedman
Committee Liaison: John Rao

Questions for discussion:

- Is the plan organized in a logical manner?
- Is the length of the plan a concern?
- Does the plan omit provisions that are necessary or frequently used?
- Does the plan include provisions that are unnecessary or infrequently used?
- Does the plan give sufficient guidance as to its operation after confirmation?
- Does the plan appropriately emphasize areas that present key issues in the chapter 13 process?
- Will the plan work in both mortgage conduit and non-conduit jurisdictions?
- Should the plan specify a different treatment of home mortgages and other secured claims if relief from the automatic stay is granted?
- Does the plan appropriately treat the inclusion of non-standard provisions?
- Is it advisable to propose a form dealing with pre-confirmation adequate protection payments? Is the proposed form suitable for this purpose?

10:30 - 10:45 **Break**

10:45 – 12:00 **Panel 2. *Draft Rule Amendments I***

Panelists: Debra Miller, Judge Saltzman, Tara Twomey, Alane Beckett, Ramona Elliott
Committee Liaison: Judge Harris

Questions for discussion:

- Draft Rule 3002(a) requires a secured creditor to file a proof of claim in order to have an allowed secured claim. Does this amendment present particular concerns?
- Draft Rule 3002(c) changes the deadline for filing proofs of claim in chapter 13 cases to 60 days after the petition date so that proofs of claim are filed before the confirmation hearing date established by Code § 1324(b). Is this amendment an improvement over the current rule?

- Several interrelated rule amendments would provide that the validity, amount, and treatment of a claim under the plan will control over a proof of claim. Draft Rule 3012, together with draft Rule 3015(g), provide that the plan may make a binding determination of the amount of an allowed secured claim, as well as the amount of a claim entitled to priority treatment, subject to ultimate resolution at the confirmation hearing. Draft Rule 3007, in turn, provides an exception to the need to file a claim objection if claim allowance is resolved under Rule 3012. Similarly, draft Rule 4003(d) makes clear that a plan may provide for avoidance of liens under Code § 522(f). And draft Rule 7001 makes clear that an adversary proceeding is not necessary to determine the validity, priority, or extent of a lien resolved through a plan. Do these amendments present particular concerns?
- If any proposed amendment raises particular concerns, what alternative would you suggest, and how would the suggested alternative impact the draft plan?

12:00 – 12:45 Lunch (catered lunch will be provided)

12:45- 2:00 Panel 3. *Draft Rule Amendments II*

Panelists: Kevin Anderson, Judge Brown, John Colwell, Andrew Altenburg, Michael Bates
Committee Liaison: Judge Perris

Questions for discussion:

- Draft Rule 3015(c) requires the use of the official form plan in all chapter 13 cases. Draft Rule 9009 limits modification of official forms so designated, including the form chapter 13 plan. Are these amendments advisable?
- Draft Rule 5009 provides that a debtor may obtain an order declaring that a lien has been satisfied, and that the order will be effective as a release of the lien. This provision is intended to facilitate documentation for title purposes. Does this amendment present concerns with respect to the timing of the order? Are there other concerns raised by this amendment?
- Several draft rule amendments concern service and notice in chapter 13 cases. Draft Rule 3015(d) is intended to ensure that creditors receive a copy of the plan before confirmation. Draft Rule 3015(f) provides that objections to confirmation must be filed and served seven-days prior to the confirmation hearing. Draft Rule 3015(h) deals with notice of a modification of the plan after confirmation. Do these provisions adequately provide for notice to interested parties?
- Some of the draft amendments require enhanced service. Draft Rule 3012 provides that a request to determine the amount of secured and priority claims under a plan must be served in accordance with Rule 7004's requirements for adversary proceedings. Draft Rule 4003(d), which concerns a plan proposing lien avoidance under Code § 522(f), and draft Rule 5009 also require service in accordance with Rule 7004. Are these enhanced service provisions appropriate?

- Because draft Rule 3015(f) sets a seven-day default deadline for objections to plan confirmation, current Rule 2002(b)(2) would effectively require that notice of the confirmation hearing be given at least 35 days before the hearing. Should the Rules Committee consider amending Rule 2002(b)(2) to provide either for 21 days' notice of the deadline to file objections to confirmation or 35 days' notice of the confirmation hearing?
- If any proposed amendment raises particular concerns, what alternative would you suggest, and how would the suggested alternative impact the draft plan?

2:15 - 3:00

Open forum to raise and discuss issues not previously addressed or fully covered, including the value of a national form for chapter 13 plans