

## **New Federal Rules of Bankruptcy Procedure: Impact on Chapter 7, 12 and 13 Secured Creditors**

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THURSDAY, FEBRUARY 15, 2018

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Today's faculty features:

Andrew M. Simon, **Squire Patton Boggs**, Cincinnati

Elliot M. Smith, **Squire Patton Boggs**, Cleveland

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# Highlights from the 2017 Changes to the Federal Rules of Bankruptcy Procedure

February 15, 2018

Elliot M. Smith

Andrew M. Simon



# Background on Amendments to Federal Rules of Bankruptcy Procedure

- Formally adopted in April 2017
- Changes became effective as of December 1, 2017
  - New rules are the culmination of several years of debate, drafting and revision
- The changes particularly affect Chapter 13 debtors and secured creditors
- Required use of a “Model” Chapter 13 Plan has garnered the most attention

# Background on Amendments to Federal Rules of Bankruptcy Procedure (cont.)

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- Changes also affect several important process deadlines
  - Uniformity imposed for plan objection and confirmation hearing deadlines
  - Claims filing deadlines were shortened
- Changes to service requirements have had unintended consequences for Chapter 13 practitioners by, among other things, shifting responsibility and cost for various matters to practitioners.

# Rule 1001 – Affirmative Duty to Administer Cases Fairly and Without Undue Cost or Delay

- Changes at first glance appear non-substantive. In fact, they reinforce a basic principal that is often overlooked.
- There is an affirmative duty on the court, and on counsel as officers of the court, to exercise the authority conferred by the rules to ensure that bankruptcy cases are resolved fairly and without undue cost or delay. This concept is reflected by adding the term “administered” into this rule.
- Parties also have a duty to use the rules to secure the just, speedy, and inexpensive determination of every case and proceeding.
  - Advisory Committee Notes: “Achievement of this goal depends upon cooperative and proportional use of procedures by lawyers and parties.”

# Rules 3015(c) and 3015.1 Require Use of an Official or Local Form for a Chapter 13 Plan

- The Model Plan has been the headline-grabber for the Rules changes
  - Rule 3015(c) was changed to require use of an Official Form, unless a Local Form is designated pursuant to Rule 3015.1
  - This section also requires that nonstandard provisions in a Chapter 13 plan be set out in the section of the Official or Local Form specifically designated for such provisions
  - Official Form B 113 contains 7 pages, plus a signature page and a trustee payments exhibit

- Many jurisdictions have adopted their own forms, under Rule 3015.1
  - Some (e.g., E.D. Wis.) have adopted a form visually similar to B 113, with slight modifications
  - Others (e.g., S.D. Ohio, S.D.N.Y) have adopted fillable forms that do not resemble the Official Form
- Unless a Local Form is used, Rule 9009 requires the Official Form to be used and not modified

# Chapter 13 Model Plan – Form B 113

**Fill in this information to identify your case:**

Debtor 1  
 \_\_\_\_\_  
First Name Middle Name Last Name

Debtor 2  
 (Spouse, if filing) \_\_\_\_\_  
First Name Middle Name Last Name

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
(State)

Case number  
 (if known) \_\_\_\_\_

Check if this is an amended plan, and list below the sections of the plan that have been changed.

\_\_\_\_\_

\_\_\_\_\_

Official Form 113

**Chapter 13 Plan**

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**Part 1: Notices**

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

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

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

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

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

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

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

**Part 2: Plan Payments and Length of Plan**

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

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

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

Debtor \_\_\_\_\_ Case number \_\_\_\_\_

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

Check all that apply.

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

2.3 Income tax refunds.

Check one.

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

2.4 Additional payments.

Check one.

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

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

**Part 3: Treatment of Secured Claims**

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

Check one.

- None. If "None" is checked, the rest of § 3.1 need not be completed or reproduced.
- The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if any, at the rate stated. Unless otherwise ordered by the court, the amounts listed on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) control over any contrary amounts listed below as to the current installment payment and arrearage. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. If relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, then, unless otherwise ordered by the court, all payments under this paragraph as to that collateral will cease, and all secured claims based on that collateral will no longer be treated by the plan. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

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

Insert additional claims as needed.

# Chapter 13 Model Plan – Form B 113 (cont.)

Debtor \_\_\_\_\_ Case number \_\_\_\_\_

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

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

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

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

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

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

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

Name of creditor	Estimated amount of creditor's total claim	Collateral	Value of collateral	Amount of claims senior to creditor's claim	Amount of secured claim	Interest rate	Monthly payment to creditor	Estimated total of monthly payments
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____%	\$ _____	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____%	\$ _____	\$ _____

Insert additional claims as needed.

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

Check one.

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

The claims listed below were either:

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

These claims will be paid in full under the plan with interest at the rate stated below. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. Unless otherwise ordered by the court, the claim amount stated on a proof of claim filed before the filing deadline under Bankruptcy Rule 3002(c) controls over any contrary amount listed below. In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Collateral	Amount of claim	Interest rate	Monthly plan payment	Estimated total payments by trustee
_____	_____	\$ _____	_____%	\$ _____	\$ _____
_____	_____	\$ _____	_____%	\$ _____	\$ _____

Disbursed by:  
 Trustee  
 Debtor(s)

Disbursed by:  
 Trustee  
 Debtor(s)

Insert additional claims as needed.

Debtor \_\_\_\_\_ Case number \_\_\_\_\_

**3.4 Lien avoidance.**

Check one.

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

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

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

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

Insert additional claims as needed.

**3.5 Surrender of collateral.**

Check one.

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

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

Name of creditor	Collateral
_____	_____
_____	_____

Insert additional claims as needed.

# Chapter 13 Model Plan – Form B 113 (cont.)

Debtor \_\_\_\_\_ Case number \_\_\_\_\_

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

**4.1 General**

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

**4.2 Trustee's fees**

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

**4.3 Attorney's fees**

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

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

Check one.

None. If "None" is checked, the rest of § 4.4 need not be completed or reproduced.

The debtor(s) estimate the total amount of other priority claims to be \_\_\_\_\_.

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

Check one.

None. If "None" is checked, the rest of § 4.5 need not be completed or reproduced.

The allowed priority claims listed below are based on a domestic support obligation that has been assigned to or is owed to a governmental unit and will be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4). This plan provision requires that payments in § 2.1 be for a term of 60 months; see 11 U.S.C. § 1322(a)(4).

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

Insert additional claims as needed.

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

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

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

The sum of \$ \_\_\_\_\_.

\_\_\_\_\_% of the total amount of these claims, an estimated payment of \$ \_\_\_\_\_.

The funds remaining after disbursements have been made to all other creditors provided for in this plan.

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

Debtor \_\_\_\_\_ Case number \_\_\_\_\_

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

None. If "None" is checked, the rest of § 5.2 need not be completed or reproduced.

The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. The claim for the arrearage amount will be paid in full as specified below and disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

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

Insert additional claims as needed.

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

None. If "None" is checked, the rest of § 5.3 need not be completed or reproduced.

The nonpriority unsecured allowed claims listed below are separately classified and will be treated as follows

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

Insert additional claims as needed.

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

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

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

Assumed items. Current installment payments will be disbursed either by the trustee or directly by the debtor(s), as specified below, subject to any contrary court order or rule. Arrearage payments will be disbursed by the trustee. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

# Chapter 13 Model Plan – Form B 113 (cont.)

Debtor \_\_\_\_\_ Case number \_\_\_\_\_

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

*Insert additional contracts or leases as needed.*

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

**7.1 Property of the estate will vest in the debtor(s) upon**  
Check the applicable box:

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

**Part 8: Nonstandard Plan Provisions**

**8.1 Check "None" or List Nonstandard Plan Provisions**  
 None. If "None" is checked, the rest of Part 8 need not be completed or reproduced.

*Under Bankruptcy Rule 3015(c), nonstandard provisions must be set forth below. A nonstandard provision is a provision not otherwise included in the Official Form or deviating from it. Nonstandard provisions set out elsewhere in this plan are ineffective.*

*The following plan provisions will be effective only if there is a check in the box "Included" in § 1.3.*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Official Form 113 Chapter 13 Plan Page 7

Debtor \_\_\_\_\_ Case number \_\_\_\_\_

**Part 9: Signature(s):**

**9.1 Signatures of Debtor(s) and Debtor(s)' Attorney**  
*If the Debtor(s) do not have an attorney, the Debtor(s) must sign below; otherwise the Debtor(s) signatures are optional. The attorney for the Debtor(s), if any, must sign below.*

**X** \_\_\_\_\_ **X** \_\_\_\_\_  
Signature of Debtor 1 Signature of Debtor 2

Executed on \_\_\_\_\_ Executed on \_\_\_\_\_  
MM / DD / YYYY MM / DD / YYYY

**X** \_\_\_\_\_ Date \_\_\_\_\_  
Signature of Attorney for Debtor(s) MM / DD / YYYY

By filing this document, the Debtor(s), if not represented by an attorney, or the Attorney for Debtor(s) also certify(ies) that the wording and order of the provisions in this Chapter 13 plan are identical to those contained in Official Form 113, other than any nonstandard provisions included in Part 8.

Official Form 113 Chapter 13 Plan Page 8

# Chapter 13 Model Plan – Form B 113 (cont.)

## **Exhibit: Total Amount of Estimated Trustee Payments**

The following are the estimated payments that the plan requires the trustee to disburse. If there is any difference between the amounts set out below and the actual plan terms, the plan terms control.

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

# Chapter 13 Model Plan – E.D. Wis. (sample pages)

**Fill in this information to identify your case:**

Debtor 1  
 First Name \_\_\_\_\_ Middle Name \_\_\_\_\_ Last Name \_\_\_\_\_

Debtor 2  
 (Spouse, if filing) First Name \_\_\_\_\_ Middle Name \_\_\_\_\_ Last Name \_\_\_\_\_

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_  
 (State)

Case number  
 (if known) \_\_\_\_\_

Official Form Plan for the  
 Eastern District of Wisconsin  
**Chapter 13 Plan**

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**Part 1: Notices**

**To Debtors:** This form sets out options that may be appropriate in some cases, but the presence of an option on the form does not mean that the option is necessarily appropriate for you. Plans that do not comply with local rules and judicial rulings may not be confirmable. Nothing in this plan controls over a contrary court order.

**THIS FORM PLAN MAY NOT BE ALTERED OTHER THAN THE NONSTANDARD PROVISIONS IN PART 8 BELOW.**  
 Nonstandard provisions set out elsewhere in this plan are ineffective.

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

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

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

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation. The objection must be filed within 28 days of the completion of the Section 341 Meeting of Creditors. Failure to file a timely objection constitutes acceptance of the plan and its terms. The court will schedule a hearing on any timely filed objections. The court may confirm this plan without further notice if no objection to confirmation is filed. In addition, a timely proof of claim must be filed in order to receive payments from the trustee under this plan.

**Note to Secured Creditors:** If your secured claim is not provided for in Part 3 below, no funds will be disbursed to you by the trustee on your secured claim.

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

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

Debtor \_\_\_\_\_ Case number \_\_\_\_\_

**Part 2: Plan Payments and Length of Plan**

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

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

The plan may not provide for payments over a period that is longer than 60 months.

For OVER median income debtors, the plan term must be 60 months or a shorter period that is sufficient to pay allowed nonpriority unsecured claims in full.

For UNDER median income debtors, the debtor(s) must make sufficient periodic or other payments to enable the trustee to make the payments to creditors stated in this plan, regardless of the number of months indicated in this part of the plan. Thirty-six or more months after confirmation, the plan's term will end when all holders of allowed nonpriority unsecured claims have received the payment amount or percentage stated in Part 5. Prior to 36 months after confirmation, the plan term will end when all holders of allowed claims have received the payment required by the plan and holders of nonpriority unsecured claims have been paid in full. The plan term will not end earlier than stated in this Part 2 if there is a creditor listed in § 4.5 of this plan that will receive less than full payment of its claim under 11 U.S.C. §§ 1322(a)(4) and 507(a)(1)(B).

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

Check all that apply.

- Debtor(s) will make payments pursuant to a payroll deduction order.
- Debtor(s) will make payments directly to the trustee.

Please note: Debtors are responsible for any payments set forth in the plan or confirmation order that are not withheld under a payroll deduction order.

**2.3 Income tax returns.**

The debtor(s) will supply the trustee with a copy of each federal and state income tax return filed during the plan term within 14 days of filing any return. The tax refunds received by the debtor(s) must be accounted for on Schedules I and J and, if applicable, Form 22-C-2.

**2.4 Additional payments.**

Check one.

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

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

**Part 3: Treatment of Secured Claims**

# Chapter 13 Model Plan – S.D.N.Y. (sample pages)

Revise 2/6/2018

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In Re: \_\_\_\_\_x

Case No. \_\_\_\_\_ CGM

CHAPTER 13 PLAN

SSN xxx-xx-\_\_\_\_ SSN xxx-xx-\_\_\_\_

**PART 1. DEFINITIONS AND NOTICES**

1.1 Plan Definitions: If this is a joint case, use of the term “Debtor” shall also mean Debtors. The term “Bankruptcy Rule” shall refer to the Federal Rules of Bankruptcy Procedure. The term “Form Plan” refers to this court’s Local Chapter 13 Model Plan. The term “Local Rule” shall refer to the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the Southern District of New York. The term “Petition” refers to Debtor’s bankruptcy petition filed with the Court on \_\_\_\_\_. The term “Plan” refers to this chapter 13 plan. The term “Real Property Used as a Principal Residence” includes cooperative apartments. The term “Trustee” shall always refer to the Chapter 13 Standing Trustee for this Court, or the substitute therefor.

1.2 Debtor must check one box on each line to state whether or not the Plan includes each of the following items. If an item is checked “does,” the Debtor must serve this Plan on any affected party in interest pursuant to Bankruptcy Rule 7004. Failure to serve the Plan pursuant to Bankruptcy Rule 7004 whenever required may render the provision ineffective. If an item is checked as “does not” or if both boxes are checked, the provision will be ineffective if set out later in the Plan.

In accordance with Bankruptcy Rule 3015.1, this Plan:

- does  does not contain any nonstandard provision (See Part 8 herein for any non-standard provision);
- does  does not limit the amount of a secured claim based on valuation of the collateral for the claim (See Part 3 herein);
- does  does not avoid a security interest or lien (See Part 3 herein);
- does  does not request loss mitigation (See Part 8 herein).

1.3 Notice to Debtor: This Form Plan sets out options that may be appropriate in some cases, but the presence of an option on the Form Plan does not indicate that the option is appropriate in your circumstances. To be confirmable, this Plan must comply with the Bankruptcy Code, the Bankruptcy Rules, judicial rulings, and the Local Rules.

- By checking this box, Debtor acknowledges that he/she is not eligible for a discharge pursuant to 11 U.S.C. § 1328 (f). [Prior Case number: \_\_\_\_\_ petition date: \_\_\_\_\_ discharge date in prior case: \_\_\_\_\_] If checked, the Debtor shall submit an order denying discharge upon confirmation of the Plan or the Court’s separate determination of the request, whichever is earlier.
- This is an Amended or Modified Plan. The reasons for filing this Amended or Modified Plan are: \_\_\_\_\_

1.4 Notice to Creditors: If you oppose the Plan’s treatment of your claim or any provision of this Plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. This includes objections to valuations of collateral, motions to avoid junior mortgage and judicial liens, and surrender provisions.

Revise 2/6/2018

Pursuant to Bankruptcy Rule 3015(g), “any determination in the Plan made under [Bankruptcy] Rule 3012 about the amount of a secured claim is binding on the holder of the claim, even if the holder files a contrary proof of claim or the Debtor schedules that claim [differently], and regardless of whether an objection to the claim has been filed.”

This Plan shall be binding upon its confirmation. You should read this Plan carefully and discuss it with your attorney if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one who practices bankruptcy law. The Bankruptcy Court may confirm this Plan without further notice if no objection is filed. See Bankruptcy Rule 3015.

**PART 2: PLAN PAYMENTS AND DURATION**

2.1 The Debtor’s future earnings are submitted as provided in the Plan to the supervision and control of the Trustee. Debtor will make the first Plan payment no later than thirty (30) days after the date the Petition was filed. The Debtor shall make [ ] monthly payments to the Trustee as follows:

	Amount	How many Months?
+ - \$		

- Debtor’s annual commitment period is 36 months and Debtor moves to extend to 60 months for the following reasons: (check all that apply)
  - Debtor is not able to propose a feasible plan in a period of less than 60 months. Debtor’s proposed monthly payment will constitute an affordable budget that the Debtor will be able to maintain.
  - Payments greater than that proposed by this Plan for 60 months would create an economic hardship for the Debtor.
  - Creditors will not be prejudiced by this application for extension of Debtor’s Plan payments from 36 to 60 months.

**2.2 Regular payments**

Regular Plan payments to the Trustee will be made from future income in the following manner:

- Check all that apply
  - Debtor will make payments directly to the Trustee.
  - Debtor will make payments through any entity from whom the Debtor receives income, pursuant to a payroll deduction order 11 U.S.C. § 1325(c). Upon checking the box for a payroll deduction order, Debtor shall submit to the Court a separate order directing Debtor’s employer to deduct the Plan payments from Debtor’s wages. Debtor also agrees to notify the Trustee immediately upon change or termination of employment.
  - Non-Debtor contributor will make the following monthly payments to the debtor, who will send payment to the Trustee.

	Amount	How many Months?
+ - \$		

**2.3 Income Tax Refunds**

All future tax refunds in excess of \$1500 per individual Debtor (less any cash exemptions in the Plan’s first year, if applicable) shall be paid to the Trustee for the duration of the Plan. The Debtor shall provide the Trustee with all income tax returns through the full performance of the Plan.

**2.4 Irregular Payments** Check one.

- None. If “None” is checked, the rest of subsection 2.4 need not be completed or reproduced.
- Debtor will make irregular payment(s) to the Trustee from other sources, as specified below.

	Source	Estimated Amount	Date of Payment (Anticipated)
+ - \$			

# Other Changes to Rule 3015 Affect Service Requirements

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- Rule 3015(d) was modified to ensure that a copy of the plan itself is served on the trustee and all creditor prior to confirmation.
- Rule 3015(f) was modified to require service of a confirmation objection at least seven days before the confirmation hearing, unless the court orders otherwise.

# Other Changes to Rule 3015 Affect Service Requirements (cont.)

- Rule 3015(g) – Two new effects of confirmation in chapter 12 or chapter 13 cases.
  - Amount of a secured claim under section 506(a) may be determined in a chapter 12 or 13 plan in accordance with Rule 3012, and that determination controls over (i) a contrary proof of claim without the need for a claim objection under Rule 3007, and (ii) the debtor’s schedule submitted under section 521(a).
  - Automatic stay is terminated as requested in the plan.
- Rule 3015(h). Reflects the practical reality that a party proposing a plan modification is often responsible for serving the proposed modification, or a summary, on other parties.

# Rule 3002 – filing and amending proofs of claim under Chapters 7, 12 and 13

- Rule 3002(a) was amended to require that all creditors, including secured creditors, must file a proof of claim in order to have an allowed claim
  - Revised Rule 3002(a) now reads: “[a] secured creditor, unsecured creditor, or equity security holder must file a proof of claim or interest for the claim or interest to be allowed....” (underlined text is new)
  - Courts have long held that secured creditors need to file claims
  - Prior omission of “secured creditor” from Rule 3002(a) caused a split of opinions about whether the claims filing deadline applies to secured creditors, who sometimes opted to have their claims acknowledged in the debtor’s plan
- This amendment is primarily intended to resolve the split and clarify that the bar date applies to secured creditors as well as unsecured creditors and equity holders

# Rule 3002 – filing and amending proofs of claim under Chapters 7, 12 and 13 (cont.)

- Rule 3002(c) – In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, the new deadline to file claims is not later than 70 days after the order for relief or the date of the order of conversion to a case under chapter 12 or 13. In an involuntary chapter 7 case, the deadline is not later than 90 days after the order for relief.
- Rule 3002(c)(6) was amended to expand the exception to the bar date for cases where a creditor received insufficient notice of the bar date if the debtor failed to timely file the required list of names and addresses of creditors. If an extension is granted for this reason, the extension runs from the date of the order.

# Rule 3002 – filing and amending proofs of claim under Chapters 7, 12 and 13 (cont.)

- Rule 3002(c)(7) was added to provide a two step deadline for filing mortgage proofs of claim secured by an interest in the debtor’s principal residence.
  - 70 days after the order for relief – file claim with the appropriate official form mortgage attachment.
  - 120 days after the order for relief- file additional documents evidencing the claim as required by Rule 3001(c)(1) and (d).

# Rule 3007 – Objecting to proofs of claim under Chapters 7, 12 and 13

- Important changes were made to Rule 3007(a) that affect the form, time and manner of services for a claim objection and remove the requirement for a hearing in some instances
- Rule 3007(a)(1) requires a notice of objection that “substantially conforms to the appropriate Official Form” to be filed and served 30 days before any scheduled hearing or deadline for the claimant to request a hearing
  - The prior rule referenced “the hearing,” and was interpreted to require a hearing in every case
  - The revised rule references “any scheduled hearing” and now permits local practices that require a claimant to timely request a hearing or file a response to obtain a hearing
  - These changes do not obviate the need for the court to make a determination on the claim

# Rule 3007 – Objecting to proofs of claim under Chapters 7, 12 and 13 (cont.)

- Rule 3007(a)(2) is new and specifies the manner of service for claims objections
  - It clarifies that Rule 7004 does not apply to the service of most claim objections.
  - Instead, a claimant must be served by first-class mail addressed to the person whom the claimant most recently designated on its proof of claim to receive notices, at the address so indicated.
  - Rule 7004 still applies where the claimant is the U.S. Government or an insured depository institution
- Changes to Rule 3007 impose an immense burden on practitioners.

# Rule 3012 Changes Impact Secured Creditors and Their Counsel

- Changes to Rule 3012(a) allow any party in interest to file a motion to seek determination of the amount of a priority claim under Section 507 of the Bankruptcy Code.
  - Under prior Rule 3012, any party in interest could already file a motion to seek a determination of the value of a claim secured by a lien on property of the estate
  - It will be interested to observe whether and under what circumstances creditor committees and other parties in interest might use modified Rule 3012 to challenge priority claims

# Rule 3012 Changes Impact Secured Creditors and Their Counsel (cont.)

- Rule 3012(b) was added to allow that a request to determine the amount of a secured claim may be made in a Chapter 12 or Chapter 13 plan, as well as by a motion or a claim objection.
  - If a request is made in a plan, the plan must be served on the claim holder and other parties designated by the court in accordance with Rule 7004
- Rule 3012(c) was added to clarify that a determination under this rule with respect to a secured claim of a governmental unit may be made only by motion or in a claim objection, but not until the governmental unit has filed a proof of claim or its time for filing a proof of claim has expired.

- Use of “husband and wife” changed to “spouses” in Rule 1015(b) (Cases involving two or more related debtors) in light of the Supreme Court’s decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)
- Changes made to Rules 2002(a) and (b) to conform to Rule 3015:
  - Rule 2002(a)(9) was added to require at least 21 days’ notice of the time for filing objections to confirmation of a Chapter 13 plan
  - Rule 2002(b)(3) was added to provide for 28 days’ notice of the date of a confirmation hearing in a Chapter 13 case

# Appendix A: About Your Presenters





- Elliot M. Smith – Cleveland, Ohio
  - Elliot Smith is Of Counsel in the Restructuring & Insolvency Practice Group.
  - Elliot has been a restructuring lawyer for 13 years and has experience representing debtors, committees, creditors, lenders, purchasers and other parties in matters involving insolvency and financial distress, business restructurings, debtor and creditor rights, and related matters.
  - Elliot also has extensive experience advising clients faced with insolvent customers and suppliers in and out of chapter 11 proceedings, including the assertion of rights and remedies available under the Uniform Commercial Code, claim litigation, and preference defense.
  - Bio: <http://www.squirepattonboggs.com/professionals/s/smith-elliott-m>
  - [Elliot.smith@squirepb.com](mailto:Elliot.smith@squirepb.com)
  - (216) 479-8644 (office)



- Andrew M. Simon – Cincinnati, Ohio
  - Andrew Simon is a Senior Associate in the Restructuring & Insolvency Practice Group.
  - Andy has been a restructuring lawyer for 9 years, representing debtors, creditors and official creditors' committees, and previously worked as a financial advisor for bankruptcies and out of court restructurings.
  - Andy also focuses his practice on corporate transactions, and has extensive experience advising debtors, creditors and third party asset purchasers in distressed situations ranging from state receiverships to complex chapter 11 proceedings.
  - Bio: <http://www.squirepattonboggs.com/professionals/s/simon-andrew-m>
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  - (513) 361-1226 (office)



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## Benefits for our clients

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- Greater global influence and reach, combined with powerful local insight
- Better problem-solvers because of the additional knowledge and expertise
- Deeper relationships with clients
- Stronger connectivity between government, law and business
- Stronger global government relations
- A deeper bench of lawyers in more key places

# Restructuring & Insolvency Capabilities

**We are a full service global law firm. We provide insight at the point where law, business and government meet, giving our clients a voice, supporting their ambitions and achieving successful outcomes.**

Our multidisciplinary team of more than 1,500 lawyers in 46 offices across 21 countries provides unrivalled access to expertise and invaluable connections on the ground. It's a seamless service that operates on any scale – locally or globally. It encompasses virtually every matter, jurisdiction and market.

This combination has allowed us to provide creative strategies that fit the requirements and expectations of our clients, which is a critical component of the value our practice brings to restructuring engagements that are often highly complex and require significant expertise. Our lawyers work with clients and their financial professionals across the full range of the restructuring and insolvency process to preserve and create value thereby ensuring a maximum recovery to stakeholders whenever a business faces financial difficulty.

We have handled reorganizations for clients across a wide range of industries including:



**Our clients are**

- Acquirers of distressed companies
- Boards of directors
- Bondholders committees
- Creditors committees (secured and unsecured)
- Debtors (public and private)
- Distress debt and hedge funds
- Equity holders
- Financial and other institutional lenders
- Franchisors
- Lessors
- Municipalities
- Private equity firms
- Trustees of pension schemes

## Firm Overview

- Top 20 full service global legal practice
- More than 1,500 lawyers in 46 offices and 21 countries
- Coverage of 140 jurisdictions and more than 40 languages
- Public and private company clients including FTSE 100 and Fortune 100 companies, financial institutions, governments and authorities

## Global Footprint

Our global footprint and integrated operating structure allows us to seamlessly draw on knowledge of local and international laws and regulations wherever our clients operate.

- **Europe/Middle East:** 20 offices
- **Asia Pacific:** 8 offices
- **The Americas:** 17 offices

**More than 110 lawyers provide local, national and cross-border restructuring and insolvency advice in the following countries, by office:**

Beijing, People's Republic of China	Leeds, UK	Prague, Czech Republic
Berlin, Germany	London, UK	Riyadh, Saudi Arabia
Birmingham, UK	Madrid, Spain	Santo Domingo, Dominican Republic
Bratislava, Slovak Republic	Manchester, UK	Shanghai, People's Republic of China
Budapest, Hungary	Moscow, Russia	Sydney, Australia
Frankfurt, Germany	Paris, France	Tokyo, Japan
Hong Kong	Perth, Australia	Warsaw, Poland

Within the US our practice is located in our offices in Cincinnati, Cleveland, Columbus, Dallas, Denver, Houston, Los Angeles, Miami, New York, Northern Virginia, Phoenix, San Francisco, Tampa, Washington DC and West Palm Beach.

# Global Coverage

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■ Regional desks and strategic alliances

