



AMERICAN
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We Finally Have a Uniform National Chapter 13 Plan — Now, Let's Change It!

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A conversation on the new National Form for Chapter 13 plans and the accompanying rule amendments

Today's program

- 1. When the changes will be effective
- 2. Why the changes were proposed
- 3. The rule amendments; Indiana dissent
- 4. The national and Wisconsin plan forms

**Please ask questions or make
comments at any time!**

1. Timing

- December 1, 2017:
 - Effective date for new rules.
 - Effective date for either the national Chapter 13 form or a local form complying with the new rules
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2. Why the changes were proposed

- A *national form* was suggested by judge and creditors, in order to
 - follow the usual bankruptcy procedure: forms, used nationally, but do not dictate content
 - lead to lower costs, after transition, for all parties
 - allow more effective education
 - make decisions more useful
 - comply with *Espinosa*
 - allow national data collection
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2. Why the changes were proposed

The general goals of the *rule amendments*:

- A. Make a Chapter 13 plan form effective
- B. Make plan confirmation final
- C. Provide adequate notice
- D. Allow for an order declaring a lien satisfied

We'll discuss:

- how these goals are addressed and
 - what new procedures will be going into effect.
-

3. The rule amendments

A. To make the forms effective

- Require use of specified forms (national or local)
 - Prohibit most modifications
 - Require local forms to meet specified standards
 - Limit modification of the forms
-

3A. Make the form effective

Require use of the specified forms

- Rule 3015(c):

If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1.

3A. Make the form effective

Northern District of Indiana dissent

- No local form has been adopted
- But the court has stated that the national form can't be required
- The theory is that the Rule 3015(c) contradicts § 1321 of the Code ("The debtor shall file a plan.")
- *See Petro v. Mishler*, 276 F.3d 375 (7th Cir. 2002) (courts can't impose confirmation requirements not in the Code)
- Confirmation of a plan not using the national form is likely to be appealed.

3A. Make the form effective

Prohibit most modifications

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

3A. Make the form effective

Prohibit most modifications

- **Amended** Rule 9009(a)
 - The Official Forms prescribed by the Judicial Conference of the United States shall be used “*without* alteration”
-

3A. Make the form effective

Prohibit most modifications

- **Amended** Rule 9009(a)
 - The Official Forms prescribed by the Judicial Conference of the United States shall be used “without alteration, **except**
 - as otherwise provided in these rules, [allowing for the use of local forms]
-

3A. Make the form effective

Prohibit most modifications

- **Amended** Rule 9009(a)
 - The Official Forms prescribed by the Judicial Conference of the United States shall be used “without alteration, **except**
 - as otherwise provided in these rules,
 - in a particular Official Form,
 - or in the national instructions regarding a particular Official Form.”
-

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a) also provides:
“Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that (1) expand the prescribed areas for responses in order to permit complete responses;
-

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a) also provides:
“Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that (2) delete space not needed for responses;
-

3A. Make the form effective

Prohibit most modifications

- Amended Rule 9009(a) also provides:
“Official Forms may be modified to permit minor changes not affecting wording or the order of presenting information, including changes that (3) delete items requiring detail by checking ‘no’ or ‘none’ or by stating in words that there is nothing to report on that question.”
-

3A. Make the form effective

Special place for nonstandard provisions

- Rule 3015(c):
“With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form.”
-

3A. Make the form effective

Requirements for local forms

- Rule 3015.1:
 - (a) one local form per district
 - (b) separate paragraphs, numbered and headed in bold type
 - (c) initial warning paragraph on nonstandard provisions, stripoff, and lien avoidance
-

3A. Make the form effective

Requirements for local forms

- Rule 3015.1:
 - (d) separate paragraphs for curing and maintaining mortgages, paying DSOs, paying hanging paragraph claims, and surrendering collateral (with stay termination)
 - (e) a final paragraph for nonstandard provisions and a certification that no nonstandard provisions are placed elsewhere.
-

3. The rule amendments

B. Make plan confirmation final

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

3B. Make plan confirmation final

All non-governmental claims must be filed before confirmation

- Rule 3002:
(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor, or an equity security holder **must file a proof of claim** or interest **for the claim** or interest **to be allowed** 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.
-

3B. Make plan confirmation final

All non-governmental claims must be filed before confirmation

- Rule 3002:

(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 70 days after the order for relief under that chapter or the date of the order of conversion to a case under chapter 12 or chapter 13.

3B. Make plan confirmation final

All non-governmental claims must be filed before confirmation

- Rule 3002:

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

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

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012:

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

[This allows the plan to provide for § 506(a) stripdown.]

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012:

A request to determine the amount of a claim entitled to priority may be made only by motion made after the filing of the claim or in a claim objection.

[Early claim filing should allow a motion to determine priority amounts at confirmation.]

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3012:

(c) CLAIMS OF GOVERNMENTAL UNITS. A request to determine the amount of a secured claim of a governmental unit may be made only by motion or in a claim objection after the governmental unit files a proof of claim or after the time for filing one under Rule 3002(c)(1) has expired. [Rule 3002(c)(1): government POCs to be filed not later than 180 days after case filing.]

3B. Make plan confirmation final

Treatment of priority and secured claims may be determined at confirmation

- Rule 3015:

(g) EFFECT OF CONFIRMATION. Upon the confirmation of a chapter 12 or chapter 13 plan: any determination in the plan made under 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 . . . and regardless of whether an objection to the claim has been filed

3B. Make plan confirmation final

Lien avoidance done through the plan

- Rule 4003:

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding under § 522(f) 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 by Rule 9014, or by serving a chapter 12 or chapter 13 plan on the affected creditors in the manner provided by Rule 7004

3. The rule amendments

C. Provide sufficient notice

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

3C. Provide adequate notice

Heightened service for claim modification

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

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

3C. Provide adequate notice

Service of the full plan

- Rule 3015(d):

NOTICE AND COPIES. If the plan is not included with the each notice of the hearing on confirmation mailed under Rule 2002, the debtor shall serve the plan on the trustee and all creditors when it is filed with the court.

3C. Provide adequate notice

Adequate time for objection

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

3. The rule amendments

D. Allow for an order declaring a lien satisfied

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

Overall approach

- Nine parts (not all used in every case)
 - “None” boxes allowing content of used sections to be omitted = shorter form
 - One exhibit (estimated payments by the trustee; a check on feasibility)
 - Designed to include all significant options (even if not available in every court)
-

4. The Proposed Plan Form

The 9 parts (note colors!):

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

4. The Proposed Plan Form

Significant provisions

- **Part 1:** Notice
 - **New feature**—First item in the form: warning to debtors that options in the form don't guarantee confirmation:

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

4. The Proposed Plan Form

Significant provisions

- **Part 1:** Notice to Interested Parties
 - Next, warning for creditors:
 - Checkboxes for claim modification, lien avoidance, and non-standard provisions, ineffective if not checked.
 - Advice regarding legal rights
 - The warnings are set out with checkboxes indicating whether or not each warning applies.
-

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

Eastern District of Wisconsin Form

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.

4. The Proposed Plan Form

Significant provisions

- **Part 2: Plan Payments and Length of Plan**
 - § 2.1 allows payments to the trustee in other than monthly installments and
 - allows changing payment amounts
 - § 2.2 allows the debtor to specify payroll deductions (but does not prevent the court from ordering payroll deductions if not chosen by the debtor)
-

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Omits the option set out in § 2.2 of the national form for any method of payments to the trustee other than direct payment by the debtor or payroll deduction.
 - Such other methods (such as a designated third party electronic funds transfer program) would have to be set out in Part 8.
-

4. The Proposed Plan Form

Significant provisions

- **Part 2: Plan Payments and Length of Plan**
 - § 2.3 gives options for turnover of tax refunds
 - § 2.4 provides for other possible sources of funding, such as property sales
 - § 2.5 estimates total payments from the debtor to the trustee
-

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Omits any direction for paying any part of a tax refund in § 2.3.
 - Only requires any applicable amendment of Schedules I and J
-

4. The Proposed Plan Form

Significant provisions

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

4. The Proposed Plan Form

Significant provisions

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

4. The Proposed Plan Form

Significant provisions

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

4. The Proposed Plan Form

Significant provisions

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

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

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Omits the “conduit” option of current payment being made by the trustee.
 - Makes a mortgagee’s proof of claim conclusive as to arrearage amounts, without provision for objection by the debtor.
 - Different treatment would have to be specified in Part 8.
-

4. The Proposed Plan Form

Significant provisions

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

4. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.3 Hanging paragraph claims
 - States grounds for applying the paragraph
 - Allows choice of direct payment by debtor or payment by the trustee
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4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Omits the option of direct payment by the debtor.
 - Different treatment would have to be specified in Part 8.
-

4. The Proposed Plan Form

Significant provisions

- Part 3: Treatment of Secured Claims
 - § 3.4 Lien avoidance
 - Requires check in warning box
 - Calculation as required by § 522(f)
 - § 3.5 Surrender
 - Provides for **request** of stay relief
 - A Part 8 provision is required to prevent stay relief for surrendered collateral
-

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Adds abandonment to the consequences of surrender.
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4. The Proposed Plan Form

Significant provisions

- **Part 4:** Trustee's Fees and Priority Claims
 - Five sections: for amounts, not timing
 - § 4.1 General rule: full payment, no interest; DSO claims included unless otherwise treated in the plan
 - § 4.2 Amount of trustee fees estimated
 - § 4.3 Amount of unpaid attorney fees estimated
-

4. The Proposed Plan Form

Significant provisions

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

4. The Proposed Plan Form

Significant provisions

- **Part 4:** Trustee's Fees and Priority Claims
 - Five sections: for amounts, not timing
 - § 4.5 DSO claims assigned or owed to a governmental unit paid less than in full (under § 1322(a)(4))
 - “None” box; provides for detail
 - Here the amount of payment must be specified, since it is not full payment.
-

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- § 4.5 sets out three separate methods for treating DSO claims.
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4. The Proposed Plan Form

Significant provisions

- **Part 5:** Nonpriority Unsecured Claims
 - Three sections
 - § 5.1 Claims not specially classified (usual)
 - Three options; more than one can be chosen
 - If so, option with highest payment applies

☐ The sum of \$_____.

☐ _____% of the total amount of these claims.

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

Best interest test of § 1325(a)(4) sets minimum

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Omits the “pot plan” option of pro rata distribution of funds remaining after payment of all other claims.
 - This treatment would have to be specified in Part 8.
-

4. The Proposed Plan Form

Significant provisions

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

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Omits the “conduit” option for current contractual payments and cure amounts being made through the trustee: all payments on long-term debt must be made directly by the debtor.
 - Conduit treatment would have to be specified in Part 8.
-

4. The Proposed Plan Form

Significant provisions

- **Part 5:** Nonpriority Unsecured Claims
 - Three sections
 - **§ 5.3** Specially classified claims (again might be used for student loans)
 - Detail list

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

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Adds an option for direct payments by the debtor.

4. The Proposed Plan Form

Significant provisions

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

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Omits the conduit option for payment of unexpired leases and executory contracts; all payments are made directly by the debtor.
 - Adds a new § 6.2 dealing with postpetition claims (either paying or not paying them through the trustee), and providing for plan modification if required for feasibility.
-

4. The Proposed Plan Form

Significant provisions

- **Part 7:** Vesting of Property of the Estate
 - Gives options for vesting property *in the debtor* (subject to court order under § 1327(b))

Check the applicable box:

- ☐ plan confirmation.
- ☐ entry of discharge.
- ☐ other: _____

4. The Proposed Plan Form

Significant provisions

- **Part 7:** Vesting of Property of the Estate
 - Gives options for vesting property *in the debtor* (subject to court order under § 1327(b))
 - A plan may also vest estate property in a third party under § 1322(b)(9). That possibility could be put into effect through the “other” box.

4. The Proposed Plan Form

Eastern District of Wisconsin Form

- Adds a limitation to vesting at entry of discharge: “unless a debtor is not eligible for a discharge, in which case property of the estate will vest in the debtor(s) upon the filing of the Notice of Plan Completion on the docket by the trustee.”
-

4. The Proposed Plan Form

Eastern District of Wisconsin Form

Adds a new § 7.2, Order of Distribution:

- Any equal monthly payments to secured creditors listed in Part 3, then
- all attorney’s fees listed in § 4.3, then
- all secured debt (paid pro rata) without equal monthly payments in Part 3 and lease arrearages in § 6.1, then
- all priority debt (paid pro rata) under § 1322(a)(2) in §§ 4.4 and 4.5, then
- all priority debt (paid pro rata) under § 1322(a)(4) in § 4.5, then
- all non-priority unsecured debt (paid pro rata) in Part 5, then
- any § 1305 claims in § 6.2.

4. The Proposed Plan Form

Significant provisions

- **Part 8:** Nonstandard Plan Provisions
 - Open for any provisions contrary to or in addition to those set out in the form
 - Not effective unless the warning box in Part 1 is checked.
-

4. The Proposed Plan Form

Significant provisions

- **Part 9:** Signatures
 - Debtor signatures required only if not represented by an attorney


 Date _____

Signature of Attorney for Debtor(s)


 Date _____


 Date _____

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

4. The Proposed Plan Form

Exhibit: Estimated trustee payments

- Should be automatic through software
 - Will check feasibility
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Questions or comments?
