



NJ ICLE

Advanced Issues in Consumer Bankruptcy

Albert Russo, Standing Chapter 13 Trustee
September 18, 2013

New Jersey



PROCEDURAL ISSUES

D.N.J.LBR 3015-1 Chapter 13 Plan

D.N.J. LBR 3015-1 CHAPTER 13 PLAN

(a) The Debtor shall file Local Form, *Chapter 13 Plan and Motions*.

(b) Only motions to avoid judicial liens under 11 U.S.C. § 522(f) and to avoid liens and reclassify claims in whole or in part may be filed within the plan. If the Plan as proposed contains such motions, the debtor must, within 21 days of the date of entry on the docket of the Notice of Hearing on Confirmation of Plan, serve each potentially affected creditor with a copy of the Plan and Local Form, *Chapter 13 Plan Transmittal Letter*. The Plan and Transmittal Letter shall be served in the manner provided for service by Fed. Rule Bankr. Proc. 9014. The Debtor shall file a Proof of Service of compliance with this subsection simultaneously upon completion of service of the Plan and Transmittal Letter.

Former Local Rule

2009 Comment:

2009 Comment:

Dec., 2009 Comment

2010 Comment:

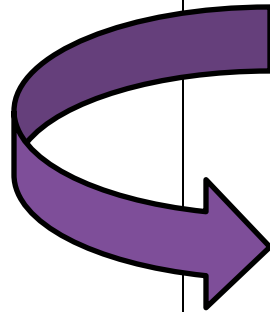
Reference: 11 U.S.C. § 1321

U.S. Bankruptcy Court – District of New Jersey

(b) Only motions to avoid judicial liens under 11 U.S.C. § 522(f) and to avoid liens and reclassify claims in whole or in part may be filed within the plan. If the Plan as proposed contains such motions, the debtor must, within 21 days of the date of entry on the docket of the Notice of Hearing on Confirmation of Plan, serve each potentially affected creditor with a copy of the Plan and Local Form, *Chapter 13 Plan Transmittal Letter*. The Plan and Transmittal Letter shall be served in the manner provided for service by Fed. Rule Bankr. Proc. 9014. The Debtor shall file a Proof of Service of compliance with this subsection simultaneously upon completion of service of the Plan and Transmittal Letter.

D.N.J.LBR 3015-1 Chapter 13 Plan

Chapter 13 Transmittal Letter



Specifically, the debtor(s) have valued real property located at _____(address) at \$ _____. The debtor(s) believe the first lien on the property to be in the approximate amount of \$_____; as such, the debtor(s) believe(s) there is inadequate equity available to satisfy your lien and seeks through the plan to reduce, modify or eliminate your lien. The debtor's valuation of the property is based upon; (a) CMA; (b) BPO; (c) appraisal; or (d) other: _____, a copy of which is attached. All forms of relief sought by motion appear in Part 7 of the plan.

D.N.J.LBR 3015-1 Chapter 13 Plan Certification of Service

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-2(e)

In Re: _____

Case No.: _____

2. On _____, I sent a copy of the following pleadings and/or documents to the parties listed in the chart below:

- Chapter 13 Plan and Motions
- Transmittal Letter

am the _____ in the above case and am representing myself.

2. On _____, I sent a copy of the following pleadings and/or documents to the parties listed in the chart below:

3. I hereby certify under penalty of perjury that the above documents were sent using the mode of service indicated.

Dated: _____

Signature _____

D.N.J.LBR 3015-1 Chapter 13 Plan Certification of Service

Name and Address of Party Served	Relationship of Party to the Case	Mode of Service
		<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)
		<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)
		<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)
		<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)

National



PROCEDURAL ISSUES

Significant Proposed Rules and Form Changes

The Judicial Conference Advisory Committee on Bankruptcy Rules has just published important proposed amendments to the bankruptcy rules and forms. Comments are due by February 15, 2014. These amendments dramatically change the content and timing of proofs of claim and include a new form for the Chapter 13 Plan. The proposed amendments and committee reports are posted at www.uscourts.gov/rulesandpolicies/rules.aspx. The

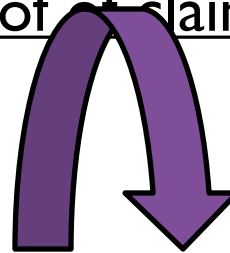
Chapter 13 Plan until December 1, 2014. Comments are due by February 15, 2014
www.uscourts.gov/rulesandpolicies/rules.aspx

become effective December 1, 2014. The Advisory Committee through its chair, Gene Wedoff, has reached out robustly to the entire bankruptcy community for comments and suggestions about these important changes. Comments may be submitted electronically at www.uscourts.gov/RulesAndPolicies/rules/proposed-amendments.aspx.

Rule 3002.

Filing Proof of Claim or Interest

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

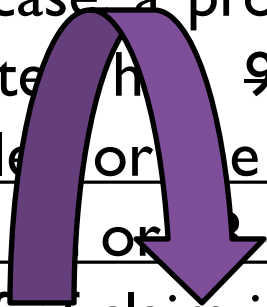


A secured creditor...

Rule 3002.

Filing Proof of Claim or Interest

(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 the petition is filed or the date of the order of conversion to a chapter 12 or 13 case. In an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set forth in ~~341 (a)~~ of the

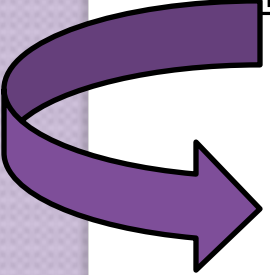


A proof of claim is timely filed if it is filed not later than 60 days after the date the petition is filed or the date of the order of conversion to a chapter 12 or 13 case.

Rule 3002.

Filing Proof of Claim or Interest

(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



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

- (A) The proof of claim, ...Rule 3001(c)(2)(C), is filed not later than 60 days after the order for relief is entered
- (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.

relief is entered.

Rule 3012.

Determination of the Amount of Secured and Priority Claims

~~The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.~~

Rule 3012.

Determination of the Amount of Secured and Priority Claims

(a) DETERMINATION OF AMOUNT OF CLAIM. On request by a party in interest and after notice – to the holder of the claim and any other entity the court designates – and a hearing, the court may determine

(1) the amount of a secured claim under § 506(a) of the Code, or

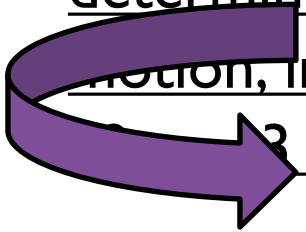
(2) the amount of a claim entitled to priority under § 507 of the Code.

Rule 3012.

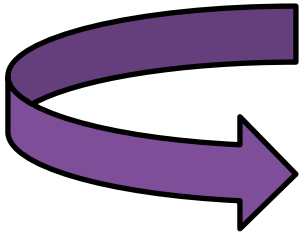
Determination of the Amount of Secured and Priority Claims

(b) REQUEST FOR DETERMINATION; HOW MADE.

Except as provided in subdivision (c), a request to determine the amount of a secured claim may be made by



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

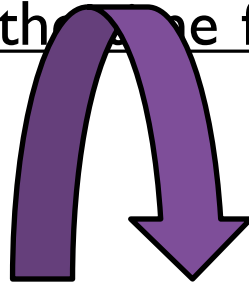


...a request to determine the amount of a claim entitled to priority may be made by motion or in a claim objection...

Rule 3012.

Determination of the Amount of Secured and Priority Claims

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

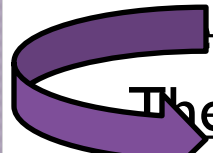


...the amount of a secured claim ...may be made by motion or in a claim objection after the governmental unit files a proof of claim.


Rule 3015.

Filing, Objection to Confirmation and Modification of a Plan in a Chapter 12 or a Chapter 13

(c) ~~DATING. Every proposed plan and any modification~~

 The plan filed in a chapter 13 case shall be prepared as prescribed by the appropriate Official Form.

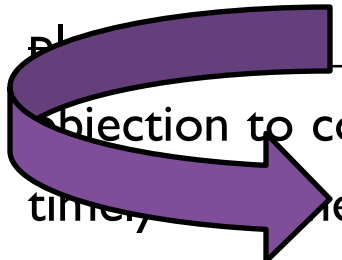
~~prescribed by the appropriate Official Form. Provisions~~

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

Rule 3015.

Filing, Objection to Confirmation and Modification of a Plan in a Chapter 12 or a Chapter 13

(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, ~~before confirmation of the~~

 An objection to confirmation of a plan shall be filed ... at least seven (7) days before the hearing on confirmation.

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, before confirmation of the plan. The objection shall be filed in good faith and shall be supported by evidence on such issues.

Rule 3015.

Filing, Objection to Confirmation and Modification of a Plan in a Chapter 12 or a Chapter 13

COMMITTEE NOTE

(g) EFFECT OF CONFIRMATION. Any determination made under Rule 3012 of the amount of a secured claim under §506(a) of the Code in a chapter 12 or 13 case is binding on the holder of the claim, even if the holder files a contrary proof of claim under Rule 3002 or the debtor schedules that claim under § 521(a) of the Code, and regardless of whether any objection to the claim has been filed under Rule 3007.

Rule 3015.

Filing, Objection to Confirmation and Modification of a Plan in a Chapter 12 or a Chapter 13

Subdivision (g) is amended to provide that the amount of a secured claim under §506(a) may be determined through a chapter 12 or chapter 13 plan in accordance with Rule 3012. That determination controls over a contrary proof of claim, without the need for a claim objection under Rule 3007, and over the schedule submitted by the debtor under §521(a). The amount of a secured claim of a governmental unit, however, may not be determined through a chapter 12 or chapter 13 plan under Rule 3012.

Mandatory National Chapter 13 Plan & Motions

Draft - 05/13/2013
United States Bankruptcy Court for the _____ District of _____
Debtor(s): _____
Case No.: _____
Date: _____

Check if this is an amended plan

Official Form 113
Chapter 13 Plan 12/15

Part 1: Notice to Interested Parties

Check all that apply:

- The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.
- The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, Section 3.4.
- The plan sets out nonstandard provisions in Part 9.

Important Notice: 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

Part 1: Notice to Interested Parties

Check all that apply:

- The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.
- The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, Section 3.4.
- The plan sets out nonstandard provisions in Part 9.

2.5 The applicable commitment period is: 36 months
 60 months

Official Form 113 Chapter 13 Plan page 1

Mandatory National Chapter 13 Plan & Motions

Draft - 05/13/2013

United States Bankruptcy Court for the _____ District of _____

Debtor(s): _____

Case No.: _____

Date: _____

Check if this is an

2.3 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.

On or before April 20 of the year following the filing of this case and each year thereafter, Debtor(s) will submit to the trustee a copy of the federal tax return filed for the prior year.

2.2 Payments to the trustee will be made from future earnings 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.

2.3 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.

On or before April 20 of the year following the filing of this case and each year thereafter, Debtor(s) will submit to the trustee a copy of the federal tax return filed for the prior year.

- Other sources of funding, including the sale of property. Describe the source, amount, and date when available:

2.4 The estimated total amount of plan payments is \$ _____

2.5 The applicable commitment period is: 36 months
 60 months

Mandatory National Chapter 13 Plan & Motions

Draft - 05/13/2013
United States Bankruptcy Court for the _____ District of _____
Debtor(s): _____
Case No.: _____
Date: _____ Check if this is an amended plan

Official Form 113
Chapter 13 Plan 12/15

Part 1: Notice to Interested Parties

Check all that apply:

- The plan seeks to limit the amount of a secured claim, as set out in Part 3, Section 3.2, which may result in a partial payment or no payment at all to the secured creditor.
- The plan requests the avoidance of a judicial lien or nonpossessory, nonpurchase-money security interest as set out in Part 3, Section 3.4.
- The plan sets out nonstandard provisions in Part 9.

Important Notice: 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'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 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 must file a proof of claim—or one must be filed on your behalf—in order for you to be paid under any plan that may be confirmed.

2.5 The applicable commitment period is: 36 months
 60 months

Official Form 113 Chapter 13 Plan page 1

_____ federal tax return filed for the prior year.

Other sources of funding, including the sale of property. Describe the source, amount, and date when available:

2.4 Estimated total amount of plan payments is \$ _____.

2.5 The applicable commitment period is: 36 months
 60 months

Official Form 113 Chapter 13 Plan

Mandatory National Chapter 13 Plan & Motions

Part 3: Treatment of Secured Claims

Part 3: Treatment of Secured Claims

3.1 Maintenance of payments and cure of any default

None [If "none" is checked, the rest of § 3.1 need not be completed or reproduced]

The debtor(s) will maintain the contractual installment payments and cure any default in payments on the secured claims listed below. The allowed claim for any arrearage amount will be paid under the plan, with interest, if any, at the rate stated. Unless otherwise ordered by the court, (1) the amounts listed on the proof of claim control over any contrary amounts listed below as to the current installment payment and arrearage, and (2) if relief from the automatic stay is ordered as to any item of collateral listed in this paragraph, all payments under this plan as to that collateral will cease and all claims as to 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.

Name of creditor	Collateral	Current installment payment (including escrow payment)	Estimated amount of arrearage	Interest rate on arrearage (if applicable)	Monthly plan payment on arrearage or other payment arrangement	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)	_____	_____	\$ _____	\$ _____

3.2 Request for valuation of security and claim modification

None [If checked, the rest of § 3.2 need not be completed or reproduced]

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, except for the claims of governmental units. For each non-governmental secured claim as to which a proof of claim has been filed in accordance with Bankruptcy Rule 3002, the debtors state that the value of the secured claim should be as stated below in the column headed "Amount of secured claim." For secured claims of governmental units, unless otherwise ordered by the court, the amounts listed in proofs of claim filed in accordance with Bankruptcy Rule 3002 control over any contrary amounts listed below. For each listed secured claim, the controlling amount of the claim 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 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 claim listed on the proof of claim controls over any contrary amounts listed under Part 5 as to the unsecured portion, if any, of the claim.

The holder of any claim listed below as having value in the column headed "Amount of secured claim" will 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, at which time the lien will terminate and be released by the creditor. See Bankruptcy Rule 3015.

- Debtor(s) will be eligible to receive a discharge in this case.
- Debtor(s) will not be eligible to receive a discharge in this case.

Name of creditor	Estimated amount of creditor's 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
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____	\$ _____	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____	\$ _____	\$ _____
_____	\$ _____	_____	\$ _____	\$ _____	\$ _____	_____	\$ _____	\$ _____

Current installment payment (including escrow payment)

\$ _____

Disbursed by:

- Trustee
- Debtor(s)

\$ _____

Disbursed by:

- Trustee
- Debtor(s)

Mandatory National Chapter 13 Plan & Motions

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

None [If 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

3.5 Surrender of collateral

None [if "None" is checked, the rest of § 3.5 need not be completed or reproduced]

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 under 11 U.S.C. § 362(a) and § 1301 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 5 below.

Name of creditor

Collateral

3.5 Surrender of collateral

None [if "None" is checked, the rest of § 3.5 need not be completed or reproduced]

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 under 11 U.S.C. § 362(a) and § 1301 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 5 below.

Name of creditor

Collateral

Mandatory National Chapter 13 Plan & Motions

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Maintenance of payments and cure of any default

None [If "None" is checked, the rest of § 5.1 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. 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	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)		

Part 5: Treatment of Nonpriority Unsecured Claims

5.1 Maintenance of payments and cure of any default

None [If "None" is checked, the rest of § 5.1 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. 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	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)		

Mandatory National Chapter 13 Plan & Motions

5.2 Separately classified nonpriority unsecured claims

None [If "None" is checked, the rest of § 5.2 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 of claim to be paid	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	\$ _____	_____	\$ _____
_____	_____	\$ _____	_____	\$ _____
_____	_____	\$ _____	_____	\$ _____

5.3 Nonpriority unsecured claims

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata, up to the full amount of the claims, as follows:

5.2 Separately classified nonpriority unsecured claims

None [If "None" is checked, the rest of § 5.2 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 of claim to be paid	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	\$ _____	_____	\$ _____
_____	_____	\$ _____	_____	\$ _____
_____	_____	\$ _____	_____	\$ _____
_____	_____	\$ _____	_____	\$ _____

Mandatory National Chapter 13 Plan & Motions

5.2 Separately classified nonpriority unsecured claims
 None [If "None" is checked, the rest of § 5.2 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 of claim to be paid	Interest rate (if applicable)	Estimated total amount of payments
_____	_____	\$ _____	_____	\$ _____
_____	_____	\$ _____	_____	\$ _____
_____	_____	\$ _____	_____	\$ _____

5.3 Nonpriority unsecured claims
Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata, up to the full amount of the claims, as follows:
Check all that apply:

- the sum of \$ _____, unless a greater amount is required under another checked option;
- _____% of the total amount of these claims;
- 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 \$ _____.
Payments on allowed nonpriority unsecured claims will not be less than this amount.

5.4 Interest

5.3 Nonpriority unsecured claims

Allowed nonpriority unsecured claims that are not separately classified will be paid, pro rata, up to the full amount of the claims, as follows:

Check all that apply:

- the sum of \$ _____, unless a greater amount is required under another checked option;
- _____% of the total amount of these claims;
- 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 \$ _____.
Payments on allowed nonpriority unsecured claims will not be less than this amount.

Mandatory National Chapter 13 Plan & Motions

5.2 Separately classified nonpriority unsecured claims

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

5.4 Interest

Interest on allowed unsecured claims, other than separately classified nonpriority unsecured claims, will (Check the applicable box):

not be paid.

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

Payments on allowed nonpriority unsecured claims will not be less than this amount.

5.4 Interest

Interest on allowed unsecured claims, other than separately classified nonpriority unsecured claims, will (Check the applicable box):

not be paid.

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

Part 6: Executory Contracts and Unexpired Leases

6.1 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.

None to be assumed [If checked, the rest of § 6.1 need not be completed or reproduced]

The final column includes only payments disbursed by the trustee rather than by the debtor.

Name of creditor	Property description	Treatment (Refer to other plan section if applicable)	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)		

Mandatory National Chapter 13 Plan & Motions

Part 9: Nonstandard Plan Provisions

Under Bankruptcy Rule 3015(c), nonstandard provisions are required to be set forth below. These plan provisions will be effective only if the applicable box in Part 1 of this plan is checked.

Other: _____

Part 9: Nonstandard Plan Provisions

Under Bankruptcy Rule 3015(c), nonstandard provisions are required to be set forth below. These plan provisions will be effective only if the applicable box in Part 1 of this plan is checked.

Part 10: Signatures

The debtor's attorney (or debtor, if not represented by an attorney) certifies that all provisions of this plan are identical to the Official Form 113, except for language contained in Part 9: Nonstandard Plan Provisions.

Debtors

(Sign if not represented by an attorney)

X

Signature of debtor

Date

MM / DD / YYYY

X

Signature of debtor

Date

MM / DD / YYYY

Debtors' Attorney

X

Signature of debtor's attorney

Date

MM / DD / YYYY

Mandatory National Chapter 13 Plan & Motions

Exhibit A Calculation of lien avoidance

A.1 The judicial lien or nonpossessory, nonpurchase-money security interest provided for in Section 3.4 is avoided to the extent listed below. Do not complete if the plan involves no lien avoidance; if more than one lien is to be avoided, provide the information for each lien.

Name of creditor	Collateral	Judgment lien information (such as judgment date, date of lien recording, book and page number)	Calculation of lien avoidance
			<p>a. Amount of lien \$ _____</p> <p>b. Amount of all other liens \$ _____</p> <p>c. Value of claimed exemptions \$ _____</p> <p>d. Total: Lines a + b + c = line d \$ _____</p> <p>e. Value of debtor's interest in property \$ _____</p> <p>f. Subtract line e from line d \$ _____</p> <p>Extent of exemption impairment (Check applicable box):</p> <p><input type="checkbox"/> Line f is equal to or greater than line a. The entire lien is avoided.</p> <p><input type="checkbox"/> Line f is less than line a. A portion of the lien is avoided.</p> <p>Amount of lien not avoided Subtract line f from line a \$ _____</p>

Mandatory National Chapter 13 Plan & Motions

Exhibit B Estimated amounts of trustee payments

B.1 The trustee will make the following estimated payments on allowed claims in the order set forth in Section 7.1:

- a. **Current installment and arrearage payments on secured claims** *(Part 3, Section 3.1 total):* \$ _____
- b. **Allowed secured claims** *(Part 3, Section 3.2 total):* \$ _____
- c. **Secured claims not subject to 11 U.S.C. § 506** *(Part 3, Section 3.3 total):* \$ _____
- d. **Judicial liens or security interests not avoided** *(Part 3, Section 3.4 total):* \$ _____
- e. **Administrative and other priority claims** *(Part 4 total):* \$ _____
- f. **Current installment payments and arrearage payments on unsecured debts** *(Part 5, Section 5.1 total):* \$ _____
- g. **Separately classified unsecured claims** *(Part 5, Section 5.2 total):* \$ _____
- h. **Nonpriority unsecured claims** *(Part 5, Section 5.3 total):* \$ _____
- i. **Interest on allowed unsecured claims** *(Part 5, Section 5.4 total):* \$ _____
- j. **Arrearage payments on executory contracts and unexpired leases** *(Part 6, Section 6.1 total):* \$ _____

Total of lines a through j

\$ _____

Form 22C - Revised

Draft May 7, 2013

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 as directed in lines 17 and 21:

According to the calculations required by this Statement:

1. Disposable income is not determined under 11 U.S.C. § 1325(b)(3).

2. Disposable income is determined under 11 U.S.C. § 1325(b)(3).

3. The commitment period is 3 years.

4. The commitment period is 5 years.

Check if this is an amended filing

Official Form 22C-1

Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period

12/14

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Average Monthly Income

1. What is your marital and filing status? Check one only.
- Not married. Fill out Column A, lines 2-11.
- Married. Fill out both Columns A and B, lines 2-11.

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

	<i>Column A For Debtor 1</i>	<i>Column B Debtor 2 or non-filing spouse</i>
2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions).	\$ _____	\$ _____
3. Alimony and maintenance payments. Do not include payments from a spouse if Column B is filled in.	\$ _____	\$ _____
4. All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support. Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3.	\$ _____	\$ _____
5. Net income from operating a business, profession, or farm		
Gross receipts (before all deductions)	\$ _____	
Ordinary and necessary operating expenses	- \$ _____	
Net monthly income from a business, profession, or farm	\$ _____	\$ _____
	Copy here →	
6. Net income from rental and other real property		
Gross receipts (before all deductions)	\$ _____	
Ordinary and necessary operating expenses	- \$ _____	
Net monthly income from rental or other real property	\$ _____	\$ _____
	Copy here →	

Form 22C - Revised

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)	_____		

Draft May 7, 2013

Check if this is an amended filing

Official Form 22C-2

Chapter 13 Calculation of Your Disposable Income

12/14

To fill out this form, you will need your completed copy of Form 22C-1: *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period*.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

Part 1: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15. To find the IRS standards, either go to <http://www.justice.gov/ust/eq/bapcca/meanstesting.htm> or ask for help at the clerk's office of the bankruptcy court.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not include any operating expenses that you subtracted from income in lines 5 and 6 of Official Form 22C-1, and do not deduct any amounts that you subtracted from your spouse's income in line 13 of Form 22C-1.

If your expenses differ from month to month, enter the average expense.

Note: Line numbers 1-4 are not used in this form. These numbers apply to information required by a similar form used in chapter 7 cases.

5. The number of people used in determining your deductions from income

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

National Standards You must use the IRS National Standards to answer the questions in lines 6-7.

6. Food, clothing, and other items: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items.

\$ _____

7. Out-of-pocket health care allowance: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

Form 22C - Revised

Official Forms 22C–1 and 22C–2

Instructions for the Chapter 13 Statement of Your Current Monthly Income, Calculation of Commitment Period and Chapter 13 Calculation of Your Disposable Income

United States Bankruptcy Court

12/01/14

How to Fill Out these Forms

Official Forms 22C–1 and 22C–2 determine the period for your payments to creditors, how the amount you may be required to pay to creditors is established, and, in some situations, how much you must pay.

You must file 22C –1, the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 22C –1) if you are an individual and you are filing under chapter 13. This form will determine your current monthly income and determine whether your income is at or below the median income for households of the same size in your state. If your income is not above the median, you will not have to fill out the second form. Form 22C -1 also will determine your applicable commitment period—the time period for making payments to your creditors, unless the court orders otherwise.

If your income is above the median, you must file the second form, 22C–2, *Chapter 13 Calculation of Your Disposable Income*. The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay unsecured debts. Your chapter 13 plan may be required to provide for payment of this amount toward unsecured debts.

Read each question carefully. You may not be required to answer every question on this form. The instructions will alert you if you may skip questions.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

If you and your spouse are filing together, you and your spouse must file a single statement.

Understand the terms used in these form

These forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. When information is needed about the spouses separately, the forms use *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Things to remember when filling out this form

- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).
- If two married people are filing together, both are equally responsible for supplying correct information.

Do not file these instructions with your bankruptcy filing package. Keep them for your records.



NEW JERSEY CASES OF INTEREST

***In re Kopec*, 473 B.R. 597 (Bankr. D.N.J. June 20, 2012) (Ferguson) (Rejecting *In re Princeton Office Park*, L.P. 423 B.R. 795 (Bankr. D.N.J. Feb 17, 2010 (Kaplan)**

Holder of tax sale certificate under New Jersey law has a “tax claim” for §511 purposes and is entitled to interest at state statutory rate.

***In re Konowicz*, 470 B.R. 725, 730 (Bankr. D.N.J. May 17, 2012 (Kaplan))**

Good faith is independent basis to consider economic components notwithstanding compliance with disposable income test; plan that retains 6,100 square foot home at cost of \$5,857.13 per month while paying only \$17,810 to unsecured creditors over 60 months is not filed in good faith. “This court agrees with those decisions holding that §1325(a)(3)’s good faith test is an independent authority for examining economic components of a proposed plan, even where the disposable income test is satisfied.”

***In re Shilling*, No. 11-42452, 2012 WL 1565257
(Bankr. D.N.J. May 2, 2012) (Ferguson)**

Proposal to surrender property to IRS in full satisfaction of its lien was not confirmable in absence of consent. Unsecured deficiency might be dischargeable on plan completion, but IRS had deficiency claim that could not be wiped out by surrender.

***In re LaTorre*, No. 10-31867, 2012 WL 1565242
(Bankr. D.N.J. May 2, 2012) (Ferguson)**

Confirmation vested personal injury cause of action in debtor, and bankruptcy court had no jurisdiction to compel debtor's acceptance of settlement.

***In re LaTorre, No. 10-31867, 2012 WL 1565242
(Bankr. D.N.J. May 2, 2012) (Ferguson)***

Scheduled personal injury action vested in debtor at confirmation and did not become disposable income because outcome was not known or virtually certain.

***In re Tarby*, No. 11-32886/JHW, 2012 WL 1390201,
(Bankr. D.N.J. Apr. 20, 2012 (unpublished) (Wizmur)**

Vesting of property in debtor at confirmation did not completely empty estate. The statute does not state that the event of confirmation changes the characterization of the property from property of the estate into property of the debtor. The property that vests in the debtor pursuant to §1327 is free and clear upon the debtor's completion of the confirmed plan and upon the debtor's receipt of a Chapter 13 discharge.

***Garsh v. Wells Fargo Bank, N.A., No. 11-1788 (MBK),
2012 WL 1207220 (Bankr. D.N.J. Apr. 9, 2012
(Kaplan)***

Lender provided required TILA disclosures, and debtors were not entitled to rescind when they lacked financial ability to tender loan amount.

Miller v. Schaub (in re Schaub), No. 11-01811 (DHS), 2012 WL 1144424, (Bankr. D.N.J. Apr. 4, 2012) (unpublished) (Steckroth)

The exception to discharge in §1328(a)(4) is not limited to prepetition awards of restitution or damages. ... The underlying policies of § 1328(a)(4) support an interpretation that does not require judgment be obtained prepetition in order to be nondischargeable...This Court...is reluctant to insulate a debtor's wrongful conduct based solely on the vagaries of timing.

***In re Alessi*, No. 11-25686 (MBK), 2012 WL 1072214,
(Bankr. D.N.J. Mar. 29, 2012 (unpublished) (Kaplan)**

Debtor failed to rebut prima facie validity of proofs of claim when creditors timely filed proofs of claim and provided documentation in support. Amounts due each creditor substantially matched scheduled claims.

In re Dahlgren, No. 11-2794, 2012 WL 3611823, (3d Cir. Aug. 23, 2012) (unpublished)

Debtor's attorney sanctioned under Bankruptcy Rule 9011 for filing modified plan that contained same objectionable provision with respect to forced sale of land that was rejected by bankruptcy court in prior plan and that was inconsistent with pre-bankruptcy judgment.



Thomas v. U.S. Bank Nat'l Ass'n, 474 B.R. 450 (D.N.J. June 22, 2012) (Wolfson)


HAMP does not provide private right of action; Helping Families Save Their Homes Act of 2009 did not preclude U.S. Bank from instituting foreclosure.

Jacobo v. BAC Home Loans Servicing, LP 477, B.R. 533
(D.N.J. June 21, 2012)

Failure to properly serve BAC Home Loan Servicing with proposed plan precluded res judicata effect of confirmation of plan that crammed down debt. Bankruptcy Rule 7004(h) requires service by certified mail on officer of federally insured depository institution.

***In re Parks*, No. 12-13045 MS, 2012 WL 3561738
(Bankr. D.N.J. Aug. 16, 2012)**

Prepetition mortgage absolutely assigned rents on multi-family residence, preventing debtor's use of rents; assigned rents were not property of estate.



Verity v. Wells Fargo Bank, N.A. (In re Verity), No. 10-02373 (DHS), 2012 WL 3561669 (Bankr. D.N.J. Aug 16, 2012) (unpublished) (Steckroth)

Rooker-Feldman and Younger doctrines prevented unraveling of pre-bankruptcy state court foreclosure.

***Alparone v. Ocwen Loan Servicing, LLC (In re Alparone)*, 471, B.R. 104 (Bankr. D.N.J. June 4, 2012)
(Lyons)**

Under Truth in Lending Act, assignee was not liable for disclosure violations that were not apparent on face of disclosure statement, nor for damages for failure to respond to notice of rescission. Debtors could recover attorney fees and costs incurred in vindicating rescission right.

***In re DiClemente*, No. 12-1226 (FLW), 2012 WL 5211942 (D.N.J. Oct. 22, 2012) (unpublished) (Wolfson)**

Substantially undersecured *in rem* claim that debtor discharged in prior Chapter 7 case is counted as unsecured debt in subsequent Chapter 13 case and renders debtor ineligible. Debtor failed to demonstrate likelihood of success on appeal of ineligibility.



**ISSUES OF INTEREST:
APPLICABLE COMMITMENT
PERIOD (ACP)**

CASES OF INTEREST

***In re Brady*, 361 B.R. 765, 776-77 (Bankr. D.N.J. Feb. 13, 2007)**

If the debtors have no disposable income to apply to unsecured creditors' claims, then the length of the applicable commitment period is irrelevant. Negative disposable income per 22C, 36 month plan payments.

***Maney v. Kagenveama In re Kagenveama*, 541 F.3d 868, 875-77 (9th Cir. June 23, 2008)**

Applicable commitment period is a temporal measurement, but debtor with no projected disposable income has no applicable commitment period.

***Coop v. Frederickson (In re Frederickson)*, 545 F. 3d 652, 659-60 (8th Cir. Oct. 27, 2008)**

Chapter 13 debtor with CMI greater than applicable median family income, even when disposable income on Form B22C is negative, applicable commitment period is temporal, is 60 months and no plan can be confirmed unless it extends for entire 60 month period.

***Whaley v. Tennyson (In re Tennyson)*, 611 F.3d 873, 877-79 (11th Cir. July 16, 2010)**

Applicable commitment period in §1325 (b)(4) is temporal and defines minimum length of Chapter 13 plan that does not pay unsecured claims in full-without regard to projected disposable income.

***Baud v. Carroll*, 634 F.3d 327, 338-56 (6th Cir. Feb. 4, 2011)**

Applicable commitment period is temporal, and upon objection, debtors with CMI greater than applicable median family income must propose a five-year plan without regard to whether there is positive, negative or no projected disposable income.

***Danielson v. Flores (In re Flores)*, 692 F.3d 1021, 1024-36 (9th Cir. Aug., 31, 2012)**

Allows debtor with no projected disposable income to confirm plan shorter than applicable commitment period (Kagenveama survived *Hamilton v. Lanning* as to this issue)

***Danielson v. Flores (In re Flores)*, Case 11-55452 D.C.
No. 6:10-29956-MJ (9th Cir 8/29/13 en banc)**

Bankruptcy Court may confirm a Chapter 13 Plan under §1325 (a)(b)(1)(B) only if the plan's duration is at least as long as the applicable commitment period.



**ISSUES OF INTEREST:
MODIFIED PLAN TO REDUCE
PLAN PERIOD (ACP)**

CASES OF INTEREST

* * YES * *

***In Re Davis*, 439 B.R. 863 (Bankr. N.D. Ill. Dec. 16, 2010)**

Modification of confirmed plan to reduce term from 60 to 36 months is approved when debtor sustained loss of income and separation from spouse; trustee's objection based on disposable income test is rejected because § 1329 (b) does not apply to post confirmation modifications. Debtor's income was now below applicable median, permitting three-year plan to meet good-faith and minimum plan term requirements.

* * NO * *

***In Re Buck*, 443 B.R. 463, 470 (Bankr. N.D. Ga. Nov 10, 2010) Applying *Whaley v. Tennyson* (In re Tennyson)**

Debtors who had CMI greater than applicable median family income at confirmation cannot modify plan 40 months later to reduce applicable commitment period or length of plan from 60 months to 36 months; debtors can reduce the monthly payments to reflect lost income but must stay in Chapter 13 for entire 60 month period.


* * **MAYBE** * *

Mattson v. Howe (In re Mattson), 468 B.R. 361, 372-73 (B.A.P. 9th Cir. Apr. 5, 2012)

Debtors failed to prove good faith with respect to shortening length of plan from 60 to 36 months. The continued absence from §1329(b)(1) of any reference to §1325(b) is conclusive as to whether a debtor may modify his or her plan to reduce the term below the applicable commitment period required for an original plan.



ISSUES OF INTEREST: **100% V. DISPOSABLE INCOME**



When a plan proposes to pay 100% of claims, are debtors able to pay less than their projected disposable income over the life of the plan, stretching out payments over 60 months?

11 U.S.C. §1325(b) subsection (b):

“(1) If the trustee or the holder of an allowed unsecured claim objects to the Confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan-

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.”

***In re Jones*, 374 B.R. 469, 471 (Bankr. D.N.H. Sept. 7, 2007)**

When plan proposes to pay unsecured creditors in full consistent with §1325(b)(1)(A), plan need not satisfy projected disposable income test in §1325 (b)(1)(B).

***In re Richall*, 470 B.R. 245, 249-50 (Bankr. D.N.H. May 11, 2012)**

After BACPA, courts may deny confirmation of a Chapter 13 plan proposed by a below median debtor, which stretches beyond a three year period and pays creditors in full but does not commit all disposable income, because a court could find that no cause exists to extend the plan longer than three years when a debtor can payoff creditors within the commitment period. The same is not true for above median debtors...Above median debtors now have an election to either pay all of their disposable income for five years, or until creditors are paid in full, §1325(b)(1)(B), or to pay less than their disposable income over five years, if such lower payments will pay unsecured creditors in full. 11 U.S.C. §1325(b)(1)(A)...This result is contrary to the intent of Congress in enacting BAPCPA...It is the responsibility of Congress, not the courts, to correct the statute.

***In re Riddle*, 410 B.R. 460, 463-64 (Bankr. N.D. Tex. Aug. 13, 2009)**

When disposable income went down after confirmation because of lost overtime and increased medical expenses, plan can be modified to reduce dividend to unsecured creditors from 100% to 0% without violating good-faith test for modification of plan.The changes in Debtor's circumstances constitute valid reasons to seek a plan modification.....The court istroubled....by the loss to creditors of the difference between Debtors' disposable income and their plan payments during the first 15 months of their case....A step-up plan is inappropriate in cases such as this where the effect is solely to defer the pain of contributing the debtor's entire disposable income to performance of his or her plan.... The courtwill no longer routinely confirm plans like...the instant case.



STUDENT LOAN DEBT IN CHAPTER 13

Student Loan Debt in Chapter 13

- When in doubt, **PUNT**:
 - Pay student loans outside the plan
 - Applies when student loan payment is minimal and no substantial impact on budget

Funds in excess of projected disposable income

- Designate payments to student loan creditors from funds which are in excess of projected disposable income
 - Below-median debtor: extend plan to five years and designate payment in years four (4) and five (5) to student loans
 - Above-median debtor pays student loan from “discretionary” income earned in excess of PDI. [Warning: *Lanning* – reconcile 22c and I/].....has there been a change in circumstances?]

Separate Classification

- Code Provision - §1322 (b) (1) [the plan may] designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims.

Consumer Debt

- *In re Millikan*, 2007 WL 62600855 (Bankr. S.D. Ind. Sept. 4, 2007) – student loans generally will be consumer debt.
- *In re Rucker*, 454 B.R. 554 (Bankr. M.D. Ga 2011) – student loan not per se consumer debt and must be evaluated on a case-by-case basis looking at the purpose for which the loan was taken out.
- *In re Santana*, 480 B.R. 222 (Bankr. D.P.R. 2012) – limiting the application of the §1322(b)(1) consumer debt exception to co-signed debt acquired for the benefit of the debtor rather than a co-signer, court holds that a student loan co-signed by debtor's father for his son did not fall within the exception because student loans generally benefit the co-signer and not the debtor.

Example:

Cases allowing separate classification

- *In re Stull*, 2013 WL 1279069 (Bankr. D. Kan. Mar 27, 2013) – distinguishing this case from *In re Kubezcko*, which involved a below median debtor, court holds that an above-median debtor's chapter 13 plan to separately classify and pay a non-dischargeable obligation from income earned in excess of the projected disposable income committed to pay unsecured debt does not unfairly discriminate.

Example:

Cases allowing separate classification

- *In re Pracht*, 464 B. R. 486 (Bankr. M.D. Ga. 2012) – separate classification and higher payment rate for student loan debt does not unfairly discriminate because it allowed debtor to participate in the Public Loan Forgiveness program and gave her the chance to write off approximately \$50,000 of student loan debt. Such discrimination advanced the goal of a fresh start for the debtor and the public policy objective of payment of student loan debts. The cost of this discrimination to unsecured creditors was 5%, or a total of only \$5,000.

Example:

Cases allowing separate classification

- *In re Kalfayan*, 415 B.R. 907 (Bankr. S.D. Fla. 2009) – separate classification of student loans to allow for maintenance of payments not unfairly discriminatory because it benefited the very creditors who were being discriminated against; debtor risked losing her optometry license, under state law, if she fell behind on her student loan payments which would jeopardize her ability to pay other unsecured creditors.

Example:

Cases disallowing separate classification

- *In re Groves*, 39 F.3d 212 (8th Cir. 1994) – nondischargeability of student loans does not, by itself, justify “substantial” discrimination against general unsecured debt; additionally, a debtor’s interest in a fresh start does not justify separately classifying student loans for the sole purpose of paying those debts in a manner that prejudices other unsecured claims.

Example:

Cases disallowing separate classification

- *In re Chapman*, 146 B.R. 411 (Bankr. N.D. Ill. 1992) – plan that proposed, *inter alia*, to separately classify and pay student loan debt in full while paying 10% to unsecured creditors was unfair because it benefitted only the debtor at the expense of the general unsecured creditors; chapter 13 bankruptcy requires the balancing of the debtor's need for a fresh start against creditors' right to fair treatment and there was no such balancing in the debtor's plan.



22c, Line 57:

Deduction for special circumstances

Example:

Cases in favor of special circumstances

- *In re Edwards*, 2012 WL 3042233 (Bankr. D. Ala. July 25, 2012) - agreeing that in some cases student loan payments may constitute special circumstances, but not in this case because debtors incurred other high unnecessary expenses

Example:

Cases in favor of special circumstances

- *In re Knight*, 370 B.R. 429, 434-36, 437-40 (Bankr. N.D. Ga. June 27, 2007) – maintaining payments on long-term, nondischargeable student loan may be a special circumstance under §707(b)(2)(B) for a Chapter 13 debtor with CMI greater than applicable median family income..... Result would be a pro rata distribution of 43% under the plan. If student loan debt was included in unsecured debt, unsecured creditors would be paid approximately 48%.Discrimination that resulted was de minimis for purposes of §1322(b)(1) and thus not unfair.

Example:

Cases rejecting special circumstances

- *In re Johnson*, 446 B. R. 921, 925 (Bankr. E.D. Wis. Mar 11, 2011) – Student loan was not special circumstance under §707(b)(2)(B)
- *In re Steele*, No. 09-21218, 2010 WL 4791837 (Bankr. D. Wyo. Nov. 18, 2010) - \$490 per month student loan expense fails special circumstances test in §707(b)(2)(B)(ii) and (iii) when debtors fail to document or detail reasonableness and necessity of student loan payment.



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