

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:

CLERK’S INSTRUCTIONS REGARDING)
CONFIRMATION OF CHAPTER 13)
PLANS AND AMENDED PLANS)
)

CHAPTER 13 CONFIRMATION PROCEDURES

To facilitate the confirmation of Chapter 13 plans, and amended plans, and to inform the bankruptcy bar of the Court’s preferred practices, the Bankruptcy Clerk has promulgated the following, non-binding procedures to assist parties in navigating the Chapter 13 confirmation process.

a. Mailing Matrix & Amended Mailing Matrix

The mailing matrix is a list of all creditors and their addresses. The confirmation process starts with a complete mailing matrix. A creditor without notice of the plan/confirmation hearing is generally not bound by the confirmation of the plan. *E.g.*, 11 U.S. C. § 523(a)(3) (excepting certain debts from discharge); § 1327(a) (“The provisions of a confirmed plan bind the debtor and each creditor”); *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1377 (2010) (stating that relief from a confirmation order is appropriate when there exists “a violation of due process that deprives a party of notice or the opportunity to be heard.”); *In re Martin*, 427 B.R. 573, 578 (Bankr. W.D. Va. 2010) (“The preclusion granted by § 1327(a), however, does not apply to a creditor who does not receive notice of the plan such that the creditor’s . . . right to due process of law is violated.”).

1. When Due

The mailing matrix is due with the petition. If it is not filed with the petition, the Clerk issues a notice of deficiency requiring the mailing matrix be filed “immediately” and if not received within 7 days the case is subject to dismissal without further notice. The Clerk’s Office has no way of knowing whether a submitted mailing matrix is full or partial, and even the inclusion of a single creditor’s address will prevent the case from being dismissed for failing to file the matrix. When one or more creditors are added to a mailing matrix after the initial matrix is filed, an amendment fee is charged (\$31 in 2017). The amendment fee may be paid by attorneys in CM/ECF or by debtors via the court’s online payment method through the court’s website: www.wvnb.uscourts.gov.

2. Importance of a Complete Mailing Matrix

The Bankruptcy Clerk's Office issue the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditor, & Deadlines no later than a day after the filing of a Chapter 13 bankruptcy petition. The Clerk's electronic notice transmits nearly contemporaneously with its docketing. For creditors that have not elected to receive electronic transmission, the Bankruptcy Noticing Center (BNC) generally places the notice of the confirmation hearing and the proposed plan in the U.S. mail two days after the notice is issued by the Clerk. The BNC then mails the notice and plan to the addresses listed on the mailing matrix (as corrected by the BNC to accommodate creditors' registered, preferred addresses).

A Chapter 13 plan is due with the petition, or within 14 days thereafter. Fed. R. Bankr. P. 3015(b). When a debtor files a Chapter 13 plan, the Clerk issues and/or mails creditors a notice setting the confirmation hearing on the proposed plan. Concomitant with the notice of the confirmation hearing, the Clerk's Office also issues the debtor's proposed plan.

- A. If a creditor is added to the mailing matrix after the Clerk issues the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditor, & Deadlines or after the initial notice of the confirmation hearing with the attached plan, the debtor is responsible for mailing the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditor, & Deadlines (with a complete social security number) and the confirmation hearing notice and the proposed plan to the newly added creditor. The failure of the debtor accomplish the mailing may result in the creditor not being bound by a subsequently entered confirmation order. This means that the creditor may hold a debt that is not discharged in Chapter 13.
- B. If a debtor amends the mailing matrix and then files an amended Chapter 13 plan, the Clerk's Office will issue a new notice that sets the confirmation hearing and simultaneously issue the amended plan. If the Clerk believes that the debtor is filing an amended plan in name only to avoid mailing costs, the Clerk may delegate noticing responsibility of the new confirmation hearing and amended plan to the debtor.

b. The Chapter 13 Plan

1. Model Plan

- A. The Court has adopted a model Chapter 13 plan for the Northern District of West Virginia. The model plan is on the Court's website,

www.wvnb.uscourts.gov. From time to time, the Court updates and/or amends the model plan. An old version of the model plan is accepted for six months after the date of the most recent amendment.

- B. A debtor's Chapter 13 plan must substantially conform to the model plan adopted by the Court. Non-standard provisions, if any, may be included in Parts 3.4, 5.3 and 8.1. If the debtor is not using the model plan, the debtor must file a motion to be excused from using the model plan and set forth why the model plan should not be required in the case.
- C. The Clerk's Office provides the model plan in EXCEL, Quattro Pro and an Adobe form-fillable PDF. The Clerk recommends the EXCEL version with its embedded formulas as the most user-friendly. Because the model plan is available in formats that allow for automatic calculations and data entry, there is no need to purchase commercial software to complete the plan efficiently. The Clerk's Office also produced a video on completing the model plan, which is available on the Clerk's YouTube Channel: WVNB Clerk.

2. When Due

- A. A Chapter 13 plan should be filed with the Chapter 13 petition. Under Fed. R. Bankr. P. 3015(b), if the plan is not filed with the petition, it "shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown on notice as the court may direct." In converted cases, the plan is due 14 days after the conversion of the case.
- B. If more than 14 days are needed to file a plan, the debtor should file a motion with the Court detailing how much additional time is needed and the reasons for the delay. Notice of the motion is limited to the debtor, debtor's counsel, the Chapter 13 trustee and the United States trustee, *i.e.*, parties receiving electronic notice in the case. The Court may grant an extension *ex parte*. Any extension of time granted by the Court is without prejudice to any party moving to dismiss the case or to seek other relief.
- C. This District does not delay issuance of the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditor, & Deadlines until the Chapter 13 plan is filed.

3. Payments & Wage Withholding

- A. The first plan payment is due 30 days after the petition is filed unless the Court enters an order delaying the date of the first plan payment. 11 U.S.C. § 1326(a)(1). The 30-day period does not run from when the plan is filed.

Payments should reflect the debtor's bankruptcy case number and be mailed to the address provided by the Chapter 13 trustee. In 2017 that address is:

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- B. Unless the debtor files a motion to allow the debtor to make plan payments directly to the Chapter 13 trustee, or is otherwise exempt from wage withholding, all plan payments are made through a wage withholding order. No wage withholding order is required when:
 - i. the debtors income is from sources other than employment;
 - ii. the debtor is self-employed; or
 - iii. the debtor's income is from social security, pension/retirement, or unemployment.
 - C. The Clerk's Office prepares the wage withholding order based on information contained in the proposed Chapter 13 plan. Debtors and counsel are responsible for ensuring that the employer information is correct, and that the wages of the debtor are sufficient to make the payment. If joint debtors desires a particular division for wage withholding that division should be reflected in Part 2 of the proposed plan. If a plan is amended to reflect a different wage withholding amount, debtor's counsel should submit an amended wage withholding order.
 - D. Wage withholding, when applicable, should commence on the first pay period following the filing of the Chapter 13 plan, assuming the debtor's employer is timely served with the wage withholding order. Under 11 U.S.C. § 1326(a)(1), plan payments are to commence 30 days after the filing of the Chapter 13 petition: it is the debtor's responsibility to send payments directly to the Chapter 13 trustee until the debtor's employer commences wage withholding.
 - E. The Clerk, Court, and Chapter 13 trustee notice a significantly better success rate, and less work for the Court, Clerk, Chapter 13 trustee, and debtor's counsel when payments are being made pursuant to a wage withholding order. The Court discourages debtors from making plan payments directly to the Trustee.
4. Adequate Protection Payments
- A. After filing a Chapter 13 petition and before confirmation, the debtor should not make any direct payments to the creditors specified in 11 U.S.C. §

1326(a)(1)(B) and (C) unless the debtor is current on payments to such creditor and/or the debtor does not propose to pay the creditor through the trustee. Creditors specified in § 1326(a)(1)(B) and (C) commonly include automobile lessors and lenders secured in motor vehicles.

- B. If a creditor specified in 11 U.S.C. § 1326(a)(1)(B) or (C) is being paid through the trustee, then all payments required by § 1326(a)(1) are made by the trustee in the amount set forth in the proposed plan, unless otherwise ordered. Such payments are subject to the trustee's percentage fee and are made in the ordinary course of the trustee's business; provided, however, that the trustee is not obligated to make any such pre-confirmation adequate protection payment until the creditor files a proof of claim.

c. Service / Notice of the Original Chapter 13 Plan

1. Service

The District's model plan does not contain motions to value or motions to avoid judicial liens. Consequently, no need exists for a debtor to serve the plan under Fed. R. Bankr. P. 7004.

2. Notice

- a. The Clerk includes the plan with the notice of the hearing on confirmation mailed pursuant to Rule 2002. See Fed. R. Bankr. P. 2002(a)(9), (b)(3) and 3015(d). To accommodate a 2-day delay when notice is by mail through the BNC, the Clerk ensures that at least 30 days exist between the issuance of the notice and the confirmation hearing date. A party in interest receives notice of the time to object to confirmation of the proposed plan through standardized language in the model plan
- b. When a debtor amends the mailing list, the Court enters an Order directing the debtor to mail a copy of: (1) the notice of bankruptcy case, (2) the amended schedules, (3) the notice of the meeting of creditors, (4), the Chapter 13 plan and the confirmation hearing notice (or a copy of the confirmation order and any approved modification), and (5) any other document that affects the rights of the newly added (or amended) creditor. Consequently, for newly added or amended creditors, the Court has directed the debtor to issue notice of the confirmation hearing date and to attach a copy of the proposed Chapter 13 plan. The debtor should file a certificate of notice with the Clerk.

d. The Confirmation Hearing Date

1. The First Confirmation Hearing Date is based on the 341 Meeting Date

- a. The date first set for the meeting of creditors for Chapter 13 cases must be scheduled no fewer than 21 and no more than 50 days after the filing of the petition. Fed. R. Bankr. P. 2003(a). A request to continue the scheduled meeting of creditors is made to the Chapter 13 trustee – not the Court or Clerk. For further information regarding the meeting of creditors under § 341 of the Bankruptcy Code, and information that should be provided to the Chapter 13 trustee in advance of the meeting, see the information video produced by the Clerk’s Office:
<https://www.youtube.com/watch?v=36bD3Q1xFF0>
- b. The Bankruptcy Code requires that the Court hold a confirmation hearing not earlier than 20 days and not later than 45 days after the date of the meeting of creditors. 11 U.S.C. § 1324(b). This time period runs from when the meeting is concluded, not from the date first set. 8 *Collier on Bankruptcy* ¶ 1324.02 (2012) (“The language of this provision is somewhat unclear, but it should be interpreted as requiring the stated time periods to run from the conclusion of the meeting of creditors, rather than the first date set for the meeting of creditors. When Congress wished a time period to run from the first date set for the meeting of creditors, it so stated. Moreover, interpreting the provision otherwise could result in the confirmation hearing being scheduled before the meeting of creditors is concluded.”).
- c. Although the statute appears to require that the confirmation hearing be set after the conclusion of the meeting of creditors – not the date first set – the Clerk has no way of knowing whether the meeting of creditors will be concluded on the date first set, or continued to a different date and then concluded. Therefore, the Clerk sets the initial confirmation hearing based on the date first set for the meeting of creditors. The time for filing objections to the proposed plan is similarly tied to the date first set for the meeting of creditors. The Clerk attempts to set confirmation hearing dates within the 20-45 day period following the date first set for the meeting of creditors as required by 11 U.S.C. § 1324(b). In some cases, however, the confirmation hearing is set beyond the 45-day period due to the Court’s divisional hearing schedule and the need to provide at least 28 days’ notice by mail of the confirmation hearing date.
- d. This District will confirm a Chapter 13 plan on the recommendation of the Chapter 13 trustee in advance of the scheduled hearing. This prevents unnecessary court appearances. To accommodate the Chapter 13 trustee’s schedule and the court’s need to review the trustee’s recommendation for

confirmation, the court and trustee prefer an objection deadline that expires at least 10 days before the scheduled hearing.

- e. When the first meeting of creditors is continued, a party in the case should move to continue the confirmation hearing such that the confirmation hearing is not held before the meeting of creditors is concluded. The failure to file a motion to continue may result in an unnecessary Court appearance.
- f. If an objection to confirmation of the proposed plan is timely filed, the Court prefers that a scheduled confirmation hearing not be continued so that it will have the opportunity to adjudicate the objection to confirmation. Generally, with the consent of the party objecting to confirmation, the confirmation hearing may be continued.

2. Plan Objection Deadline

- a. The model plan sets the deadline for objecting to confirmation of the proposed plan:

“Objections by any party other than the Chapter 13 Trustee must be in writing and filed with the court no later than fourteen days after the date first set for the section 341(a) meeting of creditors, unless otherwise permitted by the court. If this proposed plan was not filed at least nine days before the date first set for the meeting of creditors, objections must be filed within twenty-three days from the issuance of the Clerk’s notice of the confirmation hearing that accompanies this proposed plan, or amended plan, unless otherwise permitted by the court.”

Again, the plan provides for 23 days’ notice instead of 21 days’ notice to accommodate a 2-day delay for the BNC to place an item in the U.S. mail.

- b. Objections not filed within this period are untimely, even if the actual confirmation hearing is continued well past the objection due date. Fed. R. Bankr. P. 3015(f) (stating that an objection to confirmation is due before confirmation); *Oakwood Acceptance Corp. LLC v. Dorn (In re Dorn)*, 315 B.R. 68, 72 (Bankr. E.D. Ark. 2004) (“Rule 3015(f) does not prohibit a local bankruptcy court from establishing a reasonable deadline for the filing of objections, provided that the deadline is before confirmation.”). The court, however, has generally permitted a late filed objection when a confirmation hearing is continued.

3. Continued Confirmation Hearing Date(s)

- a. Although the first confirmation hearing is “held” in accordance with 11 U.S.C. § § 1324(b) (20-45 days after the meeting of creditors) it is the general practice in this District not to confirm a Chapter 13 plan until after claims are filed. *See* Fed. R. Bankr. P. 3002(c)(1). Therefore, although an early confirmation hearing is set by the Clerk, actual confirmation of a plan may not occur until much later, perhaps not until after the governmental claims bar date, which is 180 days after the petition is filed.
- b. When no party in interest (other than the Chapter 13 trustee) timely files an objection to confirmation within the deadlines set forth in the proposed plan, counsel should move to continue the confirmation hearing until such time as the Chapter 13 trustee may be ready to recommend confirmation.
- c. If a 28-day period does not exist between notice of the confirmation hearing and the set confirmation hearing, or if objections to the proposed plan are due less than 10 days in advance of the scheduled hearing, counsel should file a motion to continue the confirmation hearing to the next regularly scheduled court hearing date in the case’s division of origin.
- d. If a party has timely objected to confirmation of a proposed Chapter 13 plan, then the Court prefers that confirmation hearing not be continued (absent consent of the objecting party) to allow the Court to adjudicate the objection.
- f. The Clerk may limit notice of a continued confirmation hearing to the debtor, debtor’s counsel, the United States trustee, the case trustee, any creditor with a timely filed objection. Consequently, when no objections to confirmation are timely filed, the entire creditor body may not be noticed with the continued confirmation hearing date. In addition, because the Clerk has already attached the proposed Chapter 13 plan to the notice of the first confirmation hearing date, the Clerk will not attach the proposed plan to the notice of the continued confirmation hearing date.

4. Confirmation Without a Hearing

If: (a) no party has a pending objection to confirmation of the proposed Chapter 13 plan, and (b) the Chapter 13 trustee recommends confirmation of the proposed plan, then the Chapter 13 trustee may submit a proposed confirmation order to the Court in advance of the hearing and no appearance is required by counsel or the debtor.

e. Amended Plans

1. Notice / Service

- A. When a debtor files an amended plan, the Clerk issues a new confirmation hearing notice and attaches the amended plan. Fed. R. Bankr. P. 3015(d). Unless notice is specifically requested to be limited by the debtor, the Clerk's Office generally notices the amended plan to the creditors listed on the mailing matrix.
- B. To limit notice on an amended plan, the debtor should indicate on the first page of the model plan those creditors that are affected by the amendment. The Clerk's Office may limit notice of the confirmation hearing and amended plan to those creditors listed as being affected by the amendment.

2. Objection Deadline to an Amended Plan

- A. A holder of a secured claim that is being treated the same or better in the amended plan, and who did not timely file an objection to the original plan, is generally deemed to have accepted the amended plan. 11 U.S.C. § 1323(c).
- B. Unlike secured claims provided for in § 1323(c), no similar statute or rule exists to deem an amended Chapter 13 plan accepted by holders of priority or unsecured claims. *Cf.* Fed. R. Bankr. P. 3019 (providing that the failure to object to an original Chapter 11 plan is deemed acceptance of an amended plan that does not affect the unsecured creditor's rights); *with* Fed. R. Bankr. P. 3015 (failing to provide similar language for amended Chapter 13 plans). The Court, however, may deem an amended Chapter 13 plan accepted by an unsecured creditor that failed to object to the original plan so long as the creditor's treatment is the same, or better, in the amended plan.

3. Effect on Previously Filed Plans and Objections

Once an amended Chapter 13 plan is filed by the debtor, all previously filed unconfirmed plans are deemed withdrawn. The filing of an amended plan does not remove any previously filed objection to confirmation; rather, the previously filed objection is deemed to be an objection to the amended plan, and removal of any previously filed objection must be done either by:

- A. Court order,
- B. Having the objecting party withdraw the objection, execute a stipulation that resolves the objection, or by filing a new objection

to the amended plan (i.e., an amended objection mooted by the original filing),

- C. Having the Chapter 13 trustee recommend confirmation and stating in the recommendation that the objection is mooted by the amended plan, and/or
- D. Having the Clerk moot the objection based on other developments in the case such as entry of a confirmation order.

Consequently, the local practice in this District is that an objecting party may, but is not required to, refile an objection to confirmation based on the filing of an amended plan.

4. Cure of Post-Petition, Pre-Confirmation Defaults by Amendment

If a debtor and creditor agree to allow the cure of a post-petition, pre-confirmation arrearage through the Chapter 13 trustee, the resulting increase in the plan payment may be reflected in the confirmation order without the need to file an amended plan – unless the Debtor proposes to reduce payments to existing creditors. Any agreed order to resolve a delinquency that requires action by the Chapter 13 trustee must be sent to the Office of the Chapter 13 trustee for signature. The order must include the exact amount of the post-petition, pre-confirmation arrearage, the amount of the on-going payment, and the address to where payments can be sent by the Trustee. If there is a wage withholding order in effect, the trustee is authorized to submit an amended wage withholding order changing the amount necessary for the payment of the claim.

f. Chapter 13 Attorney’s Fees

- 1. Except for any fee collected before the bankruptcy case is filed, which is duly disclosed to the court, a Chapter 13 debtor’s attorney generally does not collect any fees from the trustee / debtor’s plan payments until the case is confirmed.
- 2. After a debtor’s Chapter 13 plan is confirmed, the Chapter 13 trustee pays outstanding attorney’s fees concurrently with any secured debt payments and any domestic support obligation that is paid by the trustee; provided, however, that funds are first applied to long term mortgage debts paid by the trustee, second to equal monthly payments to other secured creditors, third to domestic support creditors, and only then to attorney’s fees. Attorney’s fees are paid, in-full, before any plan payment is applied to an arrearage claim or before payment is applied to any other priority or unsecured debts.
- 3. As of the last update to these procedures, this District has not set a Chapter 13 “no-

look” fee. Debtor’s counsel, however, is not required to submit a fee application. Instead, attorney’s fees are disclosed in Part 4.3 of the Model Plan and if there are no objections to the fee, the amount payable to the attorney is set forth in the confirmation order prepared by the Chapter 13 trustee.

4. As a general matter, the Chapter 13 trustee and the court review the requested attorney’s fees and will set a hearing on attorney compensation should the amount requested appear too inconsistent with the customary practices before the court.

g. General Time Line of the Confirmation Process

1. Note the following general timelines that result from the Bankruptcy Code, Bankruptcy Rules, and local practice. A delay in filing a Chapter 13 plan, or the filing of an amended plan, especially when combined with the court’s divisional hearing calendar, can have significant procedural consequences that can delay confirmation of a plan.

- Day 0: Chapter 13 Petition filed.
- Day 0-1: Issuance of the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditor, & Deadlines. (Fed. R. Bankr. P. 2002(f) & local practice)
- Day 0-1: Notice of filing deficiencies issued (if any exist) (Local practice).
- Day 7: Last day to file mailing list before administrative dismissal of the case. (Local practice).
- Day 14: Plan due. (Fed. R. Bankr. P. 3015(b)).
- Day 14: Last day to comply with previously noted deficiencies (Local practice)
- Day 14: Date by which the Clerk should have issued the notice of the confirmation hearing (Local practice)
- Day 21-50: Time within which to schedule the chapter 13 meeting of creditors. (Fed. R. Bankr. P. 2003(a)).
- Day 30: First plan payment due. (11 U.S.C. § 1326(a)(1)).
- Day 36-66: Time within which to file objections to confirmation of the proposed plan (Fed. R. Bankr. P. 2002(a)(9) and local practice).
- Day 41-95: Time within which to schedule the first hearing on confirmation. (11 U.S.C. § 1324(b)).
- Day 70: Proof of claim bar date for non-governmental creditors (Fed. R. Bankr. P. 3002(c)).
- Day 120: Claim supplement date or creditors with a security interest in the debtor’s principal residence. (Fed. R. Bankr. P. 3002(c)(7)).
- Day 180: Governmental proof of claim bar date. (Fed. R. Bankr. P. 3002(c)(1)).

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