

**DISCUSSION OF REVISIONS TO
KYEB LOCAL FORM 3015-1(A) (CHAPTER 13 PLAN)
EFFECTIVE 12/01/2023**

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The U.S. Bankruptcy Court for the Eastern District of Kentucky has revised Local Form 3015-1(a), Chapter 13 Plan, to become effective December 1, 2023.

This document highlights significant substantive changes and provides a brief explanation of the changes. **Only plan sections being revised are discussed herein. Significant changes are highlighted.** A complete redlined version is available.

The materials generally reflect my interpretation of relevant statutes, rules, forms, and court opinions as they relate to the local chapter 13 plan form. As the trustee in the EDKY, I reserve the right to take a contrary position in any particular case depending on the facts of that case, and I reserve the right to argue an interpretation that may differ from that set forth in these materials.

PART 1: NOTICES.

Revised:

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

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

If you oppose the plan's treatment of your claim or any provision of this plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court may confirm this plan without further notice if no objection to confirmation is filed. In addition, you must timely file a proof of claim, or a proof of claim must be timely filed on your behalf, to be paid under any plan. See Section 3.7 of the plan.

The following matters may be of particular importance. **Debtors must check one box on each line to state whether or not the plan includes each of the following items. If an item is checked as "Not Included," if both boxes are checked, or if neither box is checked, the provision will be ineffective if set out later in the plan.**

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

Explanation:

- 1) "You may need to file a timely proof of claim" is changed to "you must timely file a proof of claim, or a proof of claim must be timely filed on your behalf."
- 2) A cross-reference to new section 3.7 (discussed separately herein) further gives notice that the requirement for filing a proof of claim also applies to secured creditors.
- 3) If neither the "included" nor the "not included" box is checked for section 1.1, 1.2, or 1.3, any attempt in the plan to limit the amount of a secured claim, to avoid a lien under § 522(f), or to include nonstandard provisions will be ineffective.

PART 2: PLAN PAYMENTS AND LENGTH OF PLAN

Revised:

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

\$		per		for		months
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Insert additional lines if needed.

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

2.2 Regular payments to the trustee will be made from future income in a manner acceptable to the trustee or as ordered by the court. See KYEB-LBR 3070-1(a).

2.3 Income tax refunds will be retained by the debtor(s) except as otherwise set forth in a nonstandard provision, a separate plan amendment, or as ordered by the court.

2.4 Additional payments, if any, will be made to the trustee as set forth in a nonstandard provision, a separate plan amendment, or as ordered by the court.

2.5 The total amount of payments to the trustee is estimated to be \$_____.

Explanation:

- 1) Because of these changes, checkboxes are no longer needed. The changes reflect the current practice and procedure in the Eastern District of Kentucky.
- 2) The manner in which debtors will make plan payments is already addressed in local rules. Since confirmation of a plan is binding on all parties under 11 U.S.C. § 1327(a), it makes no sense to use the plan to designate how the debtor will make payments, especially since the manner of payment is likely to change during the term of the plan.
- 3) Debtors generally keep tax refunds unless on a case-by-case basis the trustee requires payment of some or all of a tax refund or the debtor needs to contribute tax refunds for feasibility. Turnover of tax refunds can be specified in a nonstandard provision, a separate plan amendment, or court order.
- 4) The trustee usually requests certain language for additional payments such as bonuses, surplus income, sale proceeds, etc., which can be included in a nonstandard provision, separate plan amendment, or court order.
- 5) Section 2.5 clarifies that the total of all payments listed in the plan is an estimate and should not be considered binding.

PART 3 – TREATMENT OF SECURED CLAIMS
SECTION 3.1 – MAINTENANCE OF PAYMENTS AND CURE OF DEFAULT

Revised:

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

None. If “None” is checked, the rest of § 3.1 need not be completed or reproduced.

The debtor(s) will maintain the current contractual installment payments on the secured claims listed below, with any changes required by the applicable contract and noticed in conformity with any applicable rules. These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. **If neither party is specified, the contractual installment payments will be disbursed directly by the debtor(s).**

Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee, with interest, if **applicable**, at the rate stated. Unless otherwise ordered by the court, **the amounts listed on a proof of claim control** over any contrary amounts listed below as to the current installment payment and arrearage. The final column includes only payments disbursed by the trustee rather than by the debtor(s).

Name of creditor	Collateral	Estimated current installment payment	Estimated amount of arrearage (if any)	Interest rate on arrearage (if applicable)	Estimated monthly payment on arrearage	Estimated total payments by trustee
		\$ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$	%	\$	\$

Explanation:

- 1) If a box is not checked indicating whether the debtor or the trustee will make the ongoing contractual installment payments, assume the debtor will make ongoing payments directly.
- 2) Reference to interest on arrearages in the narrative text above the table is changed from “if any” to “if applicable,” consistent with the heading in the table (and as a subtle reminder that interest is rarely required to be paid on arrearages).
- 3) Headings clarify that the amounts stated in the plan are estimates.
- 4) The amount of the arrearage and the current installment payment amount are fixed by the proof of claim, whether the proof of claim is filed by the creditor or by the debtor on behalf of the creditor.

SECTION 3.2 – VALUATION OF SECURED CLAIMS

Revised:

3.2 Request for valuation of security and modification of undersecured claims. *Check one.*

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

The remainder of this paragraph will be effective only if the “Included” box is checked in § 1.1.

The debtor(s) requests that the court determine the value of the secured claims listed below. Each of the following non-governmental secured claims should be paid the amount listed below in the column headed **Value of collateral (Amount of secured claim)** with interest at the rate stated below. Any remaining portion of the claim will be treated as an unsecured claim under Part 5.

If the *Value of collateral (amount of secured claim)* is listed below as having no value or a value of \$0, the total amount of the claim will be treated as an unsecured claim under Part 5.

Unless otherwise ordered by the court, the amount of the creditor’s total claim listed in a proof of claim controls over any contrary amount listed below.

For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim controls over any contrary amount listed below.

Unless a nonstandard provision expressly provides otherwise, an allowed secured tax claim shall be paid with interest at the applicable statutory rate in effect on the date on which the plan is confirmed, notwithstanding any contrary rate stated below.

Name of creditor	Collateral	Estimated amount of creditor’s total claim	Value of collateral (Amount of secured claim)	Interest rate*	Estimated monthly payment to creditor	Estimated total payments by trustee
			\$	%	\$	\$

Insert additional claims as needed.

***If the interest rate above is blank,** the interest rate shall be the WSJ Prime Rate on the date of confirmation plus 2 percentage points.

Explanation:

- 1) “Payment of fully secured claims” is deleted from the heading for section 3.2. Those will be treated under Section 3.3, discussed separately.
- 2) Stating that section 3.2 is effective “only if the applicable box in Part 1 is checked” is changed to specify that section 3.2 is effective “only if the “Included” box is checked in § 1.1”.
- 3) A secured value of “\$0” (or “no value”) means the claim will be treated as unsecured.
- 4) The table where claims are listed has been reorganized.
 - a) The separate columns for “Value of collateral” and “amount of secured claim” are merged so that the value of the collateral IS the amount of secured claim.
 - b) The column for “amount of claims senior to creditor’s claim” is eliminated. To strip off a junior lien or to deal with cross-collateralized claims, explain in a nonstandard provision.
- 5) The default interest rate for secured tax claims is still the statutory rate regardless of the interest rate listed. If the debtor really intends to change the interest rate (which is sometimes done as to property tax claims), list the interest rate in section 3.2 AND explain in a nonstandard provision.

**SECTION 3.3 – SECURED CLAIMS EXCLUDED FROM 11 U.S.C. § 506
OR PAID-IN-FULL SECURED CLAIMS**

Revised:

3.3 Secured claims excluded from 11 U.S.C. § 506 or paid-in-full secured claims. Check one.

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

The claims listed below either:

- (1) were 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) were incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value, or
- (3) are fully secured claims to be paid in full.**

Each of the following claims will be paid in full through the plan with interest at the rate stated below. Unless otherwise ordered by the court, the claim amount listed in a proof of claim controls over any contrary amount listed below.

Unless a nonstandard provision expressly provides otherwise, an allowed secured tax claim shall be paid with interest at the applicable statutory rate in effect on the date on which the plan is confirmed, notwithstanding any contrary rate stated below.

Name of creditor	Collateral	Estimated amount of claim	Interest rate *	Estimated monthly payment to creditor	Estimated total payments by trustee
		\$	%	\$	\$

***If the interest rate above is blank,** the interest rate shall be the WSJ Prime Rate on the date of confirmation plus 2 percentage points.

Explanation:

- 1) The heading in Section 3.3 referring to “paid-in-full secured claims” means fully secured claims that should be paid in full by the trustee based on the amount in the creditor’s proof of claim. List delinquent property tax debts (or other fully secured claims) in this section.
- 2) The amount of the claim set forth in the proof of claim controls over the amount listed in the plan, regardless of who files the proof of claim.
- 3) The word “estimated” is added to the column “amount of claim.”
- 4) The option for a debtor to make direct payments on a claim listed in section 3.3 is eliminated. To make direct payments on a 910-claim or fully secured claim, list it in section 3.1.
- 5) The heading “monthly plan payment” is changed to “estimated monthly payment to creditors” to be consistent with the other sections.
- 6) The language regarding the interest rate on secured tax claims is added to Section 3.3 so that debtors can list fully secured property tax claims in this section. Because the statutory rate applies, the trustee is able to split delinquent property tax claims into interest bearing and non-interest bearing portions. To change the rate of interest to something other than the rate under relevant statutes, list the interest rate in Section 3.3 AND explain in a nonstandard provision.

SECTION 3.7 ALLOWANCE OF SECURED CLAIMS

Revised:

3.7 Allowance of Secured Claims.

- 1) Any creditor with a secured claim listed in the plan must have an allowed claim to be paid under the plan.
- 2) To have an allowed claim, a secured creditor must file a proof of claim in accordance with Bankruptcy Rule 3002, except as set out in paragraph 4 below.
- 3) If the plan lists a claim as a secured claim and the creditor files a proof of claim under Bankruptcy Rule 3002 as unsecured, the claim will be treated as unsecured, and the filing of such a claim **will be treated as a waiver of the security interest by the creditor.**
- 4) If a creditor with a listed secured claim fails to file a proof of claim before the deadline under Bankruptcy Rule 3002(c), the debtor(s) may file a proof of claim on behalf of the creditor pursuant to Bankruptcy Rule 3004, subject to the following:
 - a) If the debtor(s) chooses to file a proof of claim on behalf of a creditor, the debtor(s) and counsel shall use their best efforts to file such claim(s) before the deadline under Bankruptcy Rule 3004.
 - b) A proof of claim filed by the debtor(s) under Bankruptcy Rule 3004 will nevertheless be timely as to any secured portion of the claim if it is filed no later than 14 days after the trustee files a Notice of Allowance of Claims.

Explanation:

- 1) Language similar to this is included as a nonstandard provision in the majority of plans filed in this district. Section 3.7 will now apply in all cases. Remove the nonstandard provision from your form plans.
 - a. The provision requires creditors listed in the plan to have an allowed secured claim in order to be paid.
 - b. Secured creditors must timely file their proof of claim under Rule 3002(c).
 - c. If the plan lists a claim as secured but the creditor files the claim as unsecured, the claim will be treated as unsecured and creditor's security interest is deemed waived.
 - d. Debtors (or debtors' attorneys) are authorized to file a secured proof of claim on behalf of a creditor outside of the time limit set by Rule 3004, but the claim must be filed no later than 14 days after the trustee's Notice of Allowance of Claims.
- 2) One change between new section 3.7 and the language that is now being inserted in plans as a nonstandard provision relates to which controls (plan or claim) when the debtor files a proof of claim on behalf of a creditor. Consistent with revisions in sections 3.1 and 3.3, the amount of the claim controls regardless of who files the claim.

PART 4: – TREATMENT OF FEES AND PRIORITY CLAIMS

Revised:

4.1 General. Allowed priority claims will be paid in full without postpetition interest except as otherwise provided in a nonstandard provision or as ordered by the court.

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

4.3 Attorney's fees [NO CHANGES SO THIS SECTION IS NOT REPRINTED HERE.]

4.4 Priority claims other than attorney's fees and trustee's fees are estimated to be \$_____.

4.5 Domestic support obligations will be paid in full; however, any claim based on a domestic support obligation that has been assigned to or is owed to a governmental unit may be paid less than the full amount of the claim under 11 U.S.C. § 1322(a)(4) as provided in a nonstandard provision or as ordered by the court.

Explanation:

Going in reverse order:

- 1) Section 4.5 does not need a table or checkboxes. DSO's will be paid in full. Assigned DSO claims being paid less than in full are rare and can be treated in a nonstandard provision if need be.
- 2) Section 4.4 does not need to have checkboxes; this section is condensed into one sentence. Just insert an estimate of the amount of priority claims (not including the trustee fee and attorney's fee).
- 3) Section 4.1 is revised to be consistent with the change in section 4.5. It also adds that postpetition interest can be paid pursuant to a nonstandard provision or court order (in the rare event that interest is required to be paid on a priority claim).

SECTION 5.1 NONPRIORITY UNSECURED CLAIMS NOT SEPARATELY CLASSIFIED

Revised:

5.1 Nonpriority unsecured claims not separately classified.

The minimum amount required for distribution to allowed priority and nonpriority unsecured claims shall be the greater of: (1) the projected disposable income for the applicable commitment period; or (2) the amount required to satisfy the liquidation test.

The trustee shall calculate the “pool” amount available for distribution to nonpriority unsecured creditors. Creditors holding allowed nonpriority unsecured claims shall be paid on a pro rata basis to the greatest extent possible. No interest accruing after the date of the filing of the petition shall be paid except as set forth in a nonstandard provision or as ordered by the court.

Explanation:

- 1) Use of existing Section 5.1 (which was derived from the “national” plan form) has created problems that unnecessarily delay confirmation and cause confusion (failure to check a box, checking the wrong box; errors in specifying an amount or percentage to be paid; a wrong liquidation amount listed; etc.).
- 2) The proposed language in Section 5.1 is essentially the language used in pre-2017 plans. It worked. It’s flexible. It eliminates checkboxes. It makes all plans “pool” plans.
- 3) Consistent with case law in this district, the payment of interest on unsecured claims may be required in certain limited circumstances. If so, interest can be paid as set forth in a nonstandard provision or court order.

**SECTION 5.2 – MAINTENANCE OF PAYMENTS AND CURE OF DEFAULT
ON UNSECURED CLAIMS**

Revised:

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

- None.** *If “None” is checked, the rest of § 5.2 need not be completed or reproduced.*
- The debtor(s) will maintain the contractual installment payments and cure any default in payments on the unsecured claims listed below on which the last payment is due after the final plan payment. **The contractual installment payments will be disbursed directly by the debtor(s). Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee. Unless otherwise ordered by the court, the amounts listed on a proof of claim control over any contrary amounts** listed below as to the current installment payment and arrearage.

Name of creditor	Estimated current installment payment	Estimated amount of arrearage to be paid by trustee
	\$	\$

Explanation:

- 1) This section now mirrors the “cure and maintain” section of the plan relating to secured claims (Section 3.1) except that there is no “conduit” option for unsecured claims.
- 2) The debtor will maintain contractual payments directly on any long-term unsecured claim listed here (such as student loans).
- 3) The amounts of the installment payment and arrearage listed in the plan are estimates only. The proof of claim amount controls. “Estimated” is added to the column headings.
- 4) The final column for “estimated total payments by trustee” is deleted. Since the conduit option is removed, the “estimated amount of arrearage to be paid by the trustee” is the estimated total payment by trustee.

SECTION 5.3 – OTHER SEPARATELY CLASSIFIED UNSECURED CLAIMS

Revised:

5.3 Other separately classified nonpriority unsecured claims. Check one.

- None.** *If “None” is checked, the rest of § 5.3 need not be completed or reproduced.*
- Allowed nonpriority unsecured claims listed below are separately classified. **These claims will be paid in full** under the plan with interest, if applicable, at the rate stated below. Unless otherwise ordered by the court, the claim amount stated on a **proof of claim controls** over any contrary amount listed below.

Name of creditor	Basis for separate classification and treatment	Estimated amount of claim	Interest rate (if applicable)	Estimated total amount of payments
		\$	%	\$

Explanation:

- 1) The existing plan is imprecise as to how a separately classified unsecured claim is to be paid. The reality is that debtors intend for claims listed in this section to be paid in full, almost always to protect a co-signer.
- 2) If the debtor intends some other treatment of a separately classified claim (for example, the debtor intends to maintain contractual payments to protect a co-signer with the trustee only paying any arrearage), it can be set forth in a nonstandard provision.
- 3) The language in this section mirrors the proposed language in Section 3.3 (910-claims and other fully secured claims) – that the claim will be paid in full and the amount of the claim will be fixed by the proof of claim.

PART 6: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Revised:

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

- None.** If “None” is checked, the rest of § 6.1 need not be completed or reproduced.
- Assumed items.**

The debtor(s) will maintain the current contractual installment payments on the leases or executory contracts listed below, These payments will be disbursed either by the trustee or directly by the debtor(s), as specified below. If neither party is specified, the contractual installment payments will be disbursed directly by the debtor(s).

Any existing arrearage on a listed claim will be paid in full through disbursements by the trustee. Unless otherwise ordered by the court, the amounts listed on a proof of claim control over any contrary amounts listed below as to the current installment payment and arrearage. The final column includes only payments disbursed by the trustee rather than by the debtor(s). Arrearages under this section will be paid concurrently with arrearages on secured claims under Section 3.1.

Name of creditor	Description of leased property or executory contract	Estimated current installment payment	Estimated amount of arrearage	Estimated total payments by trustee
		\$ Disbursed by: <input type="checkbox"/> Trustee <input type="checkbox"/> Debtor(s)	\$	\$

Explanation:

- 1) The entire section under “assumed items” is re-written to mirror the language in Section 3.1 (curing defaults and maintaining payments on secured claims).
- 2) Ongoing lease payments can be made directly by the debtor or as a conduit payment through the trustee. Any arrearage will be paid by the trustee through the plan.
- 3) The amount of the arrearage and the current installment payment amount are fixed by the proof of claim. The amounts listed in the plan are only estimated.
- 4) The existing column headed “Treatment of arrearage (refer to other plan section if applicable)” is deleted as unnecessary in light of the proposed changes.
- 5) A sentence has been added to notify parties that an arrearage on a lease will be cured over the same time period as an arrearage on a secured claim.

EXHIBIT: TOTAL AMOUNT OF ESTIMATED TRUSTEE PAYMENTS

Revised:

The Exhibit is deleted in its entirety.

Explanation:

- 1) The Exhibit is an extra sheet of paper that debtors' attorneys must print and mail. It is often blank or wrong. Based on feedback the trustee has received, few (if any) people rely on the information in the Exhibit, so no one is adversely affected by its removal from the plan.
- 2) Parties can still crunch their own numbers based on the data contained throughout the plan.