

**PUBLIC NOTICE: Opportunity for Public Comment on Proposed Amendments to Three Local Bankruptcy Rules Effective December 1, 2020.**

United States Bankruptcy Court  
Northern District of New York  
September 29, 2020

The Local Rules Standing Committee and the Judges for the United States Bankruptcy Court for the Northern District of New York are proposing amendments to three local rules and have requested that the proposed amendments be circulated to the bar for comment. The amended rules will become effective December 1, 2020. Please submit all comments electronically to [rules\\_comment@nynb.uscourts.gov](mailto:rules_comment@nynb.uscourts.gov) The deadline for submitting comments is Monday, October 26, 2020.

Amendments are being proposed to the following rules:

- 2014-2
- 2016-2
- 3015-1

The current version of the rules with the proposed amendments appearing in redline are attached.

**RULE 2014-2      ADMISSION TO PRACTICE/DESIGNATION FOR SERVICE**

- (a) **Attorney Admission.** An attorney who is admitted to practice before the District Court of the Northern District of New York, unless otherwise restricted, is also admitted to practice before this Court.
- (b) **Pro Hac Vice Admission.**
- (1) **Application.** A member in good standing of the bar of any state or of any United States District Court not otherwise admitted to practice before the Court, may be permitted to practice on motion in this Court for a limited purpose only in a particular case, adversary proceeding, contested matter, or action. An attorney seeking admission pro hac vice shall provide an original certificate of good standing, as evidence of admission to the bar of the highest court of any state or of any United States District Court and shall pay the required admission fee. The application, original certificate of good standing, proposed order and a check made payable to the District Court Clerk shall be delivered in paper format to the Bankruptcy Court Clerk.
- (A) **Waiver of Fee.** The admission fee shall be waived for all attorneys in the full-time employ of the United States Government pursuant to the [District Court Local Rule 83.1\(a\)\(5\)](#).
- (c) **Limited Admission as Student Practitioner.** A law student approved as a “Student Practitioner” may, under the supervision of an attorney and with prior Court approval, appear on behalf of a debtor who has completed and signed the [Student Practice Authorization Form](#). The completed [Student Practice Authorization Form](#) shall be filed in the case pending before the Court.
- (1) **Attorney Supervision.** The attorney who supervises a student shall:
- (A) Be a member in good standing of the bar of the United States District Court for the Northern District of New York;
- (B) Assume personal professional responsibility for the student’s work;
- (C) Assist the student to the extent necessary;
- (D) Appear with the student in all proceedings before the Court unless his or her presence is waived by the Court; and
- (E) Consent to supervise the student on the [Student Practice Authorization Form](#).
- (2) **Student Eligibility.** In order to appear, the student shall:
- (A) Be enrolled in a law school approved by the American Bar Association;

- (B) Have completed legal studies amounting to at least two (2) semesters, or the equivalent;
  - (C) Be recommended by either the dean or a faculty member of his or her law school as a Student Practitioner, which recommendation may be withdrawn by the recommender at any time by mailing a notice to the Clerk;
  - (D) Neither ask for, nor receive any compensation or remuneration of any kind for the services performed from the person on whose behalf they are rendered, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services. Neither the student, nor anyone on the student's behalf, shall seek recovery of attorneys' fees from an adverse party for the services rendered by the student as a student practitioner, except for the successful prosecution of a willful violation of the automatic stay or of the discharge injunction pursuant to §§ 362 and 524 and for the defense of an § 523(a)(2) nondischargeability action;
  - (E) Certify in writing that the student is familiar with the federal procedural and evidentiary rules as well as these rules; and
  - (F) Complete and file a [Student Practice Authorization Form](#) with the Court together with a proposed order for appearance as a Student Practitioner in the bankruptcy case and/or adversary proceeding in which the client consent has been obtained.
- (3) **Permitted Student Services.** The Student Practitioner may:
- (A) Appear as counsel in Court or at other proceedings when consent of the client and the supervising attorney has been filed and when the Court has approved the student's request to appear in the particular case;
  - (B) Prepare and sign affidavits, motions, petition, answers, objections, replies, memoranda and legal briefs, and other documents (collectively, "Documents") in connection with any matter in which the student has met the conditions of subparagraph (A) above. The Documents must also be signed by the supervising attorney with the original maintained in the case file.
- (4) **Term of Student Admission.** A Student Practitioner whose application has been approved may continue to appear in a particular case as a Student Practitioner until the student has graduated from law school and is formally admitted to the bar or until termination by the Court. The Court sua sponte may terminate a Student Practitioner's right to appear at any time without notice of hearing and without showing of cause.

(d) **Designation for Service.** A Court may require an attorney who does not have an office in the Northern District of New York to designate a resident member of the bar of the Northern District of New York for service of process or papers.

**RULE 2014-2      ADMISSION TO PRACTICE/DESIGNATION FOR SERVICE**

(a) **Attorney Admission.** An attorney who is admitted to practice before the District Court of the Northern District of New York, unless otherwise restricted, is also admitted to practice before this Court.

(b) **Pro Hac Vice Admission.**

(1) **Application.** A member in good standing of the bar of any state or of any United States District Court not otherwise admitted to practice before the Court, may be permitted to practice on motion in this Court for a limited purpose only in a particular case, adversary proceeding, contested matter, or action. An attorney seeking admission pro hac vice shall provide an original certificate of good standing, as evidence of admission to the bar of the highest court of any state or of any United States District Court and shall pay the required admission fee. The application, original certificate of good standing, proposed order and a check made payable to the District Court Clerk shall be delivered in paper format to the Bankruptcy Court Clerk.

(A) **Waiver of Fee.** The admission fee shall be waived for all attorneys in the full-time employ of the United States Government pursuant to the [District Court Local Rule 83.1\(a\)\(5\)](#).

(c) **Limited Admission as Student Practitioner.** A law student approved as a “Student Practitioner” may, under the supervision of an attorney and with prior Court approval, appear on behalf of a debtor who has completed and signed the [Student Practice Authorization Form](#). The completed [Student Practice Authorization Form](#) shall be filed in the case pending before the Court.

(1) **Attorney Supervision.** The attorney who supervises a student shall:

(A) Be a member in good standing of the bar of the United States District Court for the Northern District of New York;

(B) Assume personal professional responsibility for the student’s work;

(C) Assist the student to the extent necessary;

(D) Appear with the student in all proceedings before the Court unless his or her presence is waived by the Court; and

(E) ~~Indicate in writing his or her~~ Consent to supervise the student on the ~~prescribed application form for appearance as a Student Practitioner~~ [Practice Authorization Form](#).

(2) **Student Eligibility.** In order to appear, the student shall:

(A) Be enrolled in a law school approved by the American Bar Association;

- (B) Have completed legal studies amounting to at least ~~three-two~~ (32) semesters; ~~or the equivalent;~~
  - (C) Be recommended by either the dean or a faculty member of his or her law school as a Student Practitioner, which recommendation may be withdrawn by the recommender at any time by mailing a notice to the Clerk;
  - (D) Neither ask for, nor receive any compensation or remuneration of any kind for the services performed from the person on whose behalf they are rendered, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a State, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for its services. Neither the student, nor anyone on the student's behalf, shall seek recovery of attorneys' fees from an adverse party for the services rendered by the student as a student practitioner, except for the successful prosecution of a willful violation of the automatic stay or of the discharge injunction pursuant to §§ 362 and 524 and for the defense of an § 523(a)(2) nondischargeability action;
  - (E) Certify in writing that the student is familiar with the federal procedural and evidentiary rules as well as these rules; and
  - (F) Complete and file a [Student Practice Authorization Form](#) with the Court together with a proposed order for appearance as a Student Practitioner in the bankruptcy case and/or adversary proceeding in which the client consent has been obtained.
- (3) **Permitted Student Services.** The Student Practitioner may:
- (A) Appear as counsel in Court or at other proceedings when consent of the client and the supervising attorney has been filed and when the Court has approved the student's request to appear in the particular case;
  - (B) Prepare and sign affidavits, motions, petition, answers, objections, replies, memoranda and legal briefs, and other documents (collectively, "Documents") in connection with any matter in which the student has met the conditions of subparagraph (A) above. The Documents must also be signed by the supervising attorney with the original maintained in the case file.
- (4) **Term of Student Admission.** A Student Practitioner whose application has been approved may continue to appear in a particular case as a Student Practitioner until the student has graduated from law school and is formally admitted to the bar or until termination by the Court. The Court sua sponte may terminate a Student Practitioner's right to appear at any time without notice of hearing and without showing of cause.

(d) **Designation for Service.** A Court may require an attorney who does not have an office in the Northern District of New York to designate a resident member of the bar of the Northern District of New York for service of process or papers.

**RULE 2016-2      COMPENSATION OF PROFESSIONALS IN CHAPTER 13 CASE**

- (a) **Compensation.** In a chapter 13 case, the plan shall set forth the entire attorney's fee to be paid by or on behalf of the debtor in connection with the case including any amount paid pre-petition as a retainer and the amount to be paid through the plan. The trustee shall review the attorney's fee charged in each case and object to confirmation if the fee sought is unreasonable. Confirmation of the chapter 13 plan shall constitute Court approval of the attorney's fee. The Court may set a hearing sua sponte to review the attorney's fee requested, which may be scheduled at the same time as the confirmation hearing. By Administrative Order, the Court in each division may set a standard fee chargeable for standard legal services rendered in a chapter 13 case.
- (b) **Notice to All Parties in Interest.** Notwithstanding any other provision of this Rule, if the compensation for debtor's counsel is an amount greater than one-half of the amount to be funded through the chapter 13 plan, the compensation is subject to further review and approval after notice and a hearing as provided for under [Fed. R. Bankr. P. 2002\(a\)\(6\)](#).
- (c) **Fed. R. Bankr. P. 2016(b) Statement.** In addition to the disclosure requirements of [Fed. R. Bankr. P. 2016\(b\)](#), if counsel has represented the debtor in a prior bankruptcy case commenced within eight (8) years of the current case, the original 2016(b) statement shall disclose the date of the prior filing(s) and the attorney's fees paid in connection with such prior filing(s).
- (d) **Application for Fees in Excess of Those Approved Under the Plan.** Any additional attorney's fees and expenses sought to be charged beyond those disclosed in the initial statement filed pursuant to [Fed. R. Bankr. P. 2016\(b\)](#) and/or approved by the confirmation order may be charged to the debtor only upon Court order, based upon prior application after notice and a hearing. The application shall detail the specific services for which additional compensation is sought and include:
- fees disclosed by applicant in the 2016(b) Statement and/or approved by confirmation order;
  - fees paid to applicant in connection with any prior representation of debtor;
  - allowed fees paid applicant through date of the application; and
  - fees allowed to any prior counsel representing debtor.

Additional compensation for postpetition services approved by the Court shall be paid through the plan, except as otherwise ordered.



## RULE 2016-2      COMPENSATION OF PROFESSIONALS IN CHAPTER 13 CASE

- (a) **Compensation.** In a chapter 13 case, the plan shall set forth the entire attorney's fee to be paid by or on behalf of the debtor in connection with the case including any amount paid pre-petition as a retainer and the amount to be paid through the plan. The trustee shall review the attorney's fee charged in each case and object to confirmation if the fee sought is unreasonable. Confirmation of the chapter 13 plan shall constitute Court approval of the attorney's fee. The Court may set a hearing sua sponte to review the attorney's fee requested, which may be scheduled at the same time as the confirmation hearing. By Administrative Order, the Court in each division may set a standard fee chargeable for standard legal services rendered in a chapter 13 case.
- (b) **Notice to All Parties in Interest.** Notwithstanding any other provision of this Rule, if the compensation for debtor's counsel is an amount greater than one-half of the amount to be funded through the chapter 13 plan, the compensation is subject to further review and approval after notice and a hearing as provided for under [Fed. R. Bankr. P. 2002\(a\)\(6\)](#).
- (c) **Fed. R. Bankr. P. 2016(b) Statement.** In addition to the disclosure requirements of [Fed. R. Bankr. P. 2016\(b\)](#), if counsel has represented the debtor in a prior bankruptcy case commenced within eight (8) years of the current case, ~~any application submitted pursuant to paragraph (d) of this Rule, as well as~~ the original 2016(b) statement, shall disclose the date of the prior filing(s) and the attorney's fees paid in connection with such prior filing(s). ~~Unless otherwise ordered, when additional compensation for postpetition services is approved by the Court, said compensation shall be paid through the plan.~~
- (d) **Application for Fees in Excess of Those Approved Under the Plan.** Any additional attorney's fees and expenses sought to be charged beyond those disclosed in the initial statement filed pursuant to [Fed. R. Bankr. P. 2016\(b\)](#) and/or approved by the confirmation order may be charged to the debtor only upon Court order, based upon prior application after notice and a hearing. The application shall ~~detail~~ disclose the specific services for which additional compensation is sought and include: fee allowed in the case to date, including amounts allowed to any prior counsel representing the debtor, the amount of allowed fees actually paid through the date of the application, and detail the specific services for which additional compensation is sought.
- fees disclosed by applicant in the 2016(b) Statement and/or approved by confirmation order;
  - fees paid to applicant in connection with any prior representation of debtor;
  - allowed fees paid applicant through date of the application; and
  - fees allowed to any prior counsel representing debtor.

Additional compensation for postpetition services approved by the Court shall be paid through the plan, except as otherwise ordered by the Court.

**RULE 3015-1      CHAPTER 13 – PLAN**

- (a) **Format of Plan.** A debtor shall file a chapter 13 plan using the Local Form Plan, a copy of which is annexed at [Appendix VI](#).
- (b) **Notice of Plan and the Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan.**
- (1) **Plan Filed with Petition.** If the plan is filed with the petition, the Bankruptcy Noticing Center shall furnish copies of the plan to all parties in interest and notice the time fixed for filing objections to and the hearing to consider confirmation of the plan.
- (2) **Plan Filed after Petition.** If the plan is filed after the petition, the debtor shall serve a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) upon all parties in interest not later than twenty-eight (28) days prior to the confirmation hearing and, if necessary, adjourn the hearing date to provide the requisite twenty-eight (28) days' notice. Not later than seven (7) days prior to the confirmation hearing, the debtor shall file a certificate of service evidencing compliance with this Rule.
- (c) **Inclusion in Plan of Relief Governed by Fed. R. Bankr. P. 7001 (Adversary Proceeding) or Fed. R. Bankr. P. 9014 (Contested Matter).**
- (1) **Allowed Contested Matters.** If a plan includes a provision for relief that is governed by [Fed. R. Bankr. P. 7001](#) or [Fed. R. Bankr. P. 9014](#), such relief shall be obtained by separate adversary proceeding or motion except to the extent the plan proposes to do any of the following:
- (A) Value collateral to establish the amount of a secured claim including voiding a wholly unsecured junior mortgage lien against the debtor's principal residence,
- (B) Set the interest rate for a secured claim,
- (C) Assume and/or reject an unexpired lease or executory contract, or
- (D) Avoid a judicial lien or non-possessory purchase money security interest, each of which shall be deemed an "Allowed Contested Matter."
- (2) **Notice Required If Plan Includes Allowed Contested Matter.** If the plan includes an Allowed Contested Matter as set forth in subparagraph (c)(1), a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) must be served on all affected creditors by the debtor pursuant to [Fed. R. Bankr. P. 7004](#). The Debtor shall promptly file a certificate of service evidencing compliance with the Rule but in no event later than seven (7) days prior to the confirmation hearing.

**(A) Affidavits in Support of Allowed Contested Matters.**

- (i)** If the plan proposes to void a wholly unsecured junior mortgage lien against the debtor's principal residence, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each senior lien against the property.
  - (ii)** If the plan proposes to avoid a judicial lien or non-possessory purchase money security interest, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each additional lien against the property.
- (d) Certification of Compliance with this Rule.** The debtor shall certify in all cases proper notice and service in compliance with this Rule by filing, not later than fourteen (14) days prior to the confirmation hearing, a [Certification Pursuant to Local Bankruptcy Rule 3015-1](#).
- (e) Section 1326 Plan Payments by Debtor and Disbursements by Trustee.**
- (1)** The debtor shall commence making plan payments to the trustee within thirty (30) days after the order for relief or the order converting the case to chapter 13. Said payment shall include the amounts necessary to pay pre-confirmation adequate protection payments plus the statutory trustee's fees. The debtor shall not reduce plan payments to the trustee under [§ 1326\(a\)\(1\)\(C\)](#) as a result of these adequate protection payments, without an order of the Court.
  - (2)** A creditor may file a motion requesting a change in the amount of [§ 1326\(a\)\(1\)](#) pre-confirmation payments pursuant to [§ 1326\(a\)\(3\)](#). Until the creditor's motion is resolved, the trustee shall continue to make pre-confirmation adequate protection payments to such creditor as set forth herein.
  - (3)** The trustee is authorized to disburse pre-confirmation adequate protection payments to a secured creditor whose claim is secured by personal property pursuant to [§ 1326\(a\)\(1\)](#) in an amount as set forth in the proposed plan. If the plan does not propose any such payment, then the trustee shall remit on a monthly basis to such creditor an amount equal to 1.5% of the value of the claim proposed to be paid by the debtor through the plan up until confirmation. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation adequate protection payments will commence within thirty (3) days after the filing of the proof of claim provided the trustee has sufficient funds.
  - (4)** The trustee is authorized to disburse pre-confirmation monthly payments to a secured creditor whose claim is secured by real property in an amount as set forth in the proposed plan. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation monthly payments will commence

within thirty (30) days after the filing of the proof of claim and continue until confirmation of the plan provided the trustee has sufficient funds.

- (5) If the case is dismissed prior to confirmation, secured creditors entitled to payments from the trustee pursuant to subparagraphs (e)(3) or (4) shall receive from the trustee any § 1326 pre-confirmation adequate protection payment or monthly payment due and owing from funds collected by the trustee, unless such creditor has previously received relief under 11 U.S.C. § 362 (see LBR 3007-1(e)) or as otherwise ordered by the Court.

### **Comment**

The debtor is responsible for ensuring that notice of the plan, the time fixed for filing objections, and the hearing to consider confirmation of the plan be given in accordance with § 342(c)(2), as applicable, regardless of whether the plan is filed with or after the petition.

Paragraph (c) recognizes that it is inappropriate and may be considered bad faith to include as a plan provision relief that should be the subject of a separate adversary proceeding or motion. *See [United Student Aid Funds, Inc. v. Espinosa](#), 130 S. Ct. 1367, 1382 (2010)* (referring to a plan provision that discharged a student loan).

**RULE 3015-1      CHAPTER 13 – PLAN**

- (a) **Format of Plan.** A debtor shall file a chapter 13 plan using the Local Form Plan, a copy of which is annexed at [Appendix VI](#).
- (b) **Notice of Plan and the Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan.**
- (1) **Plan Filed with Petition.** If the plan is filed with the petition, the Bankruptcy Noticing Center shall furnish copies of the plan to all parties in interest and notice the time fixed for filing objections to and the hearing to consider confirmation of the plan.
- (2) **Plan Filed after Petition.** If the plan is filed after the petition, the debtor shall serve a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) upon all parties in interest not later than twenty-eight (28) days prior to the confirmation hearing and, if necessary, adjourn the hearing date to provide the requisite twenty-eight (28) days' notice. Not later than seven (7) days prior to the confirmation hearing, the debtor shall file a certificate of service evidencing compliance with this Rule.
- (c) **Inclusion in Plan of Relief Governed by Fed. R. Bankr. P. 7001 (Adversary Proceeding) or Fed. R. Bankr. P. 9014 (Contested Matter).**
- (1) **Allowed Contested Matters.** If a plan includes a provision for relief that is governed by [Fed. R. Bankr. P. 7001](#) or [Fed. R. Bankr. P. 9014](#), such relief shall be obtained by separate adversary proceeding or motion except to the extent the plan proposes to do any of the following:
- (A) Value collateral to establish the amount of a secured claim including voiding a wholly unsecured junior mortgage lien against the debtor's principal residence,
- (B) Set the interest rate for a secured claim,
- (C) Assume and/or reject an unexpired lease or executory contract, or
- (D) Avoid a judicial lien or non-possessory purchase money security interest, each of which shall be deemed an "Allowed Contested Matter."
- (2) **Notice Required If Plan Includes Allowed Contested Matter.** If the plan includes an Allowed Contested Matter as set forth in subparagraph (c)(1), a copy of the plan and [Notice of Time Fixed for Filing Objections to and the Hearing to Consider Confirmation of Chapter 13 Plan](#) must be served on all affected creditors by the debtor pursuant to [Fed. R. Bankr. P. 7004](#). The Debtor shall promptly file a certificate of service evidencing compliance with the Rule but in no event later than seven (7) days prior to the confirmation hearing.

**(A) Affidavits in Support of Allowed Contested Matters.**

- (i)** If the plan proposes to void a wholly unsecured junior mortgage lien against the debtor's principal residence, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each senior lien against the property.
- (ii)** If the plan proposes to avoid a judicial lien or non-possessory purchase money security interest, the debtor shall file and serve with the plan and Notice referenced in subparagraph (c)(2) an affidavit providing evidence of value of the property and the amount of each additional lien against the property.

**(d) Certification of Compliance with this Rule.** The debtor shall certify in all cases proper notice and service in compliance with this Rule by filing, not later than fourteen (14) days prior to the confirmation hearing, a [Certification Pursuant to Local Bankruptcy Rule 3015-1](#).

**(e) Tax Returns and Refunds.**

**(1) Tax Returns.** The debtor shall:

- (A)** timely, including with any extension period allowed by such taxing authorities, file federal and state tax returns with such taxing authorities; and
- (B)** within 14 days of filing, provide copies of the returns to the trustee.

**(2) Application to Retain Refund in Excess of \$1,500.** If the debtor asserts that more than \$1,500 of an annual tax refund is needed for reasonable and necessary expenses of the debtor and/or debtor's dependents, the debtor shall make written application to the trustee for approval to retain the excess amount and itemize the anticipated expenses for which the excess refund money is needed. The debtor shall not file the application with the Court.

- (A) Trustee Approval.** The trustee may allow the debtor to retain tax refunds in excess of \$1,500 based upon demonstrated reasonable and necessary expenses of the debtor or the debtor's dependents on an annual basis, without notice beyond that included in the debtor's chapter 13 plan or further hearing. If a request is approved by the trustee, the trustee shall file the approval and the application.
- (B) Trustee Denial.** If the application is denied by the trustee, the debtor may file a motion to retain the refund. The motion shall be on notice to the trustee, the United States trustee, and all creditors.

**(e)(f) Section 1326 Plan Payments by Debtor and Disbursements by Trustee.**

- (1) The debtor shall commence making plan payments to the trustee within thirty (30) days after the order for relief or the order converting the case to chapter 13. Said payment shall include the amounts necessary to pay pre-confirmation adequate protection payments plus the statutory trustee's fees. The debtor shall not reduce plan payments to the trustee under [§ 1326\(a\)\(1\)\(C\)](#) as a result of these adequate protection payments, without an order of the Court.
- (2) A creditor may file a motion requesting a change in the amount of [§ 1326\(a\)\(1\)](#) pre-confirmation payments pursuant to [§ 1326\(a\)\(3\)](#). Until the creditor's motion is resolved, the trustee shall continue to make pre-confirmation adequate protection payments to such creditor as set forth herein.
- (3) The trustee is authorized to disburse pre-confirmation adequate protection payments to a secured creditor whose claim is secured by personal property pursuant to [§ 1326\(a\)\(1\)](#) in an amount as set forth in the proposed plan. If the plan does not propose any such payment, then the trustee shall remit on a monthly basis to such creditor an amount equal to 1.5% of the value of the claim proposed to be paid by the debtor through the plan up until confirmation. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation adequate protection payments will commence within thirty (3) days after the filing of the proof of claim provided the trustee has sufficient funds.
- (4) The trustee is authorized to disburse pre-confirmation monthly payments to a secured creditor whose claim is secured by real property in an amount as set forth in the proposed plan. However, no such payments shall be made to a creditor until a proof of claim is filed. These pre-confirmation monthly payments will commence within thirty (30) days after the filing of the proof of claim and continue until confirmation of the plan provided the trustee has sufficient funds.
- (5) If the case is dismissed prior to confirmation, secured creditors entitled to payments from the trustee pursuant to subparagraphs (e)(3) or (4) shall receive from the trustee any [§ 1326](#) pre-confirmation adequate protection payment or monthly payment due and owing from funds collected by the trustee, unless such creditor has previously received relief under [11 U.S.C. § 362](#) (see [LBR 3007-1\(e\)](#)) or as otherwise ordered by the Court.

### **Comment**

The debtor is responsible for ensuring that notice of the plan, the time fixed for filing objections, and the hearing to consider confirmation of the plan be given in accordance with [§ 342\(c\)\(2\)](#), as applicable, regardless of whether the plan is filed with or after the petition.

Paragraph (c) recognizes that it is inappropriate and may be considered bad faith to include as a plan provision relief that should be the subject of a separate adversary proceeding or motion. *See*

[\*United Student Aid Funds, Inc. v. Espinosa\*, 130 S. Ct. 1367, 1382 \(2010\)](#) (referring to a plan provision that discharged a student loan).