

Chapter 13 FAQ

Prepared by:
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Disclosure Statement: This FAQ is designed to provide general answers to questions typically received by the Trustee. It is not intended to apply to all situations.

General Office Information:

Correspondence address: 300 W. Douglas Ave., Ste. 650, Wichita, Kansas 67202

Chapter 13 Payment address: P.O. Box 2818, Wichita, Kansas 67201

Chapter 12 Payment address: 300 W. Douglas Avenue, Ste. 650, Wichita, Kansas 67202

Phone: (316) 267-1791

Fax: (316) 267-0970

Telephone Hours: Monday – Thursday 9:00 a.m. – 4:00 p.m. and Friday 9:00 a.m. – 3:00 p.m.

Send Orders & Questions to: inquiries@kstrustee.com

Website: www.kstrustee.com

Payments:

Can the debtor pay the trustee in person in Topeka or Wichita? No. The Trustee does not accept in-person payments. All Chapter 13 payments must be mailed to the Trustee’s lockbox at P.O. Box 2818, Wichita, Kansas 67201 or sent through TFS. Cash payments are not accepted.

The Trustee strongly encourages Chapter 13 debtors to pay via TFS.

How long does it take to receive and post payments? The Trustee posts payments sent to the P.O. Box daily. It typically takes 1-2 days for payments to show up on BankruptcyLink.

If a debtor was paying Trustee Hamilton via TFS, do they have to do anything to switch over to Trustee Davis? No. TFS will automatically switch debtors over to Trustee Davis from Trustee Hamilton.

Online Access (NDC, BankruptcyLink, Document Delivery Portal):

What is the National Data Center (NDC) and how can I access it? The NDC is a data website to furnish information about pending Chapter 13s to debtors and other parties-in-interest. The NDC offers free access to debtors and their attorneys. To access the NDC, send an email request to inquiries@kstrustee.com. You will receive an invitation with your login information and a link to create your password. Follow the link and create your account.

Do I need a new NDC login and password if I already have one? If you already have an account with NDC, once you are entered in Trustee Davis' system you should be able to view all case information as long as you are using the same email for Trustee Hamilton's old system and Trustee Davis' system.

What is Epiq BankruptcyLink and how can I access it? BankruptcyLink is Epiq's version of BSS' 13net, where debtors' counsel can go to review the case, payments, etc. To register for BankruptcyLink, please send an email request to inquiries@kstrustee.com.

What is Document Delivery Portal (DDP) and how can I access it? DDP is Trustee Davis' secured document delivery portal managed by Epiq. To access it, you must receive an invitation to the system. Email inquiries@kstrustee.com to receive your invitation.

Who do I contact if I have issues with DDP, BankruptcyLink or NDC? If you have issues with EPIQ's Document Delivery Portal or Bankruptcy Link, please reach out to EPIQ directly at 1-888-374-2713. NDC has a link on its website to request assistance by email.

Disbursements:

When does the Trustee disburse payments? The Trustee has a cutoff on the 20th of each month and disburses payments the first week of the following month. Distributions come from Oregon.

Automobile Issues:

The debtor wrecked a car and needs a new one, now what? When an encumbered car is wrecked and the debtor receives insurance proceeds, the debtor may move the Court for an order substituting collateral if the debtor wants to use insurance money to purchase a new car and give the lienholder a new security interest. To avoid Trustee objection, the motion must state whether anything will change with the treatment of the claim (e.g., will the creditor still be paid the same amount, will the car still be paid through case administration, etc.) and include a description of the new collateral (if known) or a statement that the description will be provided to the Trustee. If the debtor wants to surrender the car to the creditor or insurance company and buy a new one, the debtor must file a motion to modify so stating. **NOTE:** Absent a motion, modification or

written confirmation from the lienholder or the insurance company that the lienholder has been paid from insurance proceeds, the Trustee will continue paying the claim pursuant to the terms of the confirmed plan.

Can the debtor pay a car loan directly instead of through the Trustee? The Trustee often objects to payment of secured debt directly because it is in all parties' best interests for the Trustee to be the disbursing agent.¹ This is especially true if the plan is modifying the terms of the original credit agreement. **Are there exceptions?** Yes. If the loan term exceeds the plan period and/or if the loan is being paid directly by a third party, the Trustee may not require it be paid through case administration.

The debtor's contract interest rate on secured debt is less than the *Till* rate.² Can the debtor pay the creditor through the plan with the contract interest rate? Yes. However, the plan must include non-standard provisions in Section 18 providing for this treatment because the default interest rate in the plan is *Till*. **What about if the contract rate is more than the *Till* rate?** If the reason is to protect a non-filing co-signor and is expressly stated in the plan, the Trustee will not object. Otherwise, the Trustee may object absent a valid reason for paying the higher contract rate of interest.

When is a car too expensive for a debtor to keep? This issue is very fact dependent. If the debtor wishes to keep an expensive vehicle (e.g., debt amount more than \$40,000), the Trustee will analyze what effect retention of the vehicle has on unsecured creditors. If the debtor takes a deduction on the Means Test for repayment of the debt or attempts to accelerate the contract at the expense of unsecured creditors, the Trustee may object for lack of good faith.³ Debtors with expensive cars should be prepared to explain the need for retention.

Mortgage Issues:

The debtor has a small pre-petition mortgage arrearage. Does the debtor have to pay the entire mortgage debt through the Trustee? It depends on the size of the pre-petition arrearage. If the plan provides to pay the mortgage directly and the proof of claim comes in with a pre-petition arrearage of one payment or less, the Trustee will pay the arrearage in full without requiring the case to become a conduit and without requiring an amended Chapter 13 plan. If the pre-petition mortgage arrearage is substantial, the Trustee will object and assert the entire mortgage should be paid through case administration as a conduit pursuant to L.B.R. 3015(b).2(b).

¹ See *In re Barber*, 191 B.R. 879 (D. Kan. 1996).

² See *Till v. SCS Credit Corp*, 541 U.S. 465 (2004); *In re Powell*, 2013 WL 1829837 (Bankr. D. Kan. 2013) (Nugent, J.). The *Till* rate is also colloquially known as the Trustee's discount rate. *Till* is calculated in Wichita as the prime rate plus 1.5%.

³ *In re Jackson*, 2015 WL 3465762 (Bankr. D. Kan. May 29, 2015) (Somers, J.).

How does the Trustee administer a standard conduit mortgage claim? Conduit mortgage claims are divided into four parts:

1. The continuing ongoing mortgage payment, which includes principal, interest and escrow (if applicable);
2. The pre-petition arrearage as calculated on Mortgage Proof of Claim Attachment A;
3. The post-petition arrearage (“GAP”) payments as calculated pursuant to D. Kan. L.B.R. 3015(b).2(f)(2)⁴; and
4. Fees, charges or expenses requested by the mortgage creditor under F.R.B.P. 3002.1(c).

Absent a plan provision stating otherwise, the ongoing payments are disbursed monthly, the pre-petition arrearage is paid in full during the life of the plan without interest; the post-petition GAP payments are paid in full during the life of the plan at 5% interest plus late fees, and additional fees charges or expenses are paid in full during the life of the plan without interest. The Trustee pays the amounts contained in the proof of claim (ongoing payment, arrearage, late fees, etc.) absent a claim objection being filed, sustained and journalized.

When does the Trustee pay Notices of Post-Petition Fees Charges and Expenses? Mortgage creditors should only file Notices of Post-Petition Fees Charges and Expenses (“NPPF”) when the mortgage loan is secured by the debtor’s principal residence.⁵ In those instances, the Trustee will pay the NPPF if all or part of the mortgage indebtedness is paid through case administration (i.e., we’re paying the ongoing payments or an arrearage). The Trustee does not pay NPPFs in cases where the entire mortgage is paid directly by the debtor outside case administration or where the mortgage debt is not secured by the debtor’s principal residence.

When does the Trustee file a Motion to Deem Current? The Trustee is required to file a Notice of Final Cure Payment in every case with a mortgage debt against the principal residence regardless of whether the mortgage is paid through case administration or directly.⁶ After that notice is filed, the mortgage creditor must file a response stating whether they agree or disagree with the Trustee’s assertion that the mortgage is current.⁷ The Trustee files a Motion to Deem Mortgage Current⁸ if he paid the ongoing mortgage or arrearage payments and the creditor files a response disagreeing those payments were made. If the creditor disagrees the mortgage is current in a direct pay case, the debtor must file the Motion to Deem Current. The Trustee will not file a Motion to Deem Current if the creditor files a response to the Notice of Final Cure Payment that says the debtor is behind on mortgage payments after the plan is complete.⁹

⁴ Two full regular monthly payments, including escrow and two late fees (per the mortgage contract), which is paid interest at 5% unless otherwise stated in the Plan.

⁵ F.R.B.P. 3002.1(a).

⁶ F.R.B.P. 3002.1(a) and (f).

⁷ F.R.B.P. 3002.1(g).

⁸ F.R.B.P. 3002.1(h).

⁹ For example, if the debtor’s plan directs the Trustee to make ongoing mortgage payments only through June 2022 and the mortgage creditor files a response to the Notice of Final Cure Payment saying the debtors did not make their

The debtor was paying the mortgage directly but fell behind post-petition. Does the debtor have to bring the mortgage into the case? Yes.¹⁰ **Are there any exceptions?** Yes. If the debtor has received a permanent loan modification, the mortgage can remain direct-pay absent further default.

Creditor Issues:

Creditor has filed a motion for stay relief which is not yet granted. Will creditor be paid pending resolution of the motion? Yes. **Are there exceptions?** Yes. If the plan (as confirmed or modified) provides to surrender the collateral, the Trustee will discontinue payment on the claim.

Creditor obtained collateral protection insurance (“CPI”) on the debtor’s car due to insurance lapse. How can the creditor get reimbursed? The Trustee requires plan provisions to pay CPI reimbursements as part of the secured claim. The creditor may file a motion or enter into a stipulation with the debtor to be reimbursed for CPI. The Trustee will not pay CPI if the creditor only amends the proof of claim to add it and will object to the amended claim. The Trustee will not pay interest on the CPI portion of the claim absent plan provisions providing for the payment of interest.

When are creditors’ attorney’s fees allowed to be assessed against the debtor? Attorney’s fees incurred by a creditor can be assessed against the debtor when: (1) the creditor has an allowed secured claim, (2) the value of the collateral exceeds the amount of the debt, (3) the fees, costs and/or charges are reasonable, and (4) the agreement between the creditor and the debtor provides for payment of fees, costs and/or charges.¹¹ **How are attorney’s fees assessed against the debtor paid?** Conduit mortgage creditors secured by an interest in a debtor’s principal residence are paid attorney’s fees by filing a Notice of Post-Petition Mortgage Fees, Expenses and Charges (“NPPF”)¹². All others must request attorney’s fees in a properly noticed pleading stating the amount requested. The Trustee will not pay creditor’s attorney’s fees if the creditor only amends the proof of claim to add them and will object to the amended claim.

Creditor has a mortgage and the debtor’s plan misstates the arrearage and/or ongoing mortgage payment. Does the Creditor have to object to the plan? No. In a standard conduit case, the Trustee pays per the claim, not the plan.¹³ In districts outside of Kansas, some trustees pay the ongoing payments and arrearage stated in the plan, which is why the national mortgage

August 2022 mortgage payment, the Trustee will not file a Motion to Deem Current because he was not responsible for making the August 2022 mortgage payment.

¹⁰ D. Kan. L.B.R. 3015(b).2(b).

¹¹ 11 U.S.C. § 506(b).

¹² Official Form 410S2.

¹³ Form Chapter 13 Plan, Section 10.2 as adopted by D. Kan. Standing Order 17-1. *See also* D. Kan. L.B.R. 3015(b).1(d).

creditors often object to confirmation when the arrearage and ongoing payments do not match their claims.

Creditor is not receiving pre-confirmation adequate protection payments. Why not? Absent a court order stating otherwise, the Trustee only pays pre-confirmation adequate protection to conduit mortgage creditors¹⁴ or creditors with purchase money claims secured by the debtor's personal property.¹⁵ Absent other claim issues, if a personal property creditor is not receiving pre-confirmation adequate protection payments, it is because the Trustee has reviewed the claim and cannot verify the collateral is purchase money.

Tax Refunds and Tax Returns:

When does the Trustee want tax returns? Pre-confirmation, the Trustee will want the debtors' most recently filed federal and state tax return, *including W2s and 1099s*. Additionally, he will want the tax return for the year debtor filed to determine any Chapter 7 liquidation of any refund and/or to verify income. If that return is not yet due at confirmation, he typically includes provisions for it to be turned over in the confirmation order. **What if the debtor is not required to file returns?** The Trustee will want an affidavit filed in the case stating that fact. **Post-confirmation,** if the Trustee wants a tax return, he will ask for it. The Trustee typically only wants yearly tax returns in business cases, cases where debtors have taken a *Lanning* deviation, cases where debtors were unemployed at confirmation, or cases where debtors had substantial gambling on previous returns. Sometimes the Trustee will only want a tax return for 1 or 2 years after confirmation, especially in below-median cases. At tax time, the Trustee will send counsel a letter that includes all the cases he wants tax returns to be produced for that attorney's clients.

When the Trustee asks for turnover of tax returns, what does he expect to receive? The Trustee wants full copies of the tax returns debtors file in federal and all applicable states with all schedules and related documents, which would include W2s, 1099s and other schedules that are used to itemize personal or business expenses.

Does the Trustee have a policy on tax refunds? Yes, but it is very limited. The Trustee analyzes each case to determine the amount of unsecured claims and their projected dividend before determining the amount of turnover he will request. He usually disclaims the estate's interest in refunds less than \$1,500. If you want the Trustee to disclaim an interest in the tax refund, submit a written request for retention of the refund *with* the state and federal tax returns or file a motion.

Post-Petition Claims, Special Classification and Lanning Deviations:

¹⁴ Pursuant to D. Kan. L.B.R. 3015(b).2(f)(4).

¹⁵ 11 U.S.C. § 1326(a)(1)(C). *See also* D. Kan. L.B.R. 3015(b).1(g).

Can a debtor file a claim for a post-petition creditor? No.¹⁶ **Are there exceptions?** Yes, if the creditor consents to counsel filing a claim on its behalf in writing, the Trustee will not object to the claim. If a debtor has incurred post-petition debt the debtor wants paid through the case, the creditor must consent by filing its own claim. If a debtor files a claim on behalf of the creditor, the Trustee will object to the claim and ask that it be disallowed without prejudice to the creditor filing its own claim.

When does the Trustee object to special classification of unsecured claims? The Trustee objects to special classification if the plan does not include provisions for how the special class creditor is to be paid or if it appears such classification will unfairly discriminate in violation of 11 U.S.C. § 1322(b)(1). For example, the Trustee will object to plans proposing to pay non-dischargeable debt (e.g., student loans, restitution) in full to the exclusion of dischargeable unsecured creditors. **Are there any exceptions?** It depends on the facts of a particular case. Be prepared to explain why the special classification is fair and why it will contribute to the debtor's performance of the plan. Expect an objection if you are proposing to pay the special class 100% of its claim and the non-priority unsecured creditors nothing.

The debtor needs to take a *Lanning* deviation from the projected disposable income requirement. Can they just propose that disposable income is determined by defaulting to I&J? No. *Lanning*¹⁷ deviations must be itemized on Line 46 of the Means Test and the deviated amount should be proposed in Section 3.3 of the Chapter 13 Plan. **Can I propose a disposable income based on filling out the Means Test with current information instead of using the information for the current monthly income period?** No. The Means Test should be completed using the debtors' current monthly income¹⁸ and expenses and then the deviation must be itemized on Line 46 of the Means Test. **What if the debtor has a non-filing spouse? Can I just put that spouse's contribution to the household on the Means Test instead of including all of their income?** No. The Trustee's position is that the Means Test requires all income for a debtor and a non-filing spouse to be included on Line 2 of Official Form 122C-1 and then a marital adjustment can be taken on Line 13. Counsel should expect an objection if all income is not clearly included.

Motions to Dismiss and Employer Pay Orders:

When does the Trustee file a Motion to Dismiss? In conduit cases, the Trustee files a motion to dismiss when the debtor misses one full payment or more. In non-conduit cases, the Trustee files a motion to dismiss when the debtor misses two full payments in a six-month period. All

¹⁶ *In re Laymon*, 360 B.R. 902 (Bankr. E.D. Ark. 2007); *In re Seyden*, 294 B.R. 418 (Bankr. S.D. Ga. 2002); *In re Martin*, 130 B.R. 349 (Bankr. M.D. Fla. 1991); *In re Roseboro*, 77 B.R. 38 (Bankr. W.D.N.C. 1987); *In re Dickey*, 64 B.R. 3 (Bankr. E.D. Va. 1985).

¹⁷ *Hamilton v. Lanning*, 560 U.S. 505 (2010).

¹⁸ 11 U.S.C. 101(10A).

cases that miss three payments over the life of the case are reviewed quarterly and depending on the circumstances of the case, a motion to dismiss may be filed.

Can the debtor’s employer charge the debtor for complying with an employer pay order (“EPO”)? No.¹⁹ The EPOs issued by the Trustee’s office advise the employer that it is not permitted to deduct a fee for compliance. **Will the Trustee do anything if an employer charges the debtor?** The Trustee does not routinely review pay advices to see if the employer is charging the debtor for complying with the EPO. However, if the Trustee discovers the employer is impermissibly charging the debtor, he will send the employer a letter advising it to stop. Debtors should review their pay advices on a regular basis to see if a fee is being charged.

Hiring Professionals and Attorney’s Fees:

The debtor needs to hire another professional during the case. Does the debtor have to file an application to employ? No, the debtor does not have to file an application to employ right away.²⁰ However, before the professional can be paid, an application to employ and request for allowance and payment of fees must be filed and approved by the Bankruptcy Court.²¹ **What is required in an application to employ?** Per F.R.B.P. 2014, the application must include:

1. Specific facts showing the necessity for the employment;
2. The name of the person to be employed;
3. The reasons for the selection;
4. The professional services to be rendered;
5. Any proposed arrangement for compensation;
6. All of the person’s connections with the debtor, creditors, other parties in interest or the UST and its employees (to the best of their knowledge).

The application must also be accompanied by a **verified statement** of the person to be employed setting forth: Their connections with the debtor, creditors, other parties in interest or the UST and its employees (to the best of their knowledge). Trustee Davis prefers the inclusion of a notarized affidavit to meet the “verified statement” requirement. If professionals are not employed or their fees not disclosed and approved by the Bankruptcy Court, the Trustee may object to payment of fees from estate property or move to disgorge the fees.

What are the no-look fees for Chapter 13 case work? There is no presumptive fee for work related to obtaining confirmation of a Chapter 13 Plan in Wichita.²² Fees for getting a case to confirmation range from \$2,800 to \$4,500 depending on the nature and complexity of the case.

¹⁹ See *U.S. v. Santoro*, 208 B.R. 645 (E.D. Va. 1997); *In re Hudson*, 216 B.R. 244 (Bankr. W.D. Tenn. 1997).

²⁰ *Morris v. King*, 621 B.R. 903 (Bankr. D. Kan. 2020).

²¹ *Id.* See also 11 U.S.C. § 327; F.R.B.P. 2014.

²² *In re Blackwell*, 2020 WL 1923588 (Bankr. D. Kan. 2020).

Higher fees are warranted for above-median cases and business cases whereas lower fees are more appropriate for below-median and fee only cases. The standard fee for defending motions to dismiss²³ and to prepare case closing work is \$350. There is not a set fee for filing motions to extend the automatic stay but the Trustee usually will not object to a fee of \$350 or less as long as the motion complies with D. Kan. L.B.R. 4001(a).3. The Trustee will not object to a fee of \$450 to \$500 for a post-confirmation motion to modify. **NOTE:** The more detailed and understandable the pleading, the less likely the Trustee will object to attorney's fees. Counsel is welcome to file fee applications but any fees requested in excess of \$1,000 must be noticed to creditors²⁴ and should include an itemization of the fees. *For purposes of administrative efficiency, the Trustee prefers counsel file fee applications once counsel's outstanding fees have accumulated to at least \$300 rather than filing successive small fee applications.*

Can attorneys be paid electronically? Not yet. The Trustee is in the process of setting up ACH payments for attorneys through Epiq, but has not yet finished the process. Attorneys are paid with a voucher check that is sent via U.S. Mail from Oregon.

Post-Petition Loans:

The debtor needs a loan. Will the Trustee approve that informally or does the debtor have to file a motion? As a general rule, the Trustee only reviews *car loan* requests informally.²⁵ The Trustee does not review informal requests for non-car loans (e.g., mortgage refinance loans, student loans, 401(k) loans, etc.) -- the debtor must file a motion seeking permission to incur the debt. However, on a case-by-case basis, the Trustee may approve a loan for \$1,500 or less if the debtor is facing an emergency.²⁶ **Does the Trustee have guidelines for car loan approval?** Yes. The debt amount should be less than \$25,000, the interest rate less than 20% and the term less than 5 years. **How do I get informal approval of car loans?** To request informal car loan approval, the debtor, attorney, lending institution and/or dealership must submit the proposed terms of the loan (interest rate, term, payment amount, collateral) to the Trustee *in writing*. Upon receipt, the Trustee will review the case and approve or decline to approve the loan request by letter. **What does the Trustee consider when reviewing car loan requests?** The loan terms, whether there is a delinquency in the case, whether the debtor already has a car(s) and those car(s) make, model, and plan treatment and the general posture of the case including whether the

²³ *In re Kiser*, 2009 WL 161322 (Bankr. D. Kan. 2009).

²⁴ F.R.B.P. 2002(a)(6). *See also* 11 U.S.C. §§ 327 and 330.

²⁵ F.R.B.P. 4001(c), which dictates how credit is obtained in a bankruptcy case does not apply to Chapter 13 cases. *See* F.R.B.P. 4001(c)(4). However, the Trustee does not believe this means a Chapter 13 debtor has the absolute and unfettered right to obtain credit without seeking permission from the Court and/or the Trustee as the confirmation order prohibits incurring post-petition debt absent an emergency.

²⁶ For example, if a debtor's heating and/or air conditioning system fails during a season that would make it hazardous to live without repairing the system.

budget on file supports that the debtor can afford to service the new debt while making the plan payments.

Funds on Hand and Unclaimed Funds:

When a case is dismissed and the Trustee has funds on hand, where do they go? Where funds on hand go at dismissal depends on whether the case is dismissed pre- or post-confirmation. If the case is dismissed pre-confirmation, the funds are paid to adequate protection²⁷ and then made payable to the debtors, care of their attorney. If the case is dismissed post-confirmation, the funds on hand are paid to creditors pursuant to the terms of the confirmed plan.

When a case is converted and the Trustee has funds on hand, where do they go? If a case is converted pre-confirmation, the funds on hand are paid to the debtors, care of their attorney. If a case is converted post-confirmation, the funds on hand are paid directly to the debtors.²⁸

What does the Trustee do with unclaimed funds? When the Trustee is in possession of unclaimed funds, he turns those funds over to the Court to deposit in the Court's registry. Usually the Trustee has unclaimed funds either because he does not have the claimant's current address (whether debtor or creditor) and his disbursement check is returned to him without a forwarding address or he has issued disbursement checks that are not negotiated within 90 days.

Is there a way for a party to ask for the funds from the Court registry? Yes. Parties seeking turnover of unclaimed funds from the Court's registry can use Official Form 1340.

THE END.

²⁷ 11 U.S.C. § 1326(a)(2).

²⁸ *Harris v. Viegelahn*, 135 S. Ct. 1829 (2015).