

BEST PRACTICES FOR DOCUMENT PRODUCTION REQUESTS BY TRUSTEES IN CONSUMER BANKRUPTCY CASES

Shortly after the effective date of BAPCPA, the United States Trustee Program (“USTP”) reviewed its document production requirements and decided that USTP staff would not routinely request from debtors any documentation that is not otherwise required by the Bankruptcy Code (“Code”) or Federal Rules of Bankruptcy Procedure (“Rules”). The USTP similarly notified chapter 7 and chapter 13 trustees that we did not require them to collect additional documents without a specific need for additional information. In an effort to control the cost of consumer bankruptcy without interfering with a trustee’s obligation to investigate the financial affairs of the debtor, the USTP consulted with the National Association of Bankruptcy Trustees (“NABT”), National Association of Chapter 13 Trustees (“NACTT”), and the National Association of Consumer Bankruptcy Attorneys (“NACBA”) to consider prevailing document request practices in consumer bankruptcy cases. After reviewing its own practices and considering the input of those entities, the USTP developed the best practices set forth below.

By identifying common examples of potentially unreasonable or burdensome document requests and some of the most common situations that may reasonably lead a trustee to make further inquiry, this USTP guidance is intended to ensure that all parties in interest are focused on documentation that is likely to advance the proper and efficient administration of a particular bankruptcy case.

These best practices are not intended to override the requirements of the Code, Rules or local bankruptcy rules. Nor are they intended to interfere with the reasonable judgments made by trustees in light of the facts and circumstances in specific cases.

I. Common Examples of Potentially Unreasonable or Overly Burdensome Document Requests

- A. A trustee asks every debtor to supply copies of automobile titles, copies of a county treasurer’s tax statement for real property, six months of bank statements, three years of tax returns, an itemized inventory of household goods, copies of divorce decrees or property settlements entered in the last three years, and copies of the complaint and answer in any legal proceeding to which the debtor is a party. This request is excessive. There may be good reasons to make any or all of these requests in an individual case, but a blanket request for all of these documents should not be made in all cases.

- B. Trustees in a particular jurisdiction have met and agreed upon a uniform letter request or questionnaire that requires all debtors to submit documents and

information that supplement and expand upon the detail required by the Bankruptcy Code and Rules. This request is excessive. In a specific case, there may be valid reasons to make such a request, but that request should not be made routinely in all cases.

- C. A trustee routinely rejects liquidation analyses and plan calculations that contain *de minimis* mathematical errors that will not affect the ultimate distribution to creditors. Generally, before rejecting a plan with minor errors, the trustee should weigh the cost to the debtor of preparing a new plan against the benefit to creditors.

II. Common Examples That May Lead to Further Inquiry and Document Requests

- A. The debtor's schedules show an expensive home but value household goods and furniture at a disproportionately nominal amount (e.g., \$500). The inconsistency between the value of the debtor's home and the value of the household goods and furnishings may cause the trustee to make further inquiry and request additional documents.
- B. On Schedule I, the debtor lists monthly pay but does not itemize deductions or identify his employer. On the Statement of Financial Affairs ("SOFA"), Question 1, the debtor lists income for the previous year only. Since Schedule I and question 1 of the SOFA appear to be incomplete, the trustee might request additional information regarding the source of the debtor's income for the current and prior years as well as the monthly deductions from the debtor's pay.
- C. On Schedule D, the debtor lists a secured automobile loan that is owed to a relative. The fact that the debt is owed to an insider may cause the trustee to request proof that the security interest has been properly perfected or other documents relating to this transaction.
- D. The debtor lists a value for his residence that, in the trustee's experience, is significantly lower than homes in that neighborhood or town. The apparent asset undervaluation may cause the trustee to request some proof of value, particularly if there appears to be equity in the property. However, trustees should not request proof of value if the asset is fully exempt under state law or there is clearly no equity.
- E. A debtor's attorney files a large number of cases in which the same questions on Schedule B are left blank, or lists the identical value on Schedule B for all of his

debtors. To the extent that the trustee believes Schedule B to be inaccurate or incomplete in a particular case, the trustee may request documents in that case to supplement the incomplete information provided.

- F. The debtor lists significant unsecured debts on his Schedule F, including recent and high credit card debt, but minimal or no assets on Schedule B. The trustee might request additional documentation, including credit card and bank statements, to determine whether the debtor has dissipated or failed to disclose assets.
- G. A debtor's attorney files cases in which the means test forms are frequently completed improperly or contain significant mathematical errors. To the extent that the trustee believes the improperly completed or miscalculated means test form will have a material impact on a debtor's case, the form deficiencies may cause the trustee to request documents to supplement the incomplete or miscalculated information provided.
- H. The debtor lists a vehicle that appears to be a "classic" or vintage car and values it at a nominal amount (e.g., \$250). The apparent undervaluation may cause the trustee to request that the debtor provide proof of the car's value, which proof may include an appraisal or documentation regarding the purchase price.
- I. The debtor lists her past-due federal tax debt and child support as "secured" debts on Schedule D. The categorization of these debts, which usually are unsecured liabilities, may cause the trustee to request that the debtor provide proof that the debts are secured.
- J. The debtor works for an hourly wage with differing hours each pay period, sometimes resulting in overtime. The debtor supplies a recent payment advice that lists cumulative year-to-date information and provides only a rough estimate of the debtor's earnings in the six months prior to filing. The variance in hours and pay may cause the trustee to request additional information to confirm the debtor's income in order to conduct a proper means-test analysis.
- K. A trustee requests additional documents such as six months of bank statements and credit card statements based on a "feeling" or "hunch" following the debtor's testimony at the meeting of creditors. The debtor's testimony may cause the trustee to make such requests in order to fully investigate the debtor's compliance with the Code and Rules. However, the trustee should be able to provide debtor's

counsel or an unrepresented debtor with a reasonable explanation for the “feeling” or “hunch”.

III. Submission of Documents to the Trustee

Currently, there is no uniformity in the manner in which debtors furnish documents, information, verification of identity, and other materials to the trustee. Even in the same geographic locality, trustees may have different preferences on the production and receipt of information and documents; and debtors and debtors’ attorneys can have different preferences on the assembly and production of this material. To avoid confusion and promote judicial efficiency, it is in the interest of all parties to the bankruptcy system to agree on a uniform manner or process through which documents, information, verification of identity, and other materials are timely furnished by debtors and debtors’ counsel to trustees. Ideally, a uniform process, such as email, should impose the least burden and cost on both trustees and debtors. Examples of uniform procedures that trustees could adopt are set forth below.

- A. Trustees in a jurisdiction have adopted a uniform method of receiving information by email. Trustees allow pro se debtors and counsel without access to email to submit their additional information in hard copy.
- B. Trustees in a jurisdiction have set up a system that allows debtors and debtors’ attorneys to send copies of encrypted information and documents to a central file-transfer-protocol site or third-party repository. Trustees allow debtors and debtors’ counsel to submit documents by another method on a case-by-case basis to accommodate specific needs or requests.