



U.S. Department of Justice

*Office of the United States Trustee
Eastern District of Kentucky*

Memorandum

To: All Chapter 12 Trustees
Eastern District of Kentucky

Lexington OUST

From: John L. Daugherty
Assistant U.S. Trustee

Date: March 2, 2015

Re: Chapter 12 Oversight

This memorandum sets forth the respective responsibilities of the trustee and Office of the United States Trustee in chapter 12 cases. Because chapter 12 trustees in this district are not guaranteed an income stream, trustees will be appointed to chapter 12 cases on a case-by-case basis, and the Office of the United States Trustee will endeavor to take a more active role in case administration, especially in contested matters.

1. New case filing.
 - 1.1. UST will appoint trustee after consultation with candidates. Appointment to a case gives no entitlement or expectation of future chapter 12 case assignments.
 - 1.2. John L. Daugherty will enter appearance for UST.
2. Preconfirmation.
 - 2.1. Trustee will calendar for monthly operating reports (due 10th of month) and filing of plan (90 days).
 - 2.2. Trustee will examine eligibility of debtor to file for chapter 12 relief and promptly advise UST of any issues (see checklist).

- 2.3. Trustee will conduct 341 meeting.
 - 2.3.1. Verify Debtor identity if individual.
 - 2.3.2. Ensure adequate insurance is in place.
 - 2.3.3. Ensure debtor maintains funds in a DIP account.
- 2.4. Trustee will examine exemptions and object if warranted.
3. The Plan.
 - 3.1. Trustee will review Plan to ensure it—
 - 3.1.1. Addresses trustee compensation adequately. The UST will allow the trustee to charge the maximum commission of 5% on all disbursements under the plan. If the Plan does not address compensation, it must be addressed in Confirmation Order or separate Order sought under 11 U.S.C. 330.
 - 3.1.2. Clearly indicates what amount is to be paid to the trustee, and when. An ambiguous Plan should not be confirmed.
 - 3.1.3. Clearly indicates how each Class is to be paid. For secured debt, the provisions should address interest rate and amortization period.
 - 3.1.4. Provides at least 21-day notice of the hearing on confirmation.
 - 3.2. Objections to confirmation.
 - 3.2.1. The trustee should file an objection to any plan that cannot be confirmed pursuant to 11 U.S.C. 1225. The trustee should not file "Reports" recommending or not recommending confirmation, but only Objections to confirmation/statement of No Objection.

3.2.2. In addition to the matters set forth above, the trustee should ensure that that the Plan meets the liquidation and disposable income tests, and object if warranted.

4. Claims.

4.1. The trustee will review, at a minimum, all unsecured claims filed in a case and object if warranted.

4.2. After expiration of the deadline to timely file claims, the trustee will file and serve a Notice of Allowed Claims that will be paid under the Plan.

5. Disbursements.

5.1. Upon confirmation, the trustee shall disburse under the plan upon the receipt of sufficient payments from the Debtor.

5.2. Upon completion of all payments, the trustee will file a Notice of Plan completion.

5.3. After all checks have cleared, but no later than 150 days after the last disbursement in the case, the trustee shall file a final report accounting for all receipts and disbursements.

6. Enforcement Actions.

6.1. The UST or trustee will file a motion to dismiss if the Debtor—

6.1.1. Misses two monthly or quarterly payments, or fails to make an annual payment.

6.1.2. Fails to file two monthly operating reports.

6.1.3. Fails to cure a lapse in insurance.

6.1.4. Otherwise materially defaults on a confirmed plan.

- 6.2. The trustee will promptly refer to the United States Trustee any evidence of fraud or criminal violations on the part of the Debtor or any other actor related to the case.

7. Reporting and Evaluation.

- 7.1. A trustee shall report quarterly on receipts and disbursements in all cases open in the prior quarter to the UST.
 - 7.1.1. Reports will be due on the 10th day after the quarter, *i.e.*, January 10, April 10, etc.
 - 7.1.2. A report will be sufficient if the trustee provides a copy of his ledger for the case and a claim register indicating amounts paid to date.
- 7.2. The UST will provide an annual report of receipts and disbursements in all chapter 12 cases to the Office of Oversight, EOUST, no later than February 15 of each year.
- 7.3. Each trustee with an open case at the end of the evaluation period will receive an evaluation for the prior biennial period no later than 45 days after the end of the evaluation period. The next evaluation will be due February 15, 2016.

Case Name _____ Case Number _____

An answer of "no" to any question means the debtor is not eligible for chapter 12.

Individual Debtors

Yes No

Has "regular annual income" sufficiently stable to fund a plan

Engaged in farming operation on date of filing

Total debts do not exceed \$4,031,575

At least 50% of non-contingent, liquidated debts (excluding debts on personal residence that do not arise from farming operation) arise out of a farming operation

Preceding tax year, more than 50% of gross income from farming operations

2nd tax year prior to filing, more than 50% of gross income from farming operations

3rd tax year prior to filing, more than 50% of gross income from farming operations

Corporate and Partnership Debtors

Has "regular annual income" sufficiently stable to fund a plan

More than 50% of equity held by one family (including relatives) that conduct the farming operation

More than 80% of asset value is related to farming operation

Total debts do not exceed \$4,031,575

At least 50% of non-contingent, liquidated debts (excluding debts on one dwelling owned by Debtor that is used as a personal residence by an equity holder that do not arise from farming operation) arise out of a farming operation

If Debtor issues stock, such stock is not publicly traded

EXHIBIT