

Guide to Judiciary Policy

Vol 4: Court and Case Management

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§ 810 Overview

This chapter contains national judiciary policies regarding bankruptcy cases that were adopted either by the Judicial Conference of the United States or by the Director of the Administrative Office (AO). They include:

- Procedures adopted by the Judicial Conference regarding the chapter 7 fee waiver provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) (**see:** [§ 820](#), below); and
- Director's Guidance Regarding Tax Information Under [11 U.S.C. § 521](#) (**see:** [§ 830](#)).

Note: This guidance is [available on the AO's public website](#), to which local courts should direct the public and members of the local bar.

§ 820 Chapter 7 Fee Waiver Procedures

- (a) On August 11, 2005, the Judicial Conference promulgated interim procedures “to assist district courts and bankruptcy courts with implementing the fee waiver provisions set forth in Section 418 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8, 199 Stat. 23), and codified at [28 U.S.C. §§ 1930\(f\)\(1\)-\(3\)](#).”
- (b) The Judicial Conference adopted the final procedures set forth below in September 2013 ([JCUS-SEP 13](#), pp. 8-9).

§ 820.10 Filing Fee Waiver Application and Initiation of the Chapter 7 Case

- (a) In lieu of paying the prescribed chapter 7 filing fee or filing an installment application, an individual debtor may, along with the bankruptcy petition, file an application to waive the filing fee. [Federal Rule of Bankruptcy Procedure 1006\(c\)](#) requires that the application conform substantially to Official Form 3B. A defective or otherwise deficient waiver application should be processed according to the court's standard operating procedures for processing deficient pleadings and papers.
- (b) When a chapter 7 petition in an individual debtor case is accompanied by an application to waive the filing fee, the court should initiate and process the case in the same manner as other individual chapter 7 cases.

§ 820.20 Judicial Determination of Filing Fee Waiver Applications

- (a) Standard of Eligibility
 - (1) Under [28 U.S.C. §§ 1930\(f\)\(1-3\)](#), the district court or bankruptcy court may waive the chapter 7 filing fee for an individual debtor who:
 - (A) has income less than 150 percent of the income official poverty line applicable to a family of the size involved; and
- (Note:** Since the Office of Management and Budget has never issued official poverty thresholds, these procedures interpret this statutory language to refer to the poverty guidelines updated periodically in the Federal Register by the Department of Health and Human Services (DHHS) under the authority of [42 U.S.C. § 9902\(2\)](#). The Secretary of Health and Human Services is required to update the

poverty guidelines annually, and defines guidelines separate for (a) the 48 contiguous states and the District of Columbia, (b) Alaska, and (c) Hawaii. The DHHS does not define poverty guidelines for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. For these areas, the guidelines for the 48 contiguous states and the District of Columbia may be used. The Administrative Office will post the last published guidelines and the 150 percent comparison levels on JNet.)

(B) is unable to pay that fee in installments.

- (2) The DHHS does not publish a standard definition of income, leaving the determination of that definition to individual program administrators. These procedures adopt a definition that is reasonable in the bankruptcy context. The income for comparison to the poverty guidelines is the "Total Combined Monthly Income" as reported (or as will be reported) on Schedule I. Amounts received as non-cash government assistance must be deducted from the total amount reported on Schedule I for fee waiver consideration.
- (3) "Family size" may be defined as the debtor(s), the debtor's spouse (unless the spouses are separated and a joint petition is not being filed), and any dependents listed on Schedule I.

(Note: The DHHS uses the term "family unit" instead of "family size" but does not publish a standard definition of "family unit.")
- (4) The district court or bankruptcy court should consider the totality of the circumstances in determining whether the debtor is unable to pay the fee in installments as provided in [28 U.S.C. §1930\(f\)\(1\)](#). Official Form 3B elicits information relevant to this determination.
- (5) A debtor may qualify for a waiver of the filing fee even if the debtor has paid or promised to pay a bankruptcy attorney, bankruptcy petition preparer, or debt relief agency in connection with the filing.

(Note: In 2008, [Fed. R. Bankr. P. 1006\(b\)\(1\)](#) was amended to delete the sentence requiring a statement in the installment fee application that the debtor has not paid an attorney or other person in connection with the case. In the installment application, debtors

must certify they will not make additional payment or transfer any additional property to an attorney or other person for services in connection with the case until the filing fee is paid in full.)

(b) Initial Court Procedures

(1) Notice of Hearing

(A) The court should promptly determine whether the fee waiver application should be granted, denied, or set for early hearing, on notice to the United States trustee or bankruptcy administrator, the case trustee, the debtor, and, if applicable, the attorney for the debtor. The order should be transmitted to the United States trustee or bankruptcy administrator, the case trustee, the debtor, and, if applicable, the attorney for the debtor.

(B) Section 418 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 defines "filing fee" to include any fee prescribed by the Judicial Conference under 28 U.S.C. §§ 1930(b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7. This includes Items 8 and 9 of the [Bankruptcy Miscellaneous Fee Schedule](#).

(2) Denial of Fee Waiver

Any order denying a filing fee waiver application may give the debtor a reasonable time in which to either pay the fee in full or begin making installment payments. The order denying the fee waiver application should set forth an installment payment schedule. It also should advise the debtor that failure to pay the fee or make timely installment payments may lead to dismissal of the case. A standard order is included with the Official Form.

(3) Conversion to Chapter 7

If a case is converted from another chapter to chapter 7, the court may waive any unpaid balance on the filing fee if the conditions described in section (a)(1) are satisfied.

§ 820.30 Developments in the Case

(a) Conversion to Another Chapter

If the filing fee for an individual chapter 7 debtor is waived and the debtor's case is later converted to a case under another chapter, the debtor must pay the full filing fee required for that chapter. The conversion order should give the debtor a reasonable time in which to either pay the fee in full or begin making installment payments.

(b) Fee Waiver Request After Installment Payment Application

If a debtor files an application to pay the filing fee in installments and later applies for a waiver of the filing fee, the court may waive any unpaid balance of the filing fee, if the circumstances warrant.

(c) Revocation or Vacation of Order on Fee Waiver

(1) The court may vacate or revoke an order waiving the filing fee if developments in the case or the administration of the estate demonstrate that the waiver was unwarranted. The court may also vacate or revoke an order denying a request to waive the filing fee if developments in the case or administration of the estate demonstrate either that the factors leading to the denial of the waiver no longer exist or that denial of the waiver was not warranted. The court may make these determinations either on motion by a party in interest or sua sponte. **See:** [Fed. R. Bankr. P. 9023, 9024](#); [11 U.S.C. § 105\(a\)](#).

(2) If the fee waiver is revoked or vacated, it is the debtor's obligation to pay the filing fee pursuant to the court's order. If the debtor does not pay the filing fee in accordance with the court's order, the case may be dismissed.

§ 820.40 Waiver of Additional Individual Debtor Fees

(a) In addition to fees due at filing, other fees scheduled by the Judicial Conference under [28 U.S.C. §§ 1930\(b\) and \(c\)](#) may be waived, in the discretion of the court, for an individual debtor whose filing fee has been waived, or for whom the totality of circumstances during the pendency of the case and appeal warrant such waiver upon request.

(b) Courts may consider whether to extend a waiver of filing fees to all fees under 28 U.S.C. §§ 1930(b) and (c) for the duration of the case and any

initial appeal from a decision of the bankruptcy court or to limit any waiver accordingly. An order granting such waiver should set forth the extent of the waiver. If a debtor moves to extend a fee waiver to other fees under 28 U.S.C. §§ 1930(b) and (c), the debtor must show that he or she still meets the standard of eligibility defined in [Guide, Vol 4, § 820.30\(a\)\(1\)](#).

- (c) If the filing fee has not been waived, a debtor may still move to seek a waiver of other fees under 28 U.S.C. §§ 1930(b) and (c) by demonstrating that he or she meets the standard of eligibility defined in [Guide, Vol 4, § 820.30\(a\)\(1\)](#).
- (d) Courts may establish local rules to address the application of a fee waiver to other fees under 28 U.S.C. §§ 1930(b) and (c).

§ 830 Guidance for Protection of Tax Information

- (a) On September 20, 2005, the Director of the AO promulgated Interim Guidance Regarding Tax Information Under 11 U.S.C. § 521 as required by Section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the Act) to safeguard the confidentiality of tax information, including tax returns, transcripts of returns, amendments to returns and any other document containing tax information provided by the debtor under [11 U.S.C. § 521](#).
- (b) In accordance with the Act, the Director establishes the following guidance to replace the Interim Guidance.

§ 830.10 Debtor's Duty to Provide Tax Information

- (a) Sections 521(e) and (f) of the Bankruptcy Code, which governs the provision of tax information, applies only to individual debtors filing under chapter 7, 11 or 13 of the Bankruptcy Code.
- (b) Section 521(e)(2) requires a debtor to provide the trustee and any requesting creditor a copy or transcript of the federal income tax return required under applicable law for the most recent tax year ending immediately before the commencement of the case if filed.
- (c) [Fed. R. Bankr. P. 4002\(b\)\(5\)](#) provides that the debtor's obligation to provide tax information to the trustee and creditors is subject to these procedures.

- (d) On the request of the court, the United States trustee, or any party in interest, Section 521(f) requires a debtor **to file with the court** certain tax information filed with the taxing authority during the pendency of the bankruptcy case.

§ 830.20 Restricted Access to Tax Information

- (a) For tax information to be filed with the court, it must be entered into a court's CM/ECF system by selection of the "tax information" event from the CM/ECF event list. This event limits access to the filed tax information to those users assigned a "court" log in (i.e., judicial officers and court employees). All other users (including PACER users) will have access to a docket event indicating that tax information has been filed, but will not have access to the tax information.
- (b) No tax information filed with the bankruptcy court or otherwise provided by the debtor should be available to the public via the Internet, PACER, or CM/ECF.

§ 830.30 Tax Information Disclosure Requests

To gain access to a debtor's tax information under [11 U.S.C. § 521\(f\)](#), the United States trustee or bankruptcy administrator, case trustee, and any party in interest, including a creditor, must follow the procedures set forth below.

- (a) A written request that a debtor file copies of tax returns with the court under 11 U.S.C. § 521(f) must be filed with the court and served on the debtor and debtor's counsel, if any.
- (b) To obtain access to debtor's tax information that is filed with the bankruptcy court, the movant must file a motion with the court, which should include:
 - (1) a description of the movant's status in the case, to allow the court to ascertain whether the movant may properly be given access to the requested tax information;
 - (2) a description of the specific tax information sought;
 - (3) a statement indicating that the information cannot be obtained by the movant from any other source; and
 - (4) a statement showing a demonstrated need for the tax information.

- (c) An order granting a motion for access to tax information should include language advising the movant that the tax information obtained is confidential and should condition dissemination of the tax information as appropriate under the circumstances of a particular case. At the discretion of the court, the order may state that sanctions may be imposed for improper use, disclosure, or dissemination of the tax information.

§ 830.40 Approved Access to Tax Information

- (a) Local courts have authority to determine procedures, the details of which are within the discretion of the court, for transmitting the tax information to the movant when access has been granted. Possible methods include mailing a hard copy, or developing procedures to view tax information at the clerk's office.
- (b) The transmission of the tax information to the movant, by whatever means the court deems appropriate, should be recorded as a docket event in CM/ECF so that the docket will reflect that the court has taken the action necessary to effect the provisions of its order granting access.

§ 830.50 Required Redaction of Debtor Tax Information

- (a) The following redaction requirements apply to all tax information provided in accordance with section 521 of the Bankruptcy Code.
- (b) Debtors providing tax information under [11 U.S.C. § 521](#) should redact personal information according to the criteria set forth in [Fed. R. Bankr. P. 9037](#). A debtor should therefore redact personal identifiers in any tax information required to be filed with the court or provided to the trustee or creditor(s), in either electronic or paper form, as follows:
 - (1) Social Security numbers

If an individual's social security number is included, only the last four digits of that number should appear.
 - (2) Individual Taxpayer Identification Number (ITIN)

If an individual taxpayer has an ITIN instead of a social security number, only the last four digits of the ITIN should appear.
 - (3) Names of Minor Children

If a minor child is identified, only the child's initials should appear.

(4) Dates of Birth

If an individual's date of birth is included, only the year should appear.

(5) Financial Account Numbers

If financial account numbers are provided, only the last four digits of these numbers should appear.

- (c) Court employees are not responsible for redacting any of the personal identifying information contained in documents filed with the court. The responsibility for redacting personal identifiers rests solely with the debtor.
- (d) Failure to follow these procedures waives the protection afforded by them.
- (1) Failure to select the "tax information" event in the CM/ECF system to file a document containing tax information with the court will make the document available to the public via the Internet, PACER, or CM/ECF.
- (2) Filing a document containing unredacted personal information with the court waives the protection of Fed. R. Bankr. P. 9037. The clerk of court is not required to review documents filed with the court, and so the responsibility to redact filings rests with the counsel, parties, and others who file such documents. **See:** [Fed. R. Bankr. P. 9037\(g\) advisory committee's note](#).