

**Chapter 13 Guidelines**  
for the  
**United States Bankruptcy Court**  
**Western District of Oklahoma**  
(as revised March 2006, November 1, 2010, and February 2012)

**I. Scope of Guidelines**

These Guidelines, in conjunction with the Bankruptcy Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (hereinafter the Bankruptcy Code), the Federal Rules of Bankruptcy Procedure, and the Local Rules of Bankruptcy Procedure, contain the rules for Chapter 13 practice in this Court, and are applicable to cases filed October 17, 2005, and thereafter. As to Chapter 13 cases pending on October 14, 2005, the Guidelines in effect at the time those cases were filed continue to apply, except where otherwise specifically provided herein. In case of a conflict between these Guidelines and the Bankruptcy Code or these Guidelines and the Federal Rules of Bankruptcy Procedure, the Bankruptcy Code, or if applicable, Federal Rules of Bankruptcy Procedure shall control.

**II. Pleadings Combined With Hearing Notice**

Any pleading combined with a notice of hearing must clearly state in the caption of the pleading that it includes the notice of hearing.

### III. Filing of Petition/Plan/Statement of Financial Affairs/Schedules

A. If, pursuant to FED. R. BANKR. P. 3015, the debtor(s) file a petition and elect to separately file a plan within fifteen days thereafter, the debtor(s) must serve the proposed plan or a complete summary of the proposed plan on each creditor, any party in interest who has requested notice, the Chapter 13 Trustee (hereinafter Trustee), and the Assistant United States Trustee, and must file a certificate of service pursuant to LOC. R. BANKR. P. 9007(d). **In cases in which the plan is not filed at the time the petition is filed, the due date for the first payment is the earlier of thirty (30) days after the plan is filed or thirty (30) days after the petition is filed.**

B. If the schedules and/or statement of financial affairs are not filed with the petition, the debtor(s) shall serve a copy of the schedules and/or statement, when filed, on the Trustee and the Assistant United States Trustee, and file a certificate of service pursuant to LOC. R. BANKR. P. 9007(d).

C. In addition to other items required under the Bankruptcy Code, all debtors must include as a part of Schedule I copies of the debtor(s)' pay stubs or paychecks for the two months immediately prior to bankruptcy, or if applicable, copies of profit and loss statements for the two quarters immediately prior to

bankruptcy, and must clearly and accurately indicate the frequency of receipt of pay and, if applicable the exact dates, e.g. weekly (include which day of the week); bi-weekly (every two weeks and include which day of which week); monthly (include which day of the month); semi-monthly (twice a month and include which days of the month).

#### **IV. Section 341 Meeting of Creditors and Confirmation**

A. The Court has determined it is in the best interest of creditors and Chapter 13 estates to confirm Chapter 13 plans, and thereby commence payments to creditors, as early as is practicable. The Court further recognizes all interested parties must be provided with an opportunity for hearing on confirmation. For these reasons, the Court has determined that if at the conclusion of the meeting of creditors under 11 U.S.C. §341, there is no unresolved oral or written objection to confirmation, and no oral or written objection to confirmation at a date earlier than the date specified in 11 U.S.C. §1324(b) (hereinafter expedited confirmation), the Trustee shall submit the confirmation order to the Court for entry. The confirmation order will be entered by the Court as soon as practicable thereafter, unless the Court, *sua sponte*, determines the matter should be set for further hearing on confirmation. The Trustee may disburse funds pursuant to the confirmation order as soon as

practicable after entry thereof.

B. Attorneys attending the §341 meeting on behalf of debtor(s) must be authorized to act on behalf of the debtor(s) they are representing. An associate without authority to act must be accompanied by an attorney of the firm who does have authority to so act.

C. The deadline for the filing of written objections to confirmation and/or written objections to expedited confirmation shall be the date that is three business days prior to the date set for the §341 meeting. Any party who has not filed a written objection by this deadline, but desires to preserve its objection, must appear at the §341 meeting and raise its oral objection. The Trustee may continue or adjourn the §341 meeting by oral notice given at the §341 meeting, without further written notice to creditors. Continuance of the §341 meeting will necessarily include continuance of any pending confirmation issues, and the deadline to object to confirmation and/or to expedited confirmation will be extended to the date that is three business days prior to the continued §341 meeting. In any case in which a written objection to confirmation or to expedited confirmation is pending, or in which an oral objection to confirmation or to expedited confirmation is raised at the §341 meeting, and any objection is not resolved by the conclusion of the §341

meeting, the Trustee shall request the case be set for a hearing on confirmation before the Judge (hereinafter the confirmation hearing). The confirmation hearing will be scheduled 25-45 days after the conclusion of the §341 meeting. Any party desiring to be heard at the confirmation hearing who has not previously filed a written objection to confirmation must do so not later than twenty (20) days after the conclusion of the §341 meeting. No objection to confirmation will be considered unless a copy of the objection has been timely served on the Trustee, counsel for the debtor(s), and all other parties in interest.

D. Whenever a hearing on confirmation is continued, the debtor(s) must be current in their payments at all future confirmation hearings or the case may, at the discretion of the Court, be dismissed.

E. During the §341 meeting, the debtor(s) will have an opportunity to voluntarily agree to make the required plan payments via employer wage deduction. While not required, payment by wage deduction significantly increases the likelihood the debtor(s) will successfully complete the plan and therefore is strongly recommended. Debtor(s) who do not initially elect to make payments via wage deduction may be subject to doing so if a plan payment is missed. *See XIII(D)*. Any order entered that authorizes the Trustee to institute a wage deduction will also

provide that the Trustee may amend or terminate such wage deduction without further order of the Court.

F. All notices of the §341 meeting will include notice of an opportunity for hearing on confirmation, and will provide the deadline for the filing of written objections to confirmation and/or to expedited confirmation. The notice of the §341 meeting shall also specifically provide that if there are no objections to confirmation or to expedited confirmation, or if all objections are resolved at the conclusion of the §341 meeting, the Trustee will submit the confirmation order to the Court for entry.

G. The confirmation order referenced above is the form confirmation order used by the Trustee. The form confirmation order is expressly adopted by the Court, with the Court reserving the right to amend the form order as it deems appropriate. Any interlineations or changes to the form confirmation order not approved by the Trustee require notice, a hearing, and approval of the Court to be effective.

H. Upon entry of the confirmation order, it shall be timely served by the debtor(s) in *pro se* cases, and by counsel for the debtor(s) in all other cases. The confirmation order shall be served upon all parties listed on the mailing matrix, all parties who have filed a request for notices, and the Assistant United States Trustee,

and a certificate of service shall be filed pursuant to Local Rule 9007(d).

## **V. Mortgages**

A. All mortgages which are subject to modification are to be paid through the Chapter 13 plan and in full during the term of the plan. Additionally, all mortgages extending beyond the plan under which the debtor(s) are not current at the time the Chapter 13 petition is filed shall be paid through the Chapter 13 plan.

B. With respect to long-term mortgages paid under the terms of 11 U.S.C. §1322(b)(5), the first ongoing mortgage payment that comes due before the first plan payment is required to be paid shall be set up by the Trustee as an additional arrearage claim, and shall be paid at the same rate of interest as is paid on the pre-petition arrearage claim pursuant to the confirmation order.

## **VI. Proofs of Claims**

A. Interested parties may download a proof of claim form from the Court's website: [www.okwb.uscourts.gov](http://www.okwb.uscourts.gov).

B. In order to receive disbursement from the Trustee, under either a confirmed Chapter 13 plan or the adequate protection provisions contained within these guidelines, a creditor must timely file a proof of claim in the case, and must provide a file-stamped copy thereof to the Trustee. If the claim is secured, proper

proof of perfection of the security interest must be attached to the proof of claim. If post-petition interest is sought, the proof of claim must clearly and conspicuously state the rate of interest sought.

C. In addition to providing a copy of any claim filed to the Trustee, creditors filing secured and priority claims must also promptly serve a copy of the claim on debtor(s)' counsel, or if debtor(s) appear *pro se*, serve a copy of the claim upon debtor(s).

D. In a case converted from another Chapter of the Bankruptcy Code to Chapter 13, creditors must file a claim following conversion to Chapter 13 even though claims may have been filed prior to the conversion. Claims filed in the case prior to the conversion are not deemed filed in the Chapter 13 case. See *In re Sorge*, 149 B.R. 197 (Bankr. W.D. Okla. 1993).

## **VII. Adequate Protection**

The Court has specifically determined the adequate protection payments provided for in 11 U.S.C. §1326(a) shall be paid through the Trustee in accordance with the following procedures:

A. Adequate protection payments shall not be paid with regard to personal property securing a claim where the debt is not attributable to the purchase



of the personal property or with regard to real property unless an order is entered by the Court providing for such payments after the filing of a motion for such protection.

B. Adequate protection payments shall be paid through the Trustee, not directly to the creditor by the debtor(s). The Trustee will be allowed to collect a fee equal to the percentage trustee fee on adequate protection payments paid through the Trustee.

C. If a secured debt which extends beyond the term of the plan is proposed to be paid outside the plan through the maintenance of regular ongoing payments, the direct payments paid outside the plan shall constitute adequate protection payments to that creditor, and no amount will be paid to that creditor by the Trustee on account of that debt.

D. Adequate protection payments will be paid by the Trustee on a monthly basis pending confirmation, dismissal or conversion.

E. Adequate protection payments shall be paid prior to the payment of outstanding attorney fees. If there are insufficient funds on hand to pay all adequate protection payments owing to creditors as well as the fee to the Trustee, the Trustee will reduce the distribution to each creditor on a pro-rata basis.

F. Adequate protection payments shall be in the amount specifically identified in the plan as the monthly adequate protection amount. If a monthly adequate protection payment amount is not specifically stated, but a monthly payment to be paid to the creditor is stated, such amount shall constitute the monthly adequate protection payment amount. If no amount is stated as a monthly adequate protection amount or as a monthly payment to the creditor, no adequate protection will be paid to the creditor. Any order of the Court setting an adequate protection payment shall control when such amount is not in conformity with the amount proposed in the plan.

G. A creditor who opposes the adequate protection amount proposed by the debtor(s) may file a written objection setting forth the reason(s) the proposed adequate protection amount is inappropriate. The objection to the proposed adequate protection amount may be combined with a motion for relief from the automatic stay or with an objection to confirmation so long as the title of the pleading clearly states that it is an Objection to Confirmation **and** Motion for Relief From the Automatic Stay (or Objection to Adequate Protection ). Additionally, it shall be the responsibility of the creditor filing the objection to ensure the adequate protection issue is heard in a timely manner and that any order addressing the

adequate protection amount to be paid to the creditor is entered and provided to the Trustee within 10 days of any order of dismissal, notice of conversion or order of conversion. If such adequate protection order is not received by the Trustee within the referenced 10 day period, the funds subject to the order may be paid to other parties.

H. Adequate protection payments in dismissed and converted cases shall not be paid to any creditor that has not filed a proof of claim with proper verification of security attached or provided, within 5 days of the filing of any order of dismissal, notice of conversion, or order of conversion. Additionally, no payment shall be made to a creditor in a confirmed case until the creditor has filed a proper proof of claim and provided a file-stamped copy to the Trustee.

I. Adequate protection will not be paid where the Chapter 13 Plan provides for the surrender of the collateral securing the debt. If a Chapter 13 plan is amended to provide for the surrender of collateral that was to be paid through the plan under an earlier plan, adequate protection payments shall be paid only through the month in which the amended plan is filed. If the amended plan is confirmed, the confirmation order shall provide for the payment of the adequate protection

amount due through and including the month in which the surrender was proposed.

J. Debtor(s) shall maintain full coverage insurance on all property serving as collateral for a debt or forming the basis of any liquidation value, and shall provide proof of such insurance upon request by any interested party.

## **VIII. Property of the Estate**

### **Vehicle Turnover Procedure Income Tax Refunds/ Employee Bonus/ Longevity Payments/ Windfall Income**

A. Pursuant to the Order Confirming Chapter 13 Plan, all property shall remain property of the estate and shall vest in the debtor(s) only upon dismissal, discharge, conversion, or order of the Court. The debtor(s) shall be responsible for the preservation and protection of all property of the estate not transferred to, and in the actual possession of, the Trustee.

B. Presumptively included among property of the estate is any vehicle owned by debtor(s) that has been repossessed pre-petition. If the debtor(s) still owns the vehicle and desires to have it turned over after filing, the debtor(s) must make a written request, and must provide to the repossessing creditor proof of full coverage insurance (comprehensive and collision), listing the creditor as a loss

payee, plus information regarding a source of verification. Once the repossessing creditor has verified the insurance coverage and that the tag is current and valid, absent extenuating circumstances, the creditor is to return the vehicle to the debtor(s) as soon thereafter as possible without necessity of hearing. Where there is a post-petition insurance lapse, the payment for the replacement insurance policy must be made by cash or money order. If extenuating circumstances exist necessitating the filing of a motion for relief from the stay, creditor must do so post-haste, and upon proper request the matter will be heard on an expedited basis.

C. Also included among property of the estate are: 1) all income tax refunds, bonuses, unused vacation pay, and any other irregular or incidental disposable income received by the debtor(s) during the plan term; and 2) any inheritance, proceeds of any lawsuit, or any other windfall in excess of \$500.

D. Unless the plan is confirmed as a 100% plan, all income tax refunds (excluding amounts attributable to federal earned income credit), bonuses, unused vacation pay, and any other irregular or incidental disposable income received by the debtor(s) during the plan term must be turned over to the Trustee. The plan base shall be increased by the additional amount received by the debtor(s), except in below median income cases confirmed for a term in excess of 36 months. In

below median income cases exceeding 36 months, the additional amount shall be applied to the existing base; however, to the extent applying these additional amounts to the existing base would reduce the plan length to less than 36 months, the plan base shall be increased. Receipt and turnover of such additional sums shall not excuse the debtor(s) from his/her obligation to make monthly payments under the confirmed plan.

E. Federal earned income credit portions of tax refunds, if received by the Trustee, will be returned to the debtor(s) if a timely request for such relief is received by the Trustee. The request must be received prior to the disbursement of the funds to creditors and must be accompanied by a copy of the tax return for the year in which the earned income credit is claimed.

F. Unless the plan is confirmed as a 100% plan, any inheritance, the proceeds of any lawsuit, or any other windfall in excess of \$500 received by the debtor(s) during the term of the plan must be turned over to the Trustee. The plan base shall be increased by the amount received as a result of the inheritance, lawsuit or other windfall. Receipt and turnover of such additional amounts shall not excuse the debtor(s) from their obligation to make monthly payments under the confirmed plan.

## **IX. Relief From the Automatic Stay**

A. If the proposed plan is not ready for confirmation at the conclusion of the §341 meeting, and there is a pending motion seeking relief from the automatic stay (hereinafter motion to lift), the debtor(s) and creditor may, upon agreement, request that the motion to lift be set for hearing concurrently with the confirmation hearing. If the date set for the confirmation hearing is outside the requisite thirty-day period contemplated by §362(e), the parties' agreement must necessarily include consent for the Court to call the motion to lift for preliminary hearing and continue it to a final hearing to be held in conjunction with the confirmation hearing. The objecting party will remain responsible for providing notice of such hearing to all interested parties as required by LOC. R. BANKR. P. 4001.

B. Otherwise, a hearing on a pending motion to lift will be set on the Court's regular motion docket, and will be set only upon timely request of and proper notice by the objecting party. 11 U.S.C. §362(e); LOC. R. BANKR. P. 4001 and 9013(g).

C. If a pending motion to lift is resolved prior to the day it is set for hearing, one of the attorneys (or the attorney's designee) is to immediately telephone (405) 609-5678 and advise the Court that the matter should be stricken.

Such information may also be conveyed after hours via voice-mail message, or facsimile transmission (405) 609-5679.

D. If a proposed Chapter 13 Plan provides for the surrender of collateral securing a debt, the secured creditor whose collateral is to be surrendered may submit an *ex parte* application and proposed order for relief from the stay as to the collateral proposed to be surrendered. The Trustee must be provided with evidence of perfection of the interest in the collateral and must approve the proposed order prior to submission to the Court. The proposed order must substantially comply with the sample order attached to these Guidelines.

E. The Trustee shall not cease payments on a secured claim upon entry of an order granting relief from the automatic stay or upon entry of an order declaring there is no stay in effect unless an order of the Court specifically provides for such cessation of payments. Once collateral has been repossessed and sold, the creditor shall promptly amend its secured claim to reflect the receipt of sales proceeds. In the event that the secured claim has been overpaid, the creditor shall promptly return such overpayment to the Trustee.



## **X. Declaratory Orders Regarding Automatic Stay**

A. Upon application by a party in interest setting forth the facts under which the applicant believes there is no stay in effect, the Court will enter an order declaring there is no stay in effect, unless the Court finds such application without merit. If the application is filed by a secured creditor, the pleading shall additionally state whether the applicant believes its collateral is insured and the basis for its belief as to insurance coverage. Additionally, where the applicant is a secured creditor, the application should be accompanied by proof that the security interest of the applicant has been properly perfected. Such an application should not be filed if there is a previously filed timely motion to extend or impose the stay upon which the Court has not ruled. Any order declaring the stay is not in effect must be promptly served by the applicant on debtor(s), their counsel, the Trustee, and all other interested parties. Any order declaring the automatic stay is not in effect must specifically provide that no action based on the order may be taken for 10 days from the date the order is entered, except that collateral the applicant believes is uninsured may be repossessed. This 10 day period will allow debtor(s) an opportunity to dispute the facts set forth in the application and to ask the Court to reconsider the entry of the order. This period will also allow the Trustee and other

interested parties to request reconsideration for cause. No filing fee should be required for a declaratory type stay order.

B. Any party in interest may file a motion to extend, or where applicable, impose the automatic stay as to any and all creditors, except those that have previously repossessed collateral or taken other action based upon a prior order declaring the automatic stay not in effect. The motion to extend or impose must be filed and the hearing must be held within the applicable time periods set forth in §§362(c)(3)(B) and 362(c)(4)(B). Any order extending or imposing the stay must be promptly served by the movant on the Trustee and all other interested parties. If a motion to extend or impose the automatic stay is unopposed, the Court may grant the Motion without the necessity of a hearing if the motion is verified by the debtor(s) and all the elements necessary for the Court to grant such relief have been properly pled.

C. Upon joint application by the debtor(s) and any creditor(s) agreeing to the extension or imposition of the automatic stay, the Court will approve the extension or imposition of the stay as to that creditor without the necessity of a hearing.

## **XI. Declaratory Orders Regarding Dismissal**

A. Any dismissal pursuant to 11 U.S.C. §521(i) shall not be effective until the Court has entered an order of dismissal. Upon application setting forth the deficiencies forming the basis for dismissal under §521(i), the Court will, within 5 days, enter an order declaring the case has been dismissed by operation of law, unless the Court finds such application without merit. Such application should not be filed if there is a previously filed motion by debtor(s) to extend the time to file the required information, or motion by the Trustee to decline dismissal, upon which the Court has not ruled. Any order dismissing the case must be promptly served by the applicant upon debtor(s), their counsel, the Trustee, and all other interested parties.

B. The debtor(s) may file a motion to extend the time within which to file the information required under 11 U.S.C. §521(a)(1). Such motion must be filed within 45 days of the filing of the petition, and may request an extension of up to 45 days. A motion to extend filed pursuant to §521(i) must include a notice of hearing, a statement as to the time for response, and a further statement that if no response is filed, the relief sought may be granted by the Court with the hearing stricken. The matter must be set by the debtor(s) on the first available docket following the expiration of the time for response.

C. The Trustee may file a motion requesting the Court decline to dismiss despite the failure of the debtor(s) to file the information required under §521(a)(1)(B)(iv) if the Trustee believes the debtor(s) attempted in good faith to file the information required under §521(a)(1)(B)(iv) and that the best interest of creditors would be served by administration of the case. Such motion must be filed prior to the expiration of the time, including any extension, within which the debtor(s) may timely file the required information. A motion to decline dismissal filed pursuant to §521(i) must include a notice of hearing, a statement as to the time for response and a further statement that if no response is filed, the relief sought may be granted by the Court with the hearing stricken. The matter must be set by the Trustee on the first available docket following the expiration of the time for response.

## **XII. Valuation**

A. Claims, including student loans and secured claims that are secured either partially or fully by real estate, may not be treated as unsecured and/or discharged simply by including language purporting to do so in the plan. Such a determination must be made in the context of an adversary proceeding or a contested matter, and counsel shall strictly adhere to applicable case law, the

provisions of the Bankruptcy Code, and Federal Rules of Bankruptcy Procedure that so require. *In re Lemons*, 285 B.R. 327 (Bankr. W.D. Okla. 2002); FED. R. BANKR. P. 7001 and 9014. Valuation of claims secured by real estate may be accomplished by the filing of a motion to determine value containing all pertinent information, including representations relating to the actions taken by the attorney to ascertain the basis for the value asserted and that the motion is being properly served upon parties in interest.

B. A creditor seeking valuation may file a motion to determine value as described in paragraph (A) may combine that motion with an objection to confirmation, so long as the title of the pleading clearly states that it is an Objection to Confirmation and Motion to Determine Value, and the hearing can be conducted at the same time. If a creditor desires to have valuation issues set for hearing separately from the confirmation hearing, it will be the responsibility of the objecting creditor to timely file a separate written motion (if such has not previously been done), to obtain a hearing date, and to provide timely notice of the hearing on valuation to all interested parties. If the valuation hearing is set separately from confirmation, that hearing must be concluded prior to the date set for confirmation.

C. Valuation of claims secured only by personal property for which cramdown is allowed may be accomplished by the debtor(s) clearly and conspicuously indicating in the Chapter 13 plan the proposed value to be paid, and by ensuring that proper notice is provided to the affected creditors.

D. Purchase money obligations secured by motor vehicles acquired for the personal use of the debtor(s) within 910 days prior to the filing of the bankruptcy petition or by other personal property purchased within 1 year prior to the filing of the bankruptcy petition are not subject to cramdown except in cases in which the creditor affirmatively agrees to such treatment. The creditor's agreement to such treatment must be evidenced by a writing signed by the creditor or creditor's representative, and such creditor shall not be deemed to have accepted the plan unless such agreement has been obtained. While the parties are not required to file such writing, it is the opinion of the Court that both parties will best be protected by filing with the Court a pleading entitled Stipulation of Agreement to Treatment Under Plan setting forth their agreement.

E. In the absence of an objection demonstrating the existence of special circumstances, in valuing motor vehicles purchased more than 910 days before the filing of the bankruptcy petition, the Court will follow Judge Lindsey's decision in

*In re Younger*, 216 B.R. 649 (Bankr. W.D. Okla. 1998). **Note:** *Younger* has been superseded by statute as stated in *In re Eddins*, 355 B.R. 849 (Bankr. W.D. Okla. 2006).

F. Nothing contained in paragraphs (C), (D), and (E) above shall be construed to prohibit agreements between debtors and creditors as to the value of personal property.

G. The presumptive interest rate for tax claims owed any local, state, or federal governmental agency shall be the statutory rate applicable to that agency in effect at the time the bankruptcy case is commenced. A representative of such agency may affirmatively agree to an interest rate other than the statutory rate.

### **XIII. Plan Payments/Amendments/Modifications**

A. Unless the plan provides for a 100% distribution to all creditors, the proposed plan shall specify a base amount that will be paid under the plan, as well as the amount that must be paid to general unsecured creditors to satisfy the requirements of 11 U.S.C. §1325(b). Additionally, in cases providing less than a 100% dividend, the confirmation order shall reflect both the base amount and dollar amount the debtor(s) will be required to pay to general unsecured creditors. If the debtor(s) desires to include in the plan any allowed post-petition claims *not subject to automatic inclusion by the confirmation order*, the plan must be modified accordingly.

The failure of any creditor to timely file a proof of claim does not justify modifying the plan to reduce the number or amount of the payments or the term of the plan, so as to reduce the amount the general unsecured creditors would otherwise receive.

B. Any proposed amendment or modification **must** be accompanied by (a) copies of the debtor(s)' pay stubs or paychecks for the two months immediately prior to the request, or if applicable, copies of profit and loss statements for the two quarters immediately prior to the request, **and** (b) amended Schedules I and J.

C. If a confirmed plan provides that payments to certain creditors will be made outside the plan and the debtor(s) fail to timely make such payments, any modification proposed by the debtor(s) must provide that such payments will henceforth be made through the plan.

D. If debtor(s) who have not agreed to make payments by employer wage deduction fail to make a regular payment under a confirmed plan, the Trustee is authorized, pursuant to the Order Confirming Chapter 13 Plan, to implement the use of the employer wage deduction provision of §1325(c) without further notice, unless, prior to the default, the Trustee was advised in writing by the debtor(s) or counsel that the debtor(s) would prefer that the Trustee move for dismissal of the case.



E. Any cure order entered to resolve a motion to dismiss for missed payments must provide that the missed payment(s) will be cured within a period not to exceed six months and must provide for a strict compliance clause. Where circumstances render a six month cure impossible or impracticable, debtor(s) may file a motion to modify providing for a cure period exceeding six months.

#### **XIV. Incurring New Debt**

A. Debtor(s) must obtain permission pursuant to this section prior to incurring post-petition debt, except as set forth in paragraph B below. Any request to incur post-petition debt **must** be initially submitted to the Trustee in letter form. The letter is to include all necessary information for the Trustee to determine whether such transaction is reasonably necessary and feasible, and the letter **must** be accompanied by copies of the debtor(s)' pay stubs or paychecks for the two months immediately prior to the request, or if applicable, copies of profit and loss statements for the two quarters immediately prior to the request, **and** (b) amended Schedules I and J. Once the Trustee has reviewed the information submitted, he may either approve the request without further order of the Court, or may require the debtor(s) to submit the request to the Court via regular motion practice.

B. Debtor(s) may incur post-petition debt for necessary medical care without first obtaining the approval of the Trustee or the Court. Debtor(s) may incur post-petition debt for student loans that enable them to obtain additional formal education for themselves without obtaining the approval of the Trustee or the Court, so long as the repayment of such loan is not scheduled to commence until after completion of the debtor(s)' Chapter 13 plan.

#### **XV(a). Attorney Fees**

**(Applicable to cases filed on or after October 17, 2005, through October 30, 2010.)**

A. General Provisions - applicable to all cases filed on or after October 17, 2005, through October 30, 2010:

1. The attorney fee amounts and rates of payment set forth below are applicable **only** in cases filed on or after October 17, 2005, through October 30, 2010. Attorney fee amounts and rates of payment set forth in prior Guidelines continue to apply to cases filed prior to October 17, 2005.

2. Debtors' attorneys are encouraged to accept a reasonable retainer amount.

3. Pursuant to FED. R. BANKR. P. 2016(b), debtors' attorneys must disclose any monies paid to them from any source on behalf of debtors.

4. The fees set forth below and in prior Guidelines are presumed to be reasonable. However, in cases where an attorney believes additional fees are warranted, the attorney may submit a written fee application together with attorney time records complying with 11 U.S.C. §330, as interpreted in *In re Seneca Oil Co.*, 65 B.R. 902 (Bankr. W.D. Okla. 1986). Additionally, in cases pending on October 14, 2005, where an attorney believes fees above the amounts set forth in prior applicable Guidelines are warranted, the attorney may submit a written fee application together with attorney time records complying with the standards set forth above. Such application will be set for hearing by the Court, and if granted, the manner of payment will be determined by the Court.

5. *All* requests for fees or compensation by Chapter 13 debtors' attorneys shall be approved by the Court, and no attorney fees will be paid in whole or in part by the Trustee before being approved by the Court unless otherwise specified in applicable Guidelines. Except as specifically provided below in this paragraph, after the filing of a petition, a debtor(s)' attorney shall not request, demand or accept from the debtor(s), or from any other person or entity acting on behalf of or for the benefit of the debtor(s), any payment for services or retainer without first obtaining a court order authorizing the fees and specifically permitting direct payment of those fees

by the debtor(s). Additionally, debtors' attorneys shall not state or imply to their clients that the debtor will be billed for further services related to debtor(s)' bankruptcy, even if intended merely to discourage future telephone calls or contact. However, attorneys may collect the post-petition filing fees imposed by the Court for the filing of necessary documents after the petition is filed. Further, an attorney may collect a retainer of up to \$300 in a pending case in which neither the attorney or any partner or associate of the attorney has previously represented the debtor(s) in the current case, and the debtor(s) seek to retain the attorney as new counsel in the current case.

6. No application for attorney fees will be heard or approved prior to confirmation, conversion, or dismissal.

7. An attorney seeking to withdraw from representation of a debtor must fully disclose in the application to withdraw the extent, if any, to which the attorney will act to protect the debtor's interests until either new counsel enters an appearance or debtor elects to proceed *pro se*. Such application must also disclose the amount, if any, of the yet unpaid fee that will be sought by the attorney.

8. The Court presumes the conduct of the Chapter 13 Bar relating to attorney fees will be ethical and will in all respects comply with all applicable statutes, rules, and Guidelines, all of which will be strictly enforced.

9. Attorney fees sought by prevailing parties in main-case contested matters or adversary proceedings will be limited as the Court deems appropriate where the party initiating the matter or proceeding has not first made reasonable attempts to resolve the matter without the necessity of instituting the contested matter or adversary proceeding.

10. The fee schedule will be reviewed every four years, or at lesser time intervals if circumstances so warrant.

B. Pre-Confirmation:

1. Upon confirmation of a case, debtor(s)' attorney will be awarded a fee of \$2,500, inclusive of any retainer received pre-petition, without the necessity of filing a fee application. This fee shall be \$3,500, inclusive of any pre-petition retainer, in a Trustee-identified business related case.

2. Such fee shall constitute compensation for fees and expenses incurred for all pre-confirmation services and nominal post-confirmation services, including, but not limited to, answering clients' general questions, reviewing notice of claims

filed, reviewing annual reports, filing proofs of claims on behalf of creditors, serving the plan or plan summary if necessary, filing motions to extend the automatic stay or to extend the time to file required documents, responding to motions for declaratory orders, attending all hearings, including the §341 meeting and confirmation hearing, and serving the Order Confirming Plan.

3. Such fee shall be paid at a rate of \$400 per month or fifty percent (50%) of the monthly plan payment, whichever is less. The fee is subject to being paid at a lesser rate if payment at such rate would not provide adequate protection and either the Trustee or a creditor objects.

4. If, due to delay caused by neglect of the debtor(s)' attorney, the case is not ready for confirmation at the conclusion of the §341 meeting, but ready for confirmation by the day of the first scheduled confirmation hearing, the allowed fee will be reduced by \$150. If the case is not confirmed by the conclusion of any continued confirmation hearing due to such neglect, the allowed fee will likewise be reduced another \$200. Such reduction will be imposed each time the case is continued due to the attorney's neglect. If the case is not ready for confirmation at any of the foregoing stages and it is clear this occurred through no fault of the

debtor(s)' attorney, the Trustee is encouraged to recommend that the reduction be waived.

C. Post-Confirmation:

1. An attorney fee of up to \$350 will be allowed, without the necessity of filing a separate fee application, for each post-confirmation service. These include, but are not limited to: 1) filing, responding to, and resolving by modification a motion to dismiss; 2) filing, responding to, and resolving by bringing the mortgage inside the plan a motion for relief from the automatic stay; 3) filing a motion to modify other than to resolve a motion to dismiss; and 4) filing a motion to incur new debt (only *after* complying with XIV(A)). The fee includes all services related to the matter, from client interview to the filing of a response and/or motion, through resolution by agreement or appearance at a hearing, and will be awarded upon completion of the matter.

2. Such fee will be paid through the confirmed plan at the rate of \$75 per month, beginning in the month following entry of the Order resolving the matter and awarding the fee. The fee is subject to being paid at a lesser rate if payment at such rate would not provide adequate protection and either the Trustee or a creditor

objects, and payment of the fee will be delayed until any delinquent post-petition ongoing mortgage payment being paid through the plan is brought current.

D. Cases Dismissed or Converted Prior to Confirmation:

1. An attorney fee of up to \$1,250 will be awarded, without the necessity of filing detailed fee application with time records attached, if the case is dismissed or converted prior to confirmation. This fee may consist of any pre-petition retainer paid by the debtor(s), plus monies held by the Trustee after payment of adequate protection payments and fees allowed to the Trustee on adequate protection payments. The Trustee will be allowed to collect a fee equal to the percentage fee on attorney fees paid in cases dismissed or converted prior to confirmation.

E. Cases Converted Post-Confirmation:

1. An attorney may accept from the debtor(s) or bill, without separate order, an attorney fee of up to \$500 for services necessary to convert the case from one under Chapter 13 to one under Chapter 7, 11, or 12.

2. This fee shall include all services relating to the conversion, including the client interview, the filing of the notice of conversion, and any other pleadings necessary to effect the conversion, plus appearance at the §341 meeting.



## **XV(b). Attorney Fees**

**(Applicable to cases filed on or after November 1, 2010.)**

A. General Provisions - applicable to all cases filed on or after November 1, 2010:

1. The attorney fee amounts and rates of payment set forth below are applicable **only** in cases filed on or after November 1, 2010. Attorney fee amounts and rates of payment set forth in prior Guidelines continue to apply to cases filed prior to November 1, 2010.

2. Debtors' attorneys are encouraged to accept a reasonable retainer amount.

3. Pursuant to FED. R. BANKR. P. 2016(b), debtors' attorneys must disclose any monies paid to them from any source on behalf of debtors.

4. The fees set forth below and in prior Guidelines are presumed to be reasonable. However, in cases filed previously or in the future where an attorney believes additional fees are warranted, the attorney may submit a written fee application together with attorney time records complying with 11 U.S.C. §330, as interpreted in *In re Seneca Oil Co.*, 65 B.R. 902 (Bankr. W.D. Okla. 1986). Such

application will be set for hearing by the Court, and if granted, the manner of payment will be determined by the Court.

5. *All* requests for fees or compensation by Chapter 13 debtors' attorneys shall be approved by the Court, and no attorney fees will be paid in whole or in part by the Trustee before being approved by the Court unless otherwise specified in applicable Guidelines. Except as specifically provided below in this paragraph, after the filing of a petition, a debtor(s)' attorney shall not request, demand, or accept from the debtor(s), or from any other person or entity acting on behalf of or for the benefit of the debtor(s), any payment for services or retainer without first obtaining a court order authorizing the fees and specifically permitting direct payment of those fees by the debtor(s). Additionally, debtors' attorneys shall not state or imply to their clients that the debtor will be billed for further services related to debtor(s)' bankruptcy, even if intended merely to discourage future telephone calls or contact. However, attorneys may collect the post-petition filing fees imposed by the Court for the filing of necessary documents after the petition is filed. Further, an attorney may collect a retainer of up to \$750 in a pending case in which neither the attorney or any partner or associate of the attorney has previously represented the debtor(s)

in the current case, and the debtor(s) seek to retain the attorney as new counsel in the current case.

6. No application for attorney fees will be heard or approved prior to confirmation, conversion, or dismissal.

7. An attorney seeking to withdraw from representation of a debtor must fully disclose in the application to withdraw the extent, if any, to which the attorney will act to protect the debtor's interests until either new counsel enters an appearance or debtor elects to proceed *pro se*.

8. The Court presumes the conduct of the Chapter 13 Bar relating to attorney fees will be ethical and will in all respects comply with all applicable statutes, rules, and Guidelines, all of which will be strictly enforced.

9. Attorney fees sought by prevailing parties in main-case contested matters or adversary proceedings will be limited as the Court deems appropriate where the party initiating the matter or proceeding has not first made reasonable attempts to resolve the matter without the necessity of instituting the contested matter or adversary proceeding.

10. The fee schedule will be reviewed every four years, or at lesser time intervals if circumstances so warrant.

B. Pre-Confirmation:

1. Upon confirmation of a case, debtor(s)' attorney will be awarded a fee of \$3,500, inclusive of any retainer received pre-petition, without the necessity of filing a fee application. This fee shall be \$4,500, inclusive of any pre-petition retainer, in a Trustee-identified business related case.

2. Such fee shall constitute compensation for fees and expenses incurred for all pre-confirmation services and nominal post-confirmation services. The Court considers nominal post-confirmation services to include all services not specifically listed in subsection C.i. below. By way of example, non-compensable post-confirmation services include, but are not limited to, answering clients' general questions, corresponding with creditors and the Trustee, filing financial management course certificates, reviewing notices of claims filed, reviewing annual reports, submitting monthly reports in business cases, filing address change notices, and serving the Order Confirming Plan.

3. Such fee shall be paid at a rate of \$400 per month or fifty percent (50%) of the monthly plan payment, whichever is less. The fee is subject to being paid at a lesser rate if payment at such rate would not provide adequate protection and either the Trustee or a creditor objects.

4. If, due to delay caused by neglect of the debtor(s)' attorney, the case is not ready for confirmation at the conclusion of the §341 meeting, but ready for confirmation by the day of the first scheduled confirmation hearing, the allowed fee will be reduced by \$350. If the case is not confirmed by the conclusion of any continued confirmation hearing due to such neglect, the allowed fee will likewise be reduced another \$350. Such reduction will be imposed each time the case is continued due to the attorney's neglect. If the case is not ready for confirmation at any of the foregoing stages and it is clear this occurred through no fault of the debtor(s)' attorney, the Trustee is encouraged to recommend that the reduction be waived.

C. Post-Confirmation:

1. An attorney fee of up to \$500 will be allowed, without the necessity of filing a separate fee application, for the following post-confirmation services: 1) responding to and resolving a motion filed by a party other than the debtor whether by agreed order or modification; 2) filing a motion to modify other than to resolve a motion filed by a party other than the debtor; 3) filing a motion to incur new debt (only *after* complying with ¶ VIII(A)); 4) filing any other reasonably necessary motion; 5) objecting to a proof of claim filed by a creditor; and 6) filing a proof of

claim on behalf of a creditor. The fee includes all services related to the matter, from client interview to the filing of an objection, response and/or motion, through resolution, and will be awarded upon completion of the matter. A motion to modify filed in response to a motion to dismiss or motion for relief from the automatic stay and/or co-debtor stay shall be deemed only one post-confirmation service for fee purposes.

2. Such fee will be paid through the confirmed plan at the rate of \$75 per month, beginning in the month following entry of the Order resolving the matter and awarding the fee. The fee is subject to being paid at a lesser rate if payment at such rate would not provide adequate protection and either the Trustee or a creditor objects.

D. Cases Dismissed or Converted Prior to Confirmation:

1. An attorney fee of up to \$1,750 will be awarded, without the necessity of filing a detailed fee application with time records attached, if the case is dismissed or converted prior to confirmation. This fee may consist of any pre-petition retainer paid by the debtor(s), plus monies held by the Trustee after payment of adequate protection payments and fees allowed to the Trustee on adequate protection

payments. The Trustee will be allowed to collect a fee equal to the percentage fee on attorney fees paid in cases dismissed or converted prior to confirmation.

E. Cases Converted Post-Confirmation:

1. An attorney may accept from the debtor(s) or bill, without separate order, an attorney fee of up to \$750 for services necessary to convert the case from one under Chapter 13 to one under Chapter 7, 11, or 12.

2. This fee shall include all services relating to the conversion, including the client interview, the filing of the notice of conversion, and any other pleadings necessary to effect the conversion, plus appearance at the §341 meeting.

**XVI. Final Reports in Chapter 13 Cases Converted to Chapter 7**

In cases converted from Chapter 13 to Chapter 7, the Chapter 13 Trustee shall not be required to file and transmit a final report and account to the United States Trustee until all funds received in the case have been administered. In accordance with Bankruptcy Rule 1019(5)(B), the Court directs that in such converted cases, the Chapter 13 Trustee shall file and transmit his final report and account as soon as is practicable following all checks clearing the bank account maintained by the Chapter 13 Trustee.

## **XVII. Chapter 13 Docket Procedure**

A. The Trustee shall conduct two confirmation dockets and two motion dockets on every Chapter 13 Docket Day, beginning at 8:30 a.m. and 9:45 a.m., respectively.

B. The Trustee shall make his best effort to schedule any attorney who represents debtors on only one of the two dockets.

C. At the inception of each confirmation docket and motion docket, the Trustee shall first ask for announcements regarding dismissals, conversions, and agreements between opposing parties. The Trustee and his attorney shall then call the scheduled debtor(s)' counsel in order of sign in, and handle all cases for the attorney called before calling the next debtor(s)' attorney.

D. If an attorney is not present when called and has not obtained prior permission to appear late or be excused, the case will be set upon the 2:00 p.m. hearing docket and the Trustee will recommend dismissal.

E. Matters not resolved or continued by the conclusion of the morning docket shall be heard on the Court's 2:00 p.m. docket.



### **XVIII. Interim Chapter 13 Guideline Provision Regarding Final Mortgage Cure Payments**

**NOTE:** This guideline provision addresses only those portions of Rule 3002.1 governing action upon completion of payments by debtors under Chapter 13 plans. It is not intended to address the remaining provisions contained within Rule 3002.1, including but not limited to requirements contained in subsections (b) and (c) requiring timely notices of payment changes and timely notices of fees, expenses and other charges. The Court expects strict compliance with **all** requirements contained within Rule 3002.1.

A. With regard to mortgages on principal residences paid pursuant to 11 U.S.C. §1322(b)(5), Bankruptcy Rule 3002.1(f) requires the Trustee to file notices of final cure payments once debtors complete payments under their plans. Once the Trustee files and serves a notice required by Rule 3002.1(f), the subject mortgage company must file a statement within 21 days pursuant to 3002.1(g) regarding whether the subject mortgage is current or whether additional amounts are required to bring the mortgage current.

B. Pursuant to Rule 3002.1(a), the Trustee shall be required to file a Rule 3002.1(f) notice only with respect to mortgages secured by a principal residence and paid through the plan.

C. Rule 3002.1(h) provides a process for determining whether all amounts owed to a mortgage company have been cured upon the filing of a Rule 3002.1(g) responsive statement. However, Rule 3002.1 does not provide the procedure to be followed upon the filing of a Rule 3002.1(g) responsive statement when it is agreed, or otherwise determined, that the amounts asserted on the responsive statement are owed. It is the opinion of the Court it is in the best interest of both debtors and mortgage companies that mortgages be fully current upon completion of Chapter 13 plans.

D. Upon the filing of a Rule 3002.1(g) responsive statement asserting additional amounts are owed, debtors may follow the procedure for determination set forth in Rule 3002.1(h). Alternatively, if the debtors believe the asserted amounts are owed, or if the Court has determined they are owed, the Court will allow the debtors up to six months to cure the additional amounts through payments to the Trustee, upon entry of an order so providing. During the cure period, the debtors shall timely pay the ongoing regular mortgage payment directly to the mortgage company, and shall retain evidence of payment of the ongoing mortgage. Counsel for the debtors may be allowed an attorney fee of up to \$500 to be paid through the

Trustee at the rate of up to \$100 per month. The Trustee shall be allowed to collect applicable Trustee fees on all additional payments disbursed by him.

E. Upon receipt of a Rule 3002.1(g) responsive statement, the Trustee and debtors may submit a proposed cure order in conformity with provision D above. Such order may be submitted without the filing of a motion or application. If the debtors fail to pay all amounts required by the cure order, the Trustee is authorized to take action to enable the closing of the case without the mortgage default being fully cured, and without further notice to debtors or their attorney.

F. If no action is taken by the debtors within 21 days of the filing of a Rule 3002.1(g) responsive statement, the Trustee may take action to enable the closing of the case without the mortgage default being fully cured, and without further notice to debtors or their attorney.

G. If the mortgage company fails to file the responsive statement required by Rule 3002.1(g), in addition to the specific remedies provided by 3002.1(i), the debtors may file a motion seeking to deem the mortgage current through the last month for which the Trustee paid the ongoing regular mortgage payment. Such motion must be filed within 21 days of the date the responsive statement was required to be filed. Counsel for the debtors may include in the motion a fee of up

