

**U.S. BANKRUPTCY COURT, NORTHERN DISTRICT OF OHIO
ATTORNEY CONSTITUENT GROUP**

2022 BENCH-BAR RETREAT

CONFERENCE MATERIALS

SESSION 1

STUDENT LOAN & CREDIT REPORT UPDATES

STUDENT LOAN UPDATE

Suzana K. Koch, AUSA

Financial Litigation Program, NDOH

STUDENT LOAN UPDATE: you know as much as me

Suzana K. Koch, AUSA

Financial Litigation Program, NDOH



FRESH START INITIATIVE

- Targets Defaulted Student Loans
- Will be eligible for repayment plans
- On April 6, 2022, the U.S. Department of Education (ED) announced an initiative—called “Fresh Start”—to help eligible borrowers in default.
- Fresh Start will continue through one year after the COVID-19 payment pause ends.
- If your loans are eligible, you’ll temporarily regain several student aid and credit reporting benefits. You’ll also get the opportunity to get out of default and keep those benefits for the long term.

FRESH START INITIATIVE

What's available now -

- Access to Federal Student Aid (apply for Federal grants and loans to go back to school)
- Stopped Collection
- Eligibility for other Government Loans
- Restored Ability to Rehabilitate Loans (will not count as the one chance to rehabilitate)

FRESH START INITIATIVE

What's available in the future -

- Loan will be reported as “CURRENT” rather than “IN COLLECTIONS”
- Access to Income-Driven Repayment Plans
- Access to Student Loan Forgiveness Plans
- Access to Short-Term Relief (forbearance and deferment)

FRESH START INITIATIVE

Eligible Loans -

- Defaulted William D. Ford Federal Direct Loan (Direct Loan) Program loans
- Defaulted Federal Family Education Loan (FFEL) Program loans
- Defaulted Perkins Loans held by ED

FRESH START INITIATIVE

NOT Eligible Loans -

- Defaulted Perkins Loans held by schools
- Defaulted Health Education Assistance Loan Program loans
- Student loans remaining with the U.S. Department of Justice for ongoing litigation
- Direct Loans that default after the end of the COVID-19 student loan payment pause
- FFEL Program loans that default after the end of the COVID-19 student loan payment pause

FRESH START INITIATIVE

If you're not sure whether your loans qualify, you can call the Default Resolution Group at
1-800-621-3115

(TTY for the deaf or hard of hearing 1-877-825-9923).

STANDARD REPAYMENT OPTION

- Debt divided by 120 months
- Interest accrues

INCOME DRIVEN REPAYMENT PLANS

- REPAYE (generally 10% of discretionary income)
- PAYE (Generally 10 percent of your discretionary income, but never more than the 10-year Standard Repayment Plan amount)
- Income-Based Repayment (Generally 10 percent of discretionary income if new borrower on or after July 1, 2014*, but never more than the 10-year Standard Repayment Plan amount; or generally 15 percent of discretionary income if not a new borrower on or after July 1, 2014, but never more than the 10-year Standard Repayment Plan amount)
- Income-Contingent Repayment Plan (The lesser of: 20 percent of discretionary income or the payment amount of a repayment plan with a fixed payment over the course of 12 years, adjusted according to income)

Defaulted loans are not eligible for repayment under any of the income-driven repayment plans.

PUBLIC SERVICE LOAN FORGIVENESS

- Available for Direct Loans.
- If you are employed by a government or not-for-profit organization, you may be able to receive loan forgiveness under the Public Service Loan Forgiveness (PSLF) Program.
- PSLF forgives the remaining balance on your Direct Loans after you have made 120 qualifying monthly payments under a qualifying repayment plan while working full-time for a qualifying employer.

TEACHER LOAN FORGIVENESS

- Available for Direct Loans and FFEL Program loans.
- If you teach full-time for five complete and consecutive academic years in a low-income elementary school, secondary school, or educational service agency, you may be eligible for forgiveness of up to \$17,500 on your Direct Loan or FFEL Program loans.
- Note: You may not receive a benefit for the same qualifying payments or period of service for Teacher Loan Forgiveness and Public Service Loan Forgiveness.
- Note: The limited PSLF waiver temporarily waives this restriction for individuals who previously received Teacher Loan Forgiveness.

CLOSED SCHOOL DISCHARGE

- Available for Direct Loans, FFEL Program loans, and Perkins Loans.
- If your school closes while you're enrolled or soon after you withdraw, you may be eligible for discharge of your federal student loan.

PERKINS LOAN CANCELLATION AND DISCHARGE

- Available only for Federal Perkins Loans.
- You may be eligible to have all or a portion of your Perkins Loan canceled (based on your employment or volunteer service) or discharged (under certain conditions). This includes Perkins Loan Teacher Cancellation.

TOTAL AND PERMANENT DISABILITY DISCHARGE

- Available for Direct Loans, FFEL Program loans, and Perkins Loans.
- If you're totally and permanently disabled, you may qualify for a discharge of your federal student loans and/or Teacher Education Assistance for College and Higher Education (TEACH) Grant service obligation.
- One page form, requires doctor's note
- Three years of annual certifications

DISCHARGE DUE TO DEATH

- Available for Direct Loans, FFEL Program loans, and Perkins Loans.
- Federal student loans will be discharged due to the death of the borrower or of the student on whose behalf a PLUS loan was taken out.

DISCHARGE IN BANKRUPTCY (RARE)

- Available for Direct Loans, FFEL Program loans, and Perkins Loans.
- In some cases, you can have your federal student loan discharged after declaring bankruptcy. However, discharge in bankruptcy is not an automatic process.

BORROWER DEFENSE TO REPAYMENT

- Available for Direct Loans.
- You may be eligible for discharge of your federal student loans based on borrower defense to repayment if you took out the loans to attend a school and the school did something or failed to do something related to your loan or to the educational services that the loan was intended to pay for. The specific requirements to qualify for a borrower defense to repayment discharge vary depending on when you received your loan.

FALSE CERTIFICATION DISCHARGE

- Available for Direct Loans and FFEL Program loans.
- You might be eligible for a discharge of your federal student loan if your school falsely certified your eligibility to receive a loan.

UNPAID REFUND DISCHARGE

- Available for Direct Loans and FFEL Program loans.
- If you withdrew from school and the school didn't make a required return of loan funds to the loan servicer, you might be eligible for a discharge of the portion of your federal student loan(s) that the school failed to return.

FORGERY DISCHARGE

- Available for Direct Loans, as well as FFEL Program loans and Federal Perkins Loans held by the U.S. Department of Education.
- Forgery is the creation of a false written document or alteration of a genuine one, with the intent to defraud. Victims of identity theft are frequently also the victims of forgery.
- If you believe you were the victim of forgery, you might be eligible for a discharge of federal student loan(s) fraudulently made in your name.
- Criminal charges for wire fraud/identity theft

ELIGIBILITY FOR PARENT BORROWERS

As with loans made to students, a parent PLUS loan can be discharged if the parent borrower dies, if parent borrower (not the student on whose behalf you obtained the loan) becomes totally and permanently disabled, or if the loan is discharged in bankruptcy. A parent PLUS loan may also be discharged if the child for whom a parent borrowed dies.

In addition, all or a portion of a parent PLUS Loan may be discharged in any of these circumstances:

- The student for whom you borrowed could not complete his or her program because the school closed.
- Your eligibility to receive the loan was falsely certified by the school.
- Your eligibility to receive the loan was falsely certified through identity theft.
- The student withdrew from school, but the school didn't pay a refund of your loan money that it was required to pay under applicable laws and regulations.

STUDENT DEBT RELIEF PLAN

<https://studentaid.gov/debt-relief-announcement/>

SIGN UP

- <https://www.ed.gov/subscriptions>

NEW!! Federal Student Loan Borrower Updates



Part 1. Final extension of the student loan repayment pause



Part 2. Providing targeted debt relief to low- and middle-income families



Part 3. Make the student loan system more manageable for current and future borrowers

THREE PART
PLAN

PART ONE

Student loan repayment pause is extended a final time through December 31, 2022, with payments resuming in January 2023. Interest will begin to accrue again on January 1, 2023 (interest has also been paused).

PART TWO

- U.S. Department of Education will provide up to \$20,000 in debt cancellation to Pell Grant recipients with loans held by the Department of Education and up to \$10,000 in debt cancellation to non-Pell Grant recipients.
- Borrowers are eligible for this relief if their individual income is less than \$125,000 or \$250,000 for households.

PART TWO

The following types of federal student loans with an outstanding balance as of June 30, 2022, are eligible for relief:

William D. Ford Federal Direct Loan (Direct Loan) Program loans

Subsidized loans (interest does not accrue while in school); Unsubsidized loans (interest does accrue)

Parent PLUS loans; Graduate PLUS loans

Consolidation loans, as long as all of the underlying loans that were consolidated were first disbursed on or before June 30, 2022

Federal Family Education Loan (FFEL) Program loans held by ED or in default at a guaranty agency

Federal Perkins Loan Program loans held by ED

Defaulted loans (includes ED-held or commercially serviced Subsidized Stafford, Unsubsidized Stafford, parent PLUS, and graduate PLUS; and Perkins loans held by ED)

PART TWO

Borrowers who are employed by non-profits, the military, or federal, state, Tribal, or local government may be eligible to have all of their student loans forgiven through the Public Service Loan Forgiveness (PSLF) program.

This is because of time-limited changes that waive certain eligibility criteria in the PSLF program. These temporary changes expire on October 31, 2022. For more information on eligibility and requirements, go to [PSLF.gov](https://pslf.gov).

PART TWO

- If you received a Pell Grant in college and meet the income threshold, you will be eligible for up to \$20,000 in debt cancellation.
- If you did not receive a Pell Grant in college and meet the income threshold, you will be eligible for up to \$10,000 in debt cancellation.

What does the “up to” in “up to \$20,000” or “up to \$10,000” mean?

- Your relief is capped at the amount of your outstanding debt.
- For example: If you are eligible for \$20,000 in debt relief, but have a balance of \$15,000 remaining, you will only receive \$15,000 in relief.

PART TWO

- Once a borrower completes the application, they can expect relief within 4-6 weeks.
- Everyone who is eligible is encouraged to file the application, but there are 8 million people for whom we have data and who will get the relief automatically.
- Borrowers are advised to apply before November 15th in order to receive relief before the payment pause expires on December 31, 2022.
- The Department of Education will continue to process applications as they are received, even after the pause expires on December 31, 2022.

[HTTPS://STUDENTAID.GOV/DEBT-
RELIEF-ANNOUNCEMENT/ONE-
TIME-CANCELLATION](https://studentaid.gov/debt-relief-announcement/one-time-cancellation)

PART THREE: PROPOSAL

- **Require borrowers to pay no more than 5% of their discretionary income monthly on undergraduate loans.** This is down from the 10% available under the most recent income-driven repayment plan.
- **Raise the amount of income that is considered non-discretionary income and therefore is protected from repayment,** guaranteeing that no borrower earning under 225% of the federal poverty level—about the annual equivalent of a \$15 minimum wage for a single borrower—will have to make a monthly payment.
- **Forgive loan balances after 10 years of payments,** instead of 20 years, for borrowers with loan balances of \$12,000 or less.
- **Cover the borrower's unpaid monthly interest,** so that unlike other existing income-driven repayment plans, no borrower's loan balance will grow as long as they make their monthly payments—even when that monthly payment is \$0 because their income is low.

FORGIVENESS OF DEBT INCOME

American Rescue Plan had a provision that exempts all federal student loan forgiveness from taxation through the end of 2025. This means no one should have to pay any federal income taxes on any federal student loan forgiveness if it occurs prior to January 1, 2026. This includes the \$10,000 and \$20,000 in student loan forgiveness

13 states could treat student loan forgiveness as taxable income to borrowers:
Arkansas, Hawaii, Idaho, Kentucky, Massachusetts, Minnesota, Mississippi, New York, Pennsylvania, South Carolina, Virginia, West Virginia, and Wisconsin.

**BORROWERS
ARE
DIRECTED TO:**

Student Loans, Forgiveness

Login—Account Info

- **Contact Your Loan Servicer**
Questions—Make a payment—Loan balance
- **Login to My Federal Student Aid**
Federal student loan and grant history

To find out who your loan servicer is

- visit your account dashboard and scroll down to the “My Loan Servicers” section, or
- call the Federal Student Aid Information Center (FSAIC) at 1-800-433-3243.



LOAN SERVICER
INFORMATION

LOAN SERVICER
PHONE
NUMBERS

Loan Servicer	Contact
<u>FedLoan Servicing (PHEAA)</u>	<u>1-800-699-2908</u>
<u>Great Lakes Educational Loan Services, Inc.</u>	<u>1-800-236-4300</u>
<u>Edfinancial</u>	<u>1-855-337-6884</u>
<u>MOHELA</u>	<u>1-888-866-4352</u>
<u>Aidvantage</u>	<u>1-800-722-1300</u>
<u>Nelnet</u>	<u>1-888-486-4722</u>
<u>OSLA Servicing</u>	<u>1-866-264-9762</u>
<u>ECSI</u>	<u>1-866-313-3797</u>
<u>Default Resolution Group</u>	<u>1-800-621-3115 (TTY: 1-877-825-9923 for the deaf or hard of hearing)</u>

WWW.ED.GOV

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FCRA AND CREDIT REPORTING aka why isn't my credit score 800 when my case is discharged?



FAIR CREDIT REPORTING ACT

Bookmark this website:

<https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-III>



FAIR CREDIT REPORTING ACT

The Basics – What’s a Report?

15 U.S.C. 1681a(d) -- A consumer report is any written, oral, or other communication of any information by a consumer reporting agency bearing on consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of....



FAIR CREDIT REPORTING ACT

The Basics – What’s a Report?

15 U.S.C. 1681a(d) cont’d ----- servicing as a factor in establishing the consumer’s eligibility for:

- a. Credit or insurance to be used primarily for personal, family or household purposes;
- b. Employment purposes; or
- c. Other purposes authorized under 15 U.S.C. 1681b



FAIR CREDIT REPORTING ACT

The Basics - What Can be Furnished under 15 U.S.C. 1681b

- **Financial information:** Estimated income, employment, bank accounts, value of car and home.
- **Public records information:** Such as arrests, **bankruptcies**, and tax liens.
- **Tradelines:** Credit accounts and their status. This will also include the data subject's payment habits on credit accounts.
- **Collection Items:** Whether the data subject has unpaid or disputed bills.
- **Current Employment and employment history.**
- **Requests for the credit report:** The number of requests for the data subject's report and the identity of the requestors.
- **Narrative information:** A statement by the data subject or by the furnisher regarding disputed items on the credit report.
- **Health information.”**



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(1)(A):

Subject to subsection (f) and except as provided in subsection (g), if the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly, or indirectly through a reseller, of such dispute, the agency shall, free of charge, conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer or reseller.



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(1)(B):

Except as provided in subparagraph (C), the 30-day period described in subparagraph (A) may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(2)(A):

Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer or a reseller in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding the dispute that the agency has received from the consumer or reseller.



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(3)(A):

Notwithstanding paragraph (1), a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(3)(B):

Upon making any determination in accordance with subparagraph (A) that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(3)(C):

A notice under subparagraph (B) shall include—

- (i) the reasons for the determination under subparagraph (A); and
- (ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(4):

In conducting any reinvestigation under paragraph (1) with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in paragraph (1)(A) with respect to such disputed information.



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(5):

(A) In general If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall—

- (i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and
- (ii) promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(6):

(A) In general

A consumer reporting agency shall provide written notice to a consumer of the results of a reinvestigation under this subsection not later than 5 business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(6):

(B) Contents As part of, or in addition to, the notice under subparagraph (A), a consumer reporting agency shall provide to a consumer in writing before the expiration of the 5-day period referred to in subparagraph (A)—

(i) a statement that the reinvestigation is completed;

(ii) a consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;

(iii) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available;



FAIR CREDIT REPORTING ACT

The Basics - How to Dispute 15 U.S.C. 1681i

15 U.S.C. 1681i(a)(6):

(B) Contents As part of, or in addition to, the notice under subparagraph (A), a consumer reporting agency shall provide to a consumer in writing before the expiration of the 5-day period referred to in subparagraph (A)—

(iv) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and

(v) a notice that the consumer has the right to request under subsection (d) that the consumer reporting agency furnish notifications under that subsection.



FAIR CREDIT REPORTING ACT AND BANKRUPTCY

How should discharged debts appear?

“Reasonable procedures”

- Consumer Data Information Association (CDIA)
- Metro 1 and Metro 2

If discharged, data furnished includes:

- date opened, term to completion

Will not include:

- any information on any delinquency, even if prepetition or pre-discharge, or
- any information on loan if current. Simply no data on the payment status.
- will not be used to calculate credit scores in nearly all cases.



FAIR CREDIT REPORTING ACT AND BANKRUPTCY

How should debts in an active bankruptcy appear?

“Reasonable procedures”

- Consumer Data Information Association (CDIA)
- Metro 1 and Metro 2

If loan is “associated” with an active bankruptcy case,

- petition date,
- active or discharged case status.



FAIR CREDIT REPORTING ACT AND BANKRUPTCY

May also include:

- contractual currentness (Ch. 7), or
- postpetition currentness (Ch. 11, 12, 13)
- dates payment received, but
- most creditors will not include payment information during an active case
- Instead, most report a code that removes the loan from credit score calculation the same as a discharged debt.



FAIR CREDIT REPORTING ACT AND BANKRUPTCY

BEST PRACTICES

1. Get a credit report at intake
2. Review all negative reporting against sections 604 (what), 605 (how old)
3. Carefully scrutinize medical data (timeliness of reporting) and interest rate data if the client is a veteran, active military, or recently returned, or a dependent of either (SCRA interest rate protections)
4. Dispute inaccurate data per section 611
5. Get an expert opinion from a FCRA practitioner
6. Schedule the FCRA claim if one exists on petition/schedules



FAIR CREDIT REPORTING ACT AND BANKRUPTCY

HOW TO HELP WITH A DISPUTE:

- List name, last four of SSN, current mailing address
- Specifically identify the furnisher
- Specifically identify the information that the consumer believes is inaccurate (i.e. the mortgage account reported by XXXXX was reported as of DATE OF REPORT as WHAT (30 days late, balance too high, reported after Chapter 7 Discharge)
- Specifically ask for an initiation for the Automated Credit Dispute Validation with the Furnisher.
- Specifically state reason why you dispute (i.e. current, discharge)



FAIR CREDIT REPORTING ACT AND BANKRUPTCY

HOW TO HELP WITH A DISPUTE:

- Specifically make an ask regarding a resolution. (i.e. I ask you remove the negative information, mark payments current, etc.)
- Specifically ask that the CRA provide a complete consumer disclosure pursuant to 15 U.S.C. §1681g with the results of the reinvestigation.
- Client must send the letter to the Credit Reporting Agency
- Client must include identifying information (Driver's License, Social Security Card, disputed pages from credit report, evidence related to dispute i.e. Bankruptcy Discharge, proof of payments)



FAIR CREDIT REPORTING ACT AND BANKRUPTCY

DAMAGES - 15 U.S.C. 1681n

A person who *willfully* fails to comply with any provision of the FCRA is liable for:

- actual damages
- statutory damages of no less than \$100.00 but no more than \$1,000.00
- Punitive Damages
- Attorney Fees and Costs



FAIR CREDIT REPORTING ACT AND BANKRUPTCY

DAMAGES - 15 U.S.C. 1681o

A person who *negligently* fails to comply with any provision of the FCRA is liable for:

- actual damages
- statutory damages of \$100.00
- Attorney Fees and Costs



CONCURRENT SESSION I

BANKRUPTCY 101/BEST PRACTICES

BEST PRACTICES FOR THE BANKRUPTCY CASE FROM EVERY PERSPECTIVE

The Honorable Tiara N.A. Patton, U.S. Bankruptcy Judge for the Northern District of Ohio (Youngstown)
Dynele L. Schinker-Kuharich, Esq., Standing Chapter 13 Trustee for the Northern District of Ohio (Canton)
Bruce C. French, Esq., Chapter 7 Trustee for the Northern District of Ohio (Toledo)
Cynthia A. Jeffrey, Esq., Director of Bankruptcy, Keith D. Weiner & Associates Co., L.P.A.
Keith L. Borders, Esq., Partner, Borders & Gerace, L.L.C.

I. The Debtor Attorney Perspective, presented by Attorney Keith L. Borders

- A. Create a comprehensive intake form.
 - 1. The form should include all questions asked by trustees and more.
- B. Provide client with list of all documents needed to evaluate and prepare petition.
 - 1. Obtain written confirmation that client will provide all necessary documents and fees before case can be filed.
 - 2. Contract and required bankruptcy disclosures.
- C. Attorney due diligence.
 - 1. Pacer search for previous bankruptcy cases.
 - a. National searches, not just local searches.
 - b. Is the debtor eligible for a discharge?
 - 2. Public records searches.
 - a. State and county internet searches.
 - b. State court searches.
 - c. Utilizing fee-based service (Is it worth it?) – Westlaw, Lexis Nexis, etc.
- D. Preparing means test.
 - 1. Can you prove every deduction?
 - 2. Claiming adult children and others as dependents.
 - 3. Marital Adjustment.
 - 4. Change in circumstances and looking forward 12 months.
 - 5. Filing Chapter 7 cases with small amount of disposable income (borderline cases)
 - 6. Choosing Chapter 13 when debtor qualifies for Chapter 7 (No asset cases).
- E. Petition review and signing with Debtor.
 - 1. Last chance to catch any red flags.
 - 2. Prepare for asset turnovers, preference payments and objections to discharge.

II. The Creditor Attorney Perspective, presented by Attorney Cynthia A. Jeffrey

- A. Know Your Court and Judge
 - 1. Familiarity with local rules and the law.
 - 2. Reference Judge's website for individual practices and procedures.
 - 3. Provide support for the position of the creditor in pleadings.
 - 4. Become involved in organizations that support the creditor practice and keep abreast of recent developments in case law, Bankruptcy Code and Bankruptcy Rules.

- B. Communication is Key
 - 1. Educate client about the laws, their position, in general and relative to the particular jurisdiction.
 - 2. Discuss matters with counsel for the Debtor; work toward resolution where possible; establish good rapport with opposing counsel for the benefit of your client, the court and the debtor.
 - 3. Interact with court room deputy to promptly report matters and timely submit and or revise agreed orders.
- C. Advocate with Respect and Reasonableness
 - 1. Ensure all pleadings and exhibits filed are clear, legible and are fully understood by counsel.
 - 2. Guide client to best outcome of contested matters.

III. The Trustee Perspective, presented by Dynele Schinker-Kuharich, Chapter 13 Trustee and Bruce C. French, Chapter 7 Trustee

- A. Chapter 13 Cases – Trustee Dynele Schinker-Kuharich
 - 1. Always be prepared with the basics before the 341 Meeting.
 - 2. Always *thoroughly* review all documents before you provide them to your Trustee (i.e., do NOT assume you know why your Trustee is asking for the document).
 - 3. If your case is something more than basic, logic dictates that you be prepared for some document request that is something more than basic. Have those documents on hand.
 - 4. Succession Planning.
- B. Chapter 7 Cases – Trustee Bruce French
 - 1. Chapter 7 Protocols.
 - 2. Responding to Correspondence from Chapter 7 Trustee’s Office.

IV. The Judge’s Perspective, presented by The Honorable Tiara N.A. Patton

- A. Knowledge – Regarding the facts of your client’s case, the Bankruptcy Code, the Bankruptcy Rules (Service Requirements), Administrative Orders, General Orders and Court’s practices and procedures, and any amendments to same.
- B. Specificity – Motions/Applications/Pleadings seeking relief should cite applicable law and the facts that support the reason the Court should grant the relief being requested.
- C. Preparedness – Be in the best position to advocate on behalf of your client before the Court.

V. Conclusion

CONCURRENT SESSION II

SUBCHAPTER V (ALMOST) THREE YEARS LATER: WAS A GOOD IDEA A GOOD IN PRACTICE?

[Discussion Only; Materials N/A]

CANTON TOWN HALL

**MEMORANDUM RE: CANTON
TRANSITION PROCEDURES FOR
CHAPTER 7 CASES AND RELATED
ADVERSARY PROCEEDINGS ASSIGNED TO
JUDGE MARY ANN WHIPPLE**

**MEMORANDUM RE: CANTON TRANSITION
PROCEDURES FOR CHAPTER 7 CASES AND RELATED ADVERSARY
PROCEEDINGS ASSIGNED TO JUDGE MARY ANN WHIPPLE**

As previously announced, Canton cases will be handled by Judges Gustafson, Patton and Whipple starting on October 1, 2022, after Judge Kendig's retirement. There will be changes in procedure and scheduling to facilitate the transition.

Judge Whipple will handle Chapter 7 matters and related adversary proceedings. The purpose of this memorandum is to highlight changes in current Chapter 7 practices and procedures in Canton. They will be effective on October 1, 2022. As the transition progresses, Judge Whipple will continue to evaluate and revise procedures as necessary.

STAFFING

Anita Pribula will serve as the courtroom deputy for Canton matters assigned to Judge Whipple. Scheduling and other questions that would generally be directed to the courtroom deputy should continue to be directed to her at (330) 458-2478.

Judge Whipple's Judicial Assistant is Andrea Schultz and her law clerk is Cathy Garcia-Feehan. They will assist in handling Judge Whipple's Canton docket. They can be reached in Toledo at (419) 213-5621.

GENERAL SCHEDULING

In a material departure from existing practice, Judge Whipple does not permit self-scheduling of matters. Rather the Clerk's office, courtroom deputy and judge will schedule matters for hearing as necessary, either by notice or order as deemed appropriate. Counsel will not necessarily be contacted in advance about a scheduled hearing date. Any continuance of a scheduled hearing requires a motion indicating whether opposing counsel consents to the requested continuance. Contact the Canton Courtroom Deputy for the continued hearing date and time and then upload an appropriate order.

Judge Whipple relies on the definition of "after notice and an opportunity for hearing" in Bankruptcy Code § 102(2) in Chapter 7 scheduling. So she will generally not hold a hearing on a properly noticed motion, application or objection if there is no timely response/objection filed and served. Sometimes, even if there is no

timely objection, she will still schedule a hearing on a matter if she has questions or concerns. Even on default, she will evaluate whether a cognizable basis for the relief sought has been stated.

Because Judge Whipple does not permit self-scheduling, and the Clerk will serve notices of hearing or orders setting hearings as appropriate if a hearing becomes necessary, Judge Whipple expects compliance with Local Bankruptcy Rule 9013-1 on filings as the means of notifying other parties-in-interest of the response date to the request for relief, whether it is 14 days (usually) or some other period of time. The exception, as set forth in more detail below, is for motions for relief from stay, where Local Bankruptcy Rule 9013-1 language will not be required, because the Clerk will be sending an immediate Official Form B420A notice of motion. The notice will include a response deadline by date and the preliminary hearing date if a response is timely filed. Parties will otherwise no longer be expected to serve motion notices on Official Form B420A on other matters.

Hearing/Pretrial Conference Times: Judge Whipple will retain the practice of scheduling Chapter 7 matters requiring a hearing on designated Mondays.

Miscellaneous Chapter 7 matters will continue to be scheduled for hearing at 3:00 p.m. on designated Mondays.

Pretrial conferences in Adversary Proceedings related to Chapter 7 matters will be scheduled for designated Mondays, instead of on Wednesdays. Pretrial conferences will be scheduled in time slots starting at 2:00 p.m.

Preliminary hearings on stay relief motions (with further procedures set forth below) will be initially set for every Monday at 1:30 p.m. When there is a response to a motion and a preliminary hearing is necessary, Judge Whipple may later change the hearing date to avoid other conflicts with her schedule.

Reaffirmation agreements that require a hearing, or that Judge Whipple decides in her discretion to hear because of an un rebutted presumption of undue hardship, will be set on one designated Monday each month at the end of the 3:00 p.m. docket.

Trials or contested matters requiring an evidentiary hearing will be scheduled in consultation with counsel for available days that Judge Whipple can

fit in given her schedule and that do not conflict with Canton scheduling for Judges Gustafson and Patton.

HEARING PROCEDURES--VIRTUAL VERSUS IN PERSON

Judge Whipple initially intends to conduct all Canton non-evidentiary matters virtually, generally by telephone. Call-in information will be as follows: **Parties should call (866) 390-1828 and use Access Code 8812665 followed by the pound sign, which is #.**

Judge Whipple intends to conduct trials and evidentiary hearings in person in the Canton courtroom unless, upon consultation with the parties and in her judgment, a matter can effectively and more efficiently be handled via Microsoft Teams. Mask-wearing and other in-court health and safety protocols for in-court proceedings will be addressed in accordance with the then-existing COVID-19 status in Stark County.

Any trial or other contested matter or proceeding at which the court intends to hear witness testimony and take other evidence will be specified as an evidentiary proceeding in a scheduling order. In the absence of a trial or other specification that evidence will be taken, lawyers should assume proceedings will consist of status updates, oral argument and scheduling discussions. Questions about whether a proceeding will be evidentiary should be directed to the courtroom deputy.

Clients are welcome and encouraged to attend pretrial conferences and other court proceedings, virtual and otherwise. But client attendance is not required **by the court** unless the court informs counsel that their client must appear.

ADVERSARY PROCEEDINGS

These procedures will only apply to Adversary Proceedings assigned to Judge Whipple. Judges Gustafson and Patton may handle Adversary Proceedings assigned to them differently.

Judge Whipple requires compliance with Bankruptcy Rule 7007.1 by any party to an adversary proceeding that is a corporation as defined by Section 101(9) of the

Bankruptcy Code. Compliance with this rule will also be emphasized district-wide in the coming months.

Judge Whipple schedules in the summons and conducts an early pretrial conference in every adversary proceeding. Whether virtually or in person, Judge Whipple will conduct all pretrial conferences on the record, not just those where a party is unrepresented.

Judge Whipple will not be entering and directing service of Judge Kendig's form "Initial Pretrial and Case Management Order" in connection with service of the summons and complaint. Nor does she use or expect to use a similar order in connection with service of the summons and complaint.

Judge Whipple does not require formal compliance with Rules 26(f) and 26(a)(1) of the Federal Rules of Civil Procedure before the initial pretrial scheduling conference set in the summons. Among other reasons, defendants are often not represented by counsel early on, especially if a defendant is a Chapter 7 debtor and the plaintiff is a Chapter 7 trustee. Also, many routine adversary proceedings do not require this level of procedure and practice to be cost-effectively and efficiently addressed. The matters and actions specified by those rules will be discussed at the pretrial conference. Deadlines set at the initial and other pretrial conferences will become part of the Rule 16 scheduling order issued after the pretrial conference. Although the formal report and discovery plan need not be filed before the pretrial conference occurs, Judge Whipple generally expects consideration of and discussions about Rule 26 matters with clients and opposing counsel where there is an appearance of record.

The court values transparency of the docket and court record. The court expects that agreements for extensions of time to respond to pleadings or discovery be reflected on the court record. Counsel may either submit an agreed order or stipulation through the e-orders program or file an agreed motion for an enlargement of time. Making such agreements a matter of record reduces miscommunication and keeps the court apprised of case progress.

If a request to extend the response date to the complaint is filed or agreed to, the pretrial conference set in the summons will not automatically be vacated and rescheduled absent a separate motion for cause. Judge Whipple generally prefers to conduct the pretrial conference even in the absence of a response to the

complaint. If there is a reason not to go forward with the initial pretrial conference, then a party needs to file a separate request to continue it. An example of a good reason to continue a pretrial scheduling conference is that the parties are engaged in settlement discussion that present a reasonable probability of success.

Judge Whipple will follow a different procedure to secure compliance with the consent provisions of Bankruptcy Rule 7008 and 7012(b). Instead of a Clerk's office deficiency notice and follow up to obtain filing of amended pleadings where initial compliance has not occurred, Judge Whipple will address this subject at the initial pretrial conference. Generally the Rule 16 scheduling order will direct as necessary the filing of a supplemental pleading to address consent, only. Judge Whipple prefers supplemental pleadings to amended pleadings to address consent issues.

Judge Whipple's view is that a default judgment cannot be entered against a party without the preliminary step of entry of a Clerk's entry of default under Rule 55(a). The Local Rules do not specify a procedure for Clerk's entries of default. Judge Whipple does not require (but does not discourage or prohibit) a separate request or application for a Clerk's entry of default to be filed, as the status of an apparent default will be addressed at the pretrial conference. If service appears proper the court will generally direct entry of a default by the Clerk in the Rule 16 scheduling order, while also setting a deadline for filing a motion for default judgment. Often, however, a request for issuance of an alias summons will need to be filed to remedy a service defect. Judge Whipple will also set motions for entry of a default judgment for hearing instead of immediately granting the motion without a hearing.

If not addressed in the complaint, the court expects compliance with the Servicemembers Civil Relief Act in connection with any motion for default judgment filed in an adversary proceeding with an individual defendant.

STAY RELIEF MOTIONS IN CHAPTER 7 CASES

Judge Whipple will not require Official Form B420A notices or Local Bankruptcy Rule 9013-1 language in connection with motions for relief from stay. Instead, the Clerk will send an immediate notice of motion conforming to Official Form B420A. The notice will include a response deadline by date and the

preliminary hearing date if a response is timely filed. Motions for relief from stay are generally the only motions upon which a hearing date will routinely be set before the response deadline has passed.

As the Official Form B420A notice will indicate, Judge Whipple will not hold a preliminary hearing on a motion for relief from stay unless a response is timely filed. Judge Whipple will not enter stay relief orders on default until on or after the day set for the preliminary hearing even if there is no response to the motion. The reason for holding off on order entry is that debtors sometimes show up for a preliminary hearing even if they are represented.

Continuances of a preliminary hearing at a debtor or trustee's request generally require the consent of movant's counsel, which should be stated in the motion for a continuance. Contact the Canton Courtroom Deputy for the continued hearing date and time and then upload an appropriate order.

Judge Whipple will not sign an order containing waiver of the 14 day stay period of Bankruptcy Rule 4001(a)(3) unless she finds that satisfactory cause for doing so is set forth in the motion. If she does not find cause, the waiver language will be stricken from the proposed order without further notice or a hearing.

ORDER SUBMISSION

As previously communicated to registered CM/ECF users in this district on September 15, 2022, the transition judges require submission of a proposed form of order through the CM/ECF e-orders program at the time of filing of any request for relief. Unless required by rule, you may but are not required to also attach a copy of the proposed order to your filed document as an exhibit. Even if you do so, you must also submit separately a proposed form order through the e-orders program at the time of filing a motion or other request for relief. All orders require a 4-inch margin at the top for electronic processing. The court does not expect a proposed form of judgment to be submitted at the time of filing of a complaint.

MISCELLANEOUS MATTERS

IFP Applications. As with all other requests for relief, a proposed form of order waiving the filing fee must be submitted through the court's CM/ECF order submission system at filing. Judge Whipple will generally set fee waiver requests for hearing if it appears that a debtor's income exceeds the 150% income poverty

ceiling for a household of the specified size set in 28 U.S.C. § 1930(f). Another circumstance that may lead Judge Whipple to set a hearing on an IFP application is if an attorney's fee information is inconsistent as between the Rule 2017 compensation statement, the statement of financial affairs and the application. She will exercise her discretion to decide whether to permit waiver of the filing fee if any attorney's fee is paid, and is unlikely to do so if the disclosed attorney's fee reflects counsel's full routine fee for representation of a debtor in a Chapter 7 case.

Power of Attorney Forms. If a case record or a filing shows the use of a power of attorney form, Judge Whipple will expect the form to be separately filed on the record. Sometimes she will set a hearing on the power of attorney.

Attorney's Fees. Judge Kendig's memorandum on a presumptive Chapter 7 case fee amount will be revoked. Where Judge Whipple has concerns about attorney's fee amounts, she will set them for hearing and review under 11 U.S.C. § 329.

Applications to Employ. Judge Whipple expects all applications to employ attorneys and other professionals to be noticed out as required by Local Bankruptcy Rule 9013-1. That includes an application filed by a trustee to employ herself or himself as attorney for the trustee. As with other matters, a proposed order needs to be uploaded with any application to employ a professional at filing.

Corporations as Debtors. Judge Whipple requires compliance with Bankruptcy Rule 1007(a) by a debtor that is a corporation as defined by Section 101(9) of the Bankruptcy Code. Compliance with this rule will also be emphasized district-wide in coming months.

Mary Ann Whipple
Chief Judge
United States Bankruptcy Court
Northern District of Ohio, Western Division

Rev 2022.1

September 30, 2022

CONCURRENT SESSION A

**MORTGAGE FORECLOSURES &
LOAN MODIFICATIONS**

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MORTGAGE FORECLOSURES AND LOAN MODIFICATIONS

a. State of foreclosures:

1. Mortgage foreclosures.

a. Original moratorium March 27, 2020.

- i. In response to COVID-19 and the related economic fallout, Congress passed and President Trump signed into law the Coronavirus Aid, Relief and Economic Security Act (commonly known as the CARES Act) on March 27, 2020. Among other measures, the CARES Act provided relief from foreclosure for eligible homeowners.
- ii. Initially until at least August 31, 2020, homeowners were eligible for a moratorium (i.e. a pause) on mortgage payments and protection from foreclosure if they had a federally backed mortgage loan. These include loans backed by Fannie Mae, Freddie Mac, the Federal Housing Administration, the Veterans' Administration or the U.S. Department of Agriculture. Most, but not all, first mortgage loans since 2010 are federally backed mortgage loans. However, lenders and servicers of conventional loans voluntarily paused foreclosures at first and then proceeded only for properties certified as vacant.
- iii. On June 28, 2021, the Consumer Financial Protection Bureau (CFPB) finalized amendments to federal mortgage servicing regulations to enforce ongoing economic recovery from as the moratoria phased out, effective August 21, 2021.
- iv. CFPB amendments required servicers to meet temporary special procedural safeguards before initiating foreclosure for certain mortgages through the end of 2021.
- v. On January 1, 2022, many loans were eligible again for foreclosure
- vi. On June 30, 2022, the moratorium on most residential foreclosures expired. Foreclosure proceedings will resume unless homeowners are under review for the Homeowner Assistance Fund (HAF) administered by the Department of Housing and Community Development (DHCD). If homeowners are under review for HAF, the moratorium is extended until September 30, 2022.
- vii. Final moratorium due to expire September 30, 2022.

- b. Proceeding with mortgage foreclosures post moratoria -- primary change - once a loan is referred for foreclosure, the CFPB regulated debt validation notice must be sent to the borrower, a model form for which was proscribed by the CFPB (see

attached), effective November 30, 2021. The intention was to create a uniform notice as prior to that date, only certain language was required to be included in what then was known as the Fair Debt Collection Practices notice. The validation notice is to advise a borrower of the amount owed, using (typically) the Monthly Periodic Statement provided by the lender that is sent to the borrower on a monthly basis as required by the CFPB, and provides an opportunity for the borrower to dispute the debt owed. The foreclosure may proceed once an affidavit of debt and payment history is provided to the borrower to evidence the amount owed.

c. Statistics:

- i. As of April 21, 2022, mortgage foreclosures were up by 132% from April 2021.
- ii. Foreclosure activity is only running at about 57% of what the foreclosure activity was in the first quarter of 2020 prior to the pandemic.

2. Tax certificate foreclosures.

- a. Not subject to foreclosure moratoria.
- b. Ohio Revised Code Sections 5721.30 to 5721.41 governs tax certificates.
- c. Of 88 counties in Ohio, roughly 50% sell tax certificates for collection of delinquent taxes.
- d. More and more counties looking to sell tax certificates to recoup delinquent taxes.
- e. Tax certificate has super priority status over all other liens.
- f. Attorney's fees and court costs incurred are collectible from owner as part of the certificate amount due.
- g. Tax certificates run with the land, are *in rem* debt, and are not subject to Chapter 7 or 13 discharge.
- h. Ohio Revised Code now allows tax certificates to be sold by the County Sheriff or a Private Selling Officer (Section 5721.372(A)).
- i. Only 2 outcomes of tax foreclosure sale: 1) property sold to successful third-party purchaser; or 2) the property forfeits to the certificate holder if after two consecutive sales, the property is not sold.

OCTOBER 2021

Debt Collection Model Forms

Model Validation Notice - English



1. Introduction

The following is a copy of the model validation notice provided in Appendix B of the Debt Collection Rule. Compliant use of the model validation notice provides safe harbor for the Rule's content and format requirements. 12 CFR 1006.34(d)(2).

More information on the requirements to obtain safe harbor if using the model validation notice are provided in Section 12.1.3 of the [Debt Collection Rule Small Entity Compliance Guide](#).

North South Group
P.O. Box 123456
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.example.com

To: Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2017, you owed:		\$	2,234.56
Between January 2, 2017 and today:			
You were charged this amount in interest:	+	\$	75.00
You were charged this amount in fees:	+	\$	25.00
You paid or were credited this amount toward the debt:	-	\$	50.00
Total amount of the debt now:		\$	2,284.56

How can you dispute the debt?

- **Call or write to us by August 28, 2020, to dispute all or part of the debt.** If you do not, we will assume that our information is correct.
- **If you write to us by August 28, 2020,** we must stop collection on any amount you dispute until we send you information that shows you owe the debt. You may use the form below or write to us without the form. You may also include supporting documents. We accept disputes electronically at www.example.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor, if different from the current creditor.** If you write by August 28, 2020, we must stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.example.com/request.
- **Go to www.cfpb.gov/debt-collection to learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you.
- Contact us about your payment options.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Notice: See reverse side for important information.



Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-2222

Person A
2323 Park Street
Apartment 342
Bethesda, MD 20815

How do you want to respond?

Check all that apply:

- I want to dispute the debt because I think:**
 - This is not my debt.
 - The amount is wrong.
 - Other (please describe on reverse or attach additional information).
- I want you to send me the name and address of the original creditor.**
- I enclosed this amount:** \$

Make your check payable to *North South Group*. Include the reference number 584-345.

- Quiero este formulario en español.**

Patrick D. Miller, Esq.

Luftman, Heck & Associates LLP
2012 W. 25th Street, Suite 701
Cleveland, Ohio 44113
pmiller@lawlh.com
216-586-6600 (Phone)
216-539-9326 (Fax)

MORTGAGE FORECLOSURES AND LOAN MODIFICATIONS

- A. What pushes people into foreclosure.
- B. Options available pre-foreclosure.

OPTIONS FOR PROPERTY OWNERS

Defend in court: Available if property owner thinks there is some type of error.

- **Improper service of notice.**
- **Improper loan closing.**
- **Breach of contract.**
- **Lack of standing/defective chain of title.**
- **Fraud and misrepresentation.**

Become a landlord: Attractive if property is multi-unit and/or if market rent is higher than mortgage payment.

Refinance: Available when there is equity in property and credit history is good. Refinancing involves a new transaction with the bank, so terms change.

Reinstatement: Typically requires a lump sum payment.

Government assistance: Options through HUD and Save the Dream

Loan modification: Available when property is underwater.

Forbearance: Mortgage company agrees to not initiate, or pause foreclosure to some future date, giving property owner time to reinstate loan. Fannie or Freddie Mac, programs like the government forbearance plans temporarily pause or reduce your mortgage payments. Servicer allows up to 6 months of missed payments if you've run into financial difficulty due to the Coronavirus, such as job loss, reduction in work hours or illness. Mortgage companies are not allowed to ask for proof of the hardship. Up to two six month extensions available so long as the initial forbearance was received prior to 2/28/2021 if Fannie Mae or Freddie Mac. or 06/30/2020 if HUD/FHA, USDA or VA. The same Forbearance programs are available with private lenders but the difference is the length in time. While Fannie and Freddie Mac loans may get a maximum of 18 months of relief. Conventional or Private Investor loans may only get 3-6 months.

Assumption: Mortgage lender agrees to allow someone else to take over the loan. Most common with relatives.

Redemption: Equitable (pre-foreclosure) and Statutory (pre-confirmation of sale)

Reverse Mortgage: Property owner must be over 62, reside in property, and have significant equity in property. Provides ability for property owner to tap into the equity in the property without having to sell it.

Deed in lieu: Typically available if there is only one mortgage on the property. Property is underwater and mortgage company agrees to release the mortgage in exchange for the deed, avoiding the time and costs of the foreclosure process.

Deed for lease: Mortgage company provides negotiated lease terms in exchange for the deed.

Short sale: Property owner sells property for less than what is owed with mortgage company's blessing.

Bankruptcy: Chapter 7 (Discharge Deficiency) and Chapter 13 (Retention)

Do nothing: Provides property owner with rights in the property until confirmation of sale. Typically at least 4 months after filing, sometimes much longer.

RESOURCES:

https://www.hud.gov/topics/avoiding_foreclosure

<https://savethedream.ohiohome.org>

SAVE THE DREAM: HELP FOR HOMEOWNERS

Save the Dream Ohio provides financial assistance to eligible Ohio homeowners financially impacted by the coronavirus pandemic. The Ohio Housing Finance Agency, on behalf of the state of Ohio, received \$280 million from the U.S. Treasury's Homeowner Assistance Fund for the program. The program is scheduled to run until September, 2025 OR until funding is depleted.

TWO PROGRAMS

Mortgage Assistance

What is it? It provides eligible Ohio homeowners that have experienced financial hardship as a result of the pandemic with assistance to pay delinquent mortgage payments and/or future payments for up to six months. A homeowner may be eligible to receive up to \$25,000 in combined mortgage assistance. Homeowner must have an income at or below the annual eligibility threshold for the household size (see chart below).

Persons in Family							
1	2	3	4	5	6	7	8
\$103,350	\$118,200	\$132,900	\$147,600	\$159,450	\$171,300	\$183,150	\$194,850

The Mortgage Assistance component of the program can even assist with delinquent property taxes if the property taxes included in the mortgage payment.

Application process:

Ohio homeowners can visit savethedream.ohiohome.org or call 888-404-4674 to apply for assistance. Document requested included mortgage statement, plus the most recent tax return OR most recent 30 days income for all adult household members. Homeowners will not receive a check to pay their mortgage. Once an application is approved, the Ohio Housing Finance Agency will make payments directly to the applicant's mortgage lender/servicer, which will be applied to the homeowner's mortgage account.

Utility Assistance Plus:

What is it? The program aims to reduce the number of foreclosures and prevent the loss of utilities for homeowners across Ohio. The Save the Dream Ohio–Utility Assistance Plus provides eligible Ohio homeowners experiencing pandemic related financial hardship up to \$10,000 in assistance to prevent utility service disconnection and/or prevent defaults on non-escrowed property taxes or homeowner fees. Homeowners with a primary residence in Ohio, have experienced financial hardship related to the COVID-19 pandemic, and have an income at or below the annual eligibility threshold for the household size (see chart above).

The following expenses are eligible:

- Natural Gas
- Electricity, including renewable resources
- Bulk fuel, including propane, fuel oil, coal and wood
- Water
- Sewer
- Trash Removal

- • Broadband internet service
- • Property Taxes

Additional housing expenses that are eligible for payment include:

- • Homeowners insurance
- • Flood insurance
- • Mortgage insurance
- • Homeowner's association fees or lien
- • Condominium association fees
- • Lot Rent
- • Common Charges

Assistance can include bringing bills current, disconnection and reconnection fees, and up to six months in future payments.

Application process:

To apply for Utility Assistance Plus, visit savethedreamohio.ohiohome.org to see if the Community Action Agency in your county is a participating partner. You will complete a Utility Assistance Plus application through the Community Action Agency. Documents needed: Most recent tax return OR most recent 30 days income for all adult household members, utility, insurance and/or tax bills. Homeowners will not receive a check to pay their utilities or other housing costs. The local Community Action Agency will make payments directly to the utility company, county auditor or lender/service provider. Payments will be applied directly to the homeowner's account.

Loss Mitigation | Options

2022

Beth Ann Schenz

Senior Vice President

Default Services Director (Customer Resolution) and Counsel

Phone: 330.384.7050

Fax: 877-229-7516

The Huntington National Bank - Legal Department

3 Cascade Plaza

Akron, Ohio 44308

CAS055

Beth.Ann.Schenz@huntington.com

huntington.com

- **Overview**

- A temporary increase in the monthly mortgage payments for the purpose of spreading out the past due amount on the loan.
- The customer pays the regular monthly payments plus an extra amount to pay the back the past due
- These payments usually take place over a 4 - 6 month period.

- **Benefit**

- Allows the customer to catch up on delinquent payments without having to pay the total amount due at once.
- Customers will not receive collection calls while on a repayment plan.
- Shows on a credit report as a partial payment agreement.

- **When**

- When the customer wants to retain ownership of the home, has recently faced a short-term hardship, and has a surplus in his/her income that would allow the loan to be brought current in four to six months.
- When a loan defaults, this is typically the first loss mitigation option reviewed.

- **Loan Terms**

- Monthly payment – Will temporarily increase
- Interest rate – No change
- Loan term length – No change
- Life of Loan Cost – The plan will include already-incurred late fees

- **Overview**

- A temporary suspension or reduction in the mortgage payment, typically for 90 days.
- A lump sum equal to the amount of the missed payments will be due at the end of the forbearance period. Some creditors offer the option to defer the missed payments to the end of the loan.
- Allows the customer time to recover from a hardship or work with the creditor on a permanent solution to the hardship.
- The loan will be considered past due until it is brought current.

- **Benefit**

- Allows the customer time to work on improving and/or stabilizing their financial situation.

- **When**

- When a customer is experiencing a short- term hardship or temporary reduction in income that will not allow him/her to keep up with their mortgage obligation. (pending disability claim, unemployment, natural disaster).

- **Loan Terms**

- Monthly payment – Reduce/stop temporarily
- Interest rate – No change
- Loan term length – May not increase the length of the loan term but subsequent loan-term options may.
- Life of Loan Cost – No change except if length changes.

- **Overview**

- Defers the amount the customer owes to the end of your loan.
- The customer will have to pay the deferred amount when the customer makes the last loan payment/pay off the balance of the loan (sale/transfer/refinance), or when the loan reaches the maturity date.

- **Benefit**

- Allows the customer time to work on improving and/or stabilizing their financial situation.

- **When**

- When a customer is experiencing a short- term hardship or temporary reduction in income.

- **Loan Terms**

- Monthly payment – No change
- Interest rate – No change
- Loan term length – Will increase the length of the loan term
- Life of Loan Cost – Accruing interest

- **Overview**

- A change in the terms of an existing mortgage note, usually the interest rate or maturity date, to make it more affordable or manageable for the customer.
- The following terms may be changed
 - An increase in the amount of the UPB caused by capitalization of interest or non-interest arrearages, Escrow amounts and/or other advances
 - A change in the Note Rate
 - A change in the monthly payment
 - A change in the maturity date
 - A forbearance of a portion of the principal balance (no write-off or permanent reduction of the UPB, delinquent interest or other non-interest arrearages of the Mortgage is allowed)
 - Change in the product type (e.g., an ARM to a fixed-rate Mortgage).
- Brings the loan current after the customer successfully makes the reduced payment during a trial period.
- May add past due amounts to the unpaid principal balance.
- May move a portion of the principal to the end of the loan to lower the payments; called principal forbearance.
- May include a lower monthly payment or lower interest rate.

- **Benefit/Consideration**

- Brings the loan current and permanently modifies the account so that that future payments or terms are more manageable.
- The customer must be willing to provide information needed to review the situation including, answering questions concerning finances, employment and hardship.

- **When**

- When the customer wants to retain ownership of the property, is experiencing a long-term hardship, but is in a financial position to maintain some regular monthly payment on the home.
- The customer is ineligible to re-finance and a repayment plan would take longer than 6 months to bring current.
- The customer can maintain payments based on the modified terms of the loan.

- **Loan Terms**

- Monthly payment – May permanently change. Not all modifications result in a lower payment.
- Interest rate – May increase, stay the same or decrease.
- Loan term length – May stay the same or increase
- Life of Loan Cost – May be affected with an increase or decrease depending on unpaid principal balance, interest rate or term of the modification

- **FHA (Partial Claim)**

- If your mortgage is insured by FHA, the customer may qualify for an interest-free loan from your mortgage guarantor in order to bring your account current.
- If your mortgage is insured by the FHA, the creditor will review your loan for an FHA modification program. You may be eligible if you meet all the following requirements:
 - You originated the mortgage loan at least 12 months ago.
 - You own the home, live there full time, and are committed to keeping the property as your primary residence.
 - Your mortgage payment is not affordable due to a financial hardship.
 - The home is in livable condition and not a condemned property.

- **VA**

- If your mortgage is guaranteed by the VA, the creditor will review your loan for a VA modification program. You may be eligible if you meet all the following requirements:
 - You have made at least twelve full payments during the life of the mortgage.
 - Your mortgage payment is not affordable due to a financial hardship.
 - The home is in livable condition and not a condemned property.

- **Fannie Mae**

- Modification with step rate feature
- The Flex Modification
 - Brings your loan current
 - May lower your mortgage payment to a more affordable amount
 - Adds your past-due amounts to the unpaid loan balance, and extends the term of your loan to 40 years from the date of the completion of the modification
 - May lower your interest rate
 - May defer some of your loan balance into a non-interest-bearing balance

- **Overview**

- Customer works with a realtor to sell his/her home for less than the balance remaining on the mortgage to avoid foreclosure.
- Takes into consideration the current appraised value of the home when determining an acceptable sales price, which will need to be agreed upon with the creditor.
- Customer will pay the remaining balance. However, the creditor may offer an unsecured loan to pay the remaining balance or loan forgiveness resulting in an IRS Form 1099.

- **Benefit**

- Allows customers to vacate the home while avoiding the stress and negative impact of foreclosure.
- Relocation assistance may be available.

- **When**

- When the hardship is permanent or long-term and the customer can no longer afford the home and wants to leave.
- When the customer owes more than the home is worth.

- **Overview**

- The process of a mortgagor signing over the rights of the property to the bank or the investor rather than going through the foreclosure process; Deed-in-lieu of foreclosure.
- Customer deeds the property back to the lien holder and walks away from the property. Transfer of ownership.
- As part of the loan balance will need to be repaid, the customer may receive an IRS Form 1099 if the remaining balance is forgiven.

- **Benefit**

- Allows a customer to transition out of their home without going through a foreclosure. Only available if no other liens on property.
- Flexible exit options and relocation assistance may exist

- **When**

- The customer is experiencing a long-term hardship that will not allow him/her to maintain the current mortgage obligation.
- The customer does not want to keep the home, does not want to sell or has been unsuccessful in attempts to sell the home.

- **Overview**

- If the conditions are right, the customer can look to refinance the loan into a lower payment.
- For those with a home equity loan or line (second mortgage), the customer may be able to combine the loan with the first mortgage to lower your overall mortgage payment, as long as certain qualifications are met.

- **Benefit**

- Allows customers to lower their monthly payment.
- Allows the customer to access additional funds with the existing equity.

- **Considerations**

- The customer will have to pay closing cost that they have already paid for in the existing loan.
- Refinancing into a shorter-term mortgage could increase your monthly payment.
- Refinancing into another 30-year mortgage would reduce your monthly payment but the long-term cost could cost more.
- May have a negative impact to credit bureau reporting.

- **Loan Terms**

- This would be a new loan with new loan terms.

- **Reporting**

- The way the account is reported to the three major credit bureaus can vary based on the type of assistance program you're participating in and the status of your account before, during and after the program.
- Completing a payment assistance program does not change any previously reported late payments. The impact on your credit score depends on your entire credit profile.
- 2022 Credit Reporting Resource Guide (CDIA) offers guidance on for different modifications.
- Blocking may be used.

- **Check List**

- Gather your mortgage statements, including information on a second mortgage (if applicable).
- Gather your other monthly debt payments (e.g., car or student loans, credit card payments).
- Gather your income details (paystubs and income tax returns).
- Complete and sign all Borrower Assistance Form. Must be signed by all borrowers and must include:
 - All income, expenses, and assets for each borrower
 - An explanation of financial hardship that makes it difficult to pay the mortgage
 - Your acknowledgment and agreement that all information that you provide is true and accurate.
- Provide required Hardship documentation. This documentation will be used to verify your hardship.
- Provide required Income documentation. This documentation will be used to verify your hardship and all of your income (including any alimony or child support that you choose to disclose and rely upon to qualify). You may also disclose any income from a household member who is not on the promissory note (non- borrower), such as a relative, spouse, domestic partner, or fiancé who occupies the property as a primary residence. If you elect to disclose and rely upon this income to qualify, the required income documentation is the same as the income documentation required for a borrower.
- Gather all requested documents and ensure that the information is **current**, accurate.
- If represented by an attorney, the attorney should either work with the Loss Mitigation specialists or provide consent for the specialist to speak with the customer.

- **Websites**

- Fannie Mae's KnowYourOptions.com website
 - <https://www.knowyouroptions.com/avoid-foreclosure-overview>
- Freddie Mac's Getting Help website
 - <https://myhome.freddiemac.com/getting-help>
- Huntington (800) 323-9865
 - <https://www.huntington.com/Personal/mortgage-education-tools/payment-help>
- To find a HUD counselor in your area, contact HUD at www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm or call (800) 569-4287.
- <https://www.consumerfinance.gov/consumer-tools/mortgages/>

- **Military**

- Eligible military customers can:
 - Apply for a wide variety of mortgage options, including Veteran Affairs (VA) loans that may offer no down payment and no monthly mortgage insurance (MI).
 - Take advantage of benefits under the Servicemembers Civil Relief Act (SCRA) or other state laws that provide benefits to military customers.



CONCURRENT SESSION B

**SINGLE ASSET REAL ESTATE SEEKS
CHAPTER 11 ENGAGEMENT**

SINGLE ASSET REAL ESTATE

Scott R. Belhorn
Office of the United States Trustee
Region 9
Howard M. Metzenbaum U.S. Courthouse
201 Superior Avenue East, Suite 441
Cleveland, Ohio 44114
Phone: (216) 522-7805
Fax: (216) 522-7193
scott.r.belhorn@usdoj.gov

11 U.S.C. § 101 DEFINITIONS

In this title the following definitions shall apply:

...

(51B) The term “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

(51C) The term “small business case” means a case filed under chapter 11 of this title in which the debtor is a small business debtor and has not elected that subchapter V of chapter 11 of this title shall apply.

(51D) The term “small business debtor”—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$2,725,625 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor; and

(B) does not include—

(i) any member of a group of affiliated debtors under this title that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$2,725,625 (excluding debt owed to 1 or more affiliates or insiders);

(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or

(iii) any debtor that is an affiliate of an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

Single Asset Real Estate Entities – (“SARE”)

Northern District of Ohio Bankruptcy Bench-Bar Conference
October 14, 2022

Michael A. Steel, Esq.
Steel & Company Law Firm ¹
2725 Abington Rd, Suite 200
Akron, Ohio 44333
msteel@steelcolaw.com

What is a SARE?

Section 101(51B) of the U.S. Bankruptcy Code defines “single asset real estate” as “real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental.” This definition was adopted through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Three Main Elements:

1. The debtor must have real property constituting a ‘single property or project’ other than residential property with fewer than four units.
 - a. This element is generally not an issue because courts have noted that if a property is a single parcel, it is a single property for the purpose of a SARE definition under the section. *In re McGreals*, 201 B.R. 736 (Bankr. E.D. Pa. 1996). (“Since there is no doubt in this case that more than a single parcel of real property involved, the issue to be decided to be further narrowed to the question of whether the properties constituted a ‘single project’. Ownership of contiguous parcels is not a SARE when there is no common purpose to combine the parcels or enter into a coordinate plan for their development.) *See also In re Webb MTN, LLC*, 2008 Bankr. LEXIS 691 (Bankr. E.D. Tenn. Mar. 6, 2008). (where five parcels of real estate is not a ‘single property’ based upon use.”

¹ The presenter recognizes the assistance of Emma Hall, University of Akron School of Law, J.D. candidate 2024.

2. The second required element is that “the debtor’s real estate ‘generates substantially all of the gross income of the debtor.’”
 - a. Generally, in determining a debtor’s gross income, the court will look at the debtor’s schedules and statement of financial affairs filed at the beginning of the case. The courts will focus on the “source and the nature of different streams of income received by the debtor.”
3. The third element is that there can be “no substantial business activity other than operating the real property and activities incidental thereto.”
 - a. The Fifth Circuit noted an analysis that has been accepted. The analysis notes that “[the definition should be interpreted] ‘according to an active-versus-passive criterion that inquires into the nature of revenue generation by and on the property, that is, whether the revenue is the product of entrepreneurial, active labor and effort – and thus is not a single asset real estate – or is simply and passively received as investment income by the debtor as the property’s owner – and thus, a single asset real estate...Real property that, for the generation of revenues, requires active, day-to-day employment of workers and managers other than or additional to the principals of the debtor, and that would not generate substantial revenue without such labor and efforts, should not be regarded as single asset real estate.’¹

These three elements are crucial in determining whether or not a debtor will be considered a SARE, and therefore it will be under the special rules and regulations that are afforded to SAREs for reorganizational purposes. These types of debtors are examined on a case-by-case basis, and specific facts are important in the court’s decisions regarding whether or not they will be treated as a SARE.

Examples:

Apartment buildings are typically considered a SARE. *In re Vargas Realty Enters.*, 2009 Bankr. LEXIS 2040 (Bankr. S.D.N.Y. July 23, 2009).

Coordinated real estate developments consisting of multiple parcels are usually a SARE even when constructed in phases. See *In re Webb MTN, LLC*, 2008 Bankr. LEXIS 691 (Bankr. E.D. Tenn. Mar. 6, 2008); *In re Pioneer Austin E. Dev. I, Ltd.*, 2010 Bankr. LEXIS 2160 (Bankr. N.D.Tex. July 1, 2010); *In re Rear Still Hill Rd., LLC*, 2007 Bankr. LEXIS 3501 (Bankr. D. Conn. Oct. 5, 2007); *In re Kachina Vill., LLC*, 538 B.R. 124, 125 (Bankr. D.N.M. 2015).

What is not a SARE

A debtor is not considered to be a single asset real estate entity where its “real estate does not generate the revenue; revenue is the product of the efforts of management and workers conducted on the lands, bringing in the customers and selling services in goods to them.”² A debtor would not be a SARE if a reasonable and prudent businessperson would expect to generate substantial revenues from the operation activities – separate and apart from the sale or lease of the underlying real estate. SARE revenues received must be passive in nature; the owner must not be conducting any active business, other than merely operating the real property and activities incidental thereto.

Several courts have also addressed and determined certain entities that under certain circumstances, do not benefit from the SARE provision. First, in *In re Larry Goodwin Golf, Inc.*, 219 B.R. 391 (Bkrcty.M.D.N.C.,1997), the court found that because debtor operated a **golf course** that had several other income methods, such as golf cart rentals, a pool, concessions, etc., they did not fit the definition of a SARE. In addition, the court in *In re CBJ Development, Inc.*, 202 B.R. 467 (9th Cir.BAP (Cal.),1996) held that the debtor’s operation of a hotel constituted business other than operation of the property and the fact that the debtor was also operating a gift shop on the property barred them from being a single asset real estate entity.

Marina was determined to not be a SARE when, in addition to providing for the mooring of boats, the marina offers concessions, fuel, stores and winterizes boats. *In re Khemko, Inc.*, 181 B.R. 47 (Bankr. S.D. Ohio 1995).

How are SARE’s Treated Differently In Bankruptcy?

The Bankruptcy Reform act of 1994 provided a different procedure and different treatment of single asset real estate by putting these cases on a different “track” than other types of bankruptcy cases. In this special track, the reorganization is **expedited** under Bankruptcy Code §363(d)(3). In addition, Bankruptcy Code 362(d)(3) provides that “a **creditor is entitled to relief from the automatic stay** otherwise imposed under Section 362(d)(3) if a **debtor fails within the 90-day period** to (1) **file a plan** of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or (2) **commence making monthly payments** ‘in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the secured claim held by the moving party.’”

² *In re Scotia Development, LLC*, 375 B.R. 764, 776 (Bankr. S.D. Tex. 2007) (Ownership of timberland is not a SARE when the debtor operates a heavily regulated business thereon that is heavily dependent upon a highly educated labor force.)

Why are SAREs treated differently

Prior to 1994, single asset real estate cases were evaluated on “bad faith” standards. The concern centered on real estate with little to no equity and inadequate or unreliable cash flow to support a plan of reorganization. The term “single-asset real estate” was added to the Bankruptcy Code in 1994.³ At that time §362 of the Code was revised to provide that the automatic stay terminates if SARE debtor does not file a plan or commence monthly interest payments within 90 days of the petition date.

SAREs excluded from SBRA

The Small Business Reorganization Act of 2019 (“SBRA”) that added the new subchapter V to chapter 11 of the Bankruptcy Code, specifically excludes SAREs from eligibility. Section 101(51D) of the Bankruptcy Code defines what entities qualify as “small business debtors” for eligibility for subchapter V status.⁴ A “person whose primary activity is the business of owning single asset real estate” is specifically excluded as a “small business debtor.”

An important substantive right under SBRA that is not available under SARE cases is the inability to fully cramdown as is available under subchapter V. This makes confirmation more difficult and less effective for SARE debtors. Section 1129(b) that governs confirmation of a cramdown plan in chapter 11 cases is largely not applicable in subchapter V cases. Under subchapter V, §1191(b) modifies the standards for confirming nonconsensual plans (not requiring the requirement that at least one impaired class has accepted the plan). Also, §1191(c) modifies the absolute priority rule by allowing “projected disposable income” to pay unsecured creditors over a 3 to 5 year period and preserve owners equity. These SBRA provisions would not be available to a SARE debtor.

Recent Case Law Updates

Challenges with dual “operating entity” and “real estate entity” cases. §364(d)(1) may not be used to approve exit financing to approve a chapter 11 plan that subordinates an existing lien in a SARE case.

The Court in *In re Aspen Club & Spa, LLC*, 2020 WL 4251761 (10th Cir.BAP (Colo.), 2020), recently examined the first prong of Bankruptcy Code 362(d)(3) looking at the reasonable possibility of the debtor being able to confirm their plan of reorganization. In this case, court had denied a motion for relief from the automatic. Aspen Club had failed to make any payments during the “SARE Period” and filed a plan near the end of the period. Appellee argued that the plan did not satisfy the first prong of 362(d)(3) because it “had no reasonable possibility of being confirmed because it was predicated on a priming lien exit financing that could not possibly be approved.” The court noted that the SARE standard “required the Bankruptcy court to rule on

³ Bankruptcy Reform Act of 1994, H.R. 5116,, 103rd Cong. § 218 (1994).

⁴ 11 U.S.C. § 101(51D).

whether exit priming lien financing needed to fund the plan is permissible as a matter of law.” The court found that under this standard, the law is unsettled, but the fact that the law is unsettled does not preclude the court “from deciding a legal issue that must be decided to determine whether there exists a legal bar to confirmation of the plan. The case was remanded to the Bankruptcy court to find whether a reasonable possibility of the plan’s confirmation was feasible or likely to happen.

Bankruptcy relief unavailable to a SARE debtor that leases commercial space to a marijuana related business tenant.

In re Arm Ventures, LLC, 564 B.R. 77 (Bankr. S.D. Fla. 2017) the court addressed a SARE’s proposed plan that generated income by leasing space to a marijuana-related business (“MRB”). The court held that the plan could not be confirmed. While the court did not immediately dismiss the case, it did grant the secured lender’s request for relief from stay.

SESSION 2

STATE & FEDERAL TAXES

State and Federal Tax Update
Attorney Constituent Group: Bench-Bar Retreat
October 14, 2022

Suzana K. Koch, AUSA, Financial Litigation Program, NDOH

and

Robert L Doty, Senior Assistant Attorney General

Ohio Attorney General's Office, Collections Enforcement

Ohio Attorney General's Office



Common Bankruptcy Issues

STATE

- Estimated Claims- failed to file return or amended return required
- Business tax issues
- Liens
- Automatic Stay
- Dischargeability disputes

FEDERAL

- Unfiled Returns
- Late Filed Returns
- Offsets

Designated Addresses

Designated addresses are on the bankruptcy court's website:

<https://www.ohnb.uscourts.gov/state-ohio-agency-addresses>



UNITED STATES BANKRUPTCY COURT

Northern District of Ohio

Mary Ann Whipple, Chief Judge • Josiah C. Sell, Clerk of Court



Search

[Rules and Procedures](#) | [Court Info](#) | [Judges' Info](#) | [Attorney Info](#) | [Filing Without an Attorney](#) | [Forms](#) | [ECF and Case Info](#) | [Office of the U.S. Trustee](#) | [Other Resources](#)

[Proposed Amendments to Local Bankruptcy Rules](#)

[Administrative Procedures Manual](#)

[Home](#) • [Rules and Procedures](#) • [Federal and State Agencies and Certain Taxing Authorities](#)

State of Ohio Agency Addresses

[State Agency Designations for Compliance with Rule 5003](#)

Ohio Attorney General
Collection Enforcement Section
Attn: Bankruptcy Unit
30 East Broad St., 14th Floor
Columbus, OH 43215

(This address is to be used to "notify also" for any State of Ohio related debt. Notice should also be given to the specific State of Ohio entity.)

Ohio Attorney General
Constitutional Offices
Attn: Constitutional Certifications/Challenges
30 East Broad St., 16th Floor
Columbus, OH 43215

(This address is to be used for certifications/challenges to the constitutionality of Ohio statutes pursuant to 28 U.S.C. §2403(b).)

Ohio Bureau of Workers' Compensation
(insert policy # or claim # here)
Attn: Law Section Bankruptcy Unit
P.O. Box 15567
Columbus, OH 43215-0567

(This address should also be used for section 505 tax determination requests for premiums assessed by the Ohio Bureau of Workers' Compensation.)

ODT Designated Address

Ohio Department of Taxation

Attn: Bankruptcy Division

P.O. Box 530

Columbus, OH 43216-0530

(This address is to be used for all claims owed to the Ohio Department of Taxation and for Section 505 tax determination requests for taxes assessed by the Ohio Department of Taxation.)

Federal Service

Please Serve –

- (1) Attorney General, and
- (2) Agency - eg IRS, DOE, SBA, HUD, SSA, USDA, EPA, VA, and
- (3) USAO (United States Attorney's Office)

Federal Service

Fed. R. Bankr. P. 9014(b) - Contested matters are served in the same manner as an adversary proceeding under Fed. R. Bankr. P. 7004.

Therefore, the agency, the United States Attorney, and the Attorney General of the United States must be served with contested matters. See *I.R.S. v. Patriot Contracting Corp.*, 2007 WL 433392 (Bankr. D. N.J. 2007) (“In short, Rules 9014(b) and 7004(b)(4) provide that motions brought in contested matters must be served by mailing a copy of the motion to the particular agency, the local United States Attorney's Office and the Attorney General of the United States.”)

Federal Service

“Notice or knowledge of an Assistant United States Attorney cannot, as a general proposition, be imputed to the particular agency to which a debt is owing.” *United States, Small Business Administration v. Bridges*, 894 F.2d 108, 112 (5th Cir.1990)(holding that notice or actual knowledge of one United States government agency will not be imputed to another agency)

In re H. & C. Table Co., 457 F.Supp. 858, 860 (W.D. Tenn.1978) (“The United States is a monstrous government and one agency will not always know what another agency is doing; when the appropriate representative of the government is not notified, the rights of the United States may be jeopardized”).

NDOH AAG CONTACTS

- Cleveland & Akron

Alison Archer – Alison.archer@OhioAGO.gov

- Toledo

Robert Doty – Robert.doty@OhioAGO.gov

- Youngstown & Canton

Jennifer Zap – Jennifer.zap@OhioAGO.gov

NDOH USAO CONTACTS

USAOHN.BankruptcyCle@usa.doj.gov

AUSA: Suzana.Koch@usdoj.gov

Paralegal: Crystal.Williamson@usdoj.gov

Please send notice to AGO & state agency

Because the provisions of Ohio Rev. Code § 131.02 require delinquent debt owed to State agencies, departments and bureaus be certified to the Ohio Attorney General's Office for collection, it is recommended that in addition to noticing the specific state entity, the following "also notify" listing should be included under each scheduled debt owed to the State of Ohio, including but not limited to Taxation, BWC, ODJFS, The Ohio State University Medical Center, Ohio Lottery Commission, Ohio Development Services Agency, and all state universities and colleges:

Ohio Attorney General
Collection Enforcement Section
Attn: Bankruptcy Unit
30 East Broad St., 14th Floor
Columbus, OH 43215

(This address is to be used to "notify also" for any State of Ohio related debt. Notice should also be given to the specific State of Ohio entity.)

State Claims

- Tax, BWC, ODJFS file their own claims.
 - Estimated if debtor resides or conducts business in Ohio and fails to file a return.
 - Claim indicates if debt is estimated.
 - Businesses required to notify the state/file final returns when they cease operation.
- AAGs or Special Counsel file all other state claims.
- Contact us before filing an objection.

Proof of Claims - ODT

- FRBP 3001(f) - Filed Proof of Claim constitutes prima facie evidence of the validity and amount of the claim
- FRBP 3002(c)(1) – Governments usually have 180 days to timely filed POCs.
- Section 1305 – ODT may file post petition claims. Contact us if you would like us to do so.
 - Per Section 1307(e) your case can be converted or dismissed for failure to file these returns.
- Missing returns – ODT will not amend a Proof of Claim until all missing returns are filed.

Income Tax Returns

Best Practices

- Make sure all returns are filed
- File electronically
- Paper returns should be submitted to the OAG Bankruptcy Division
- See www.tax.ohio.gov for forms, free electronic filing, and to view transcripts of previously filed returns.

Delinquent Returns

- Trustee will be notified within 5 days of the meeting of creditors
- The Department may seek dismissal
- Proof of Claim will reflect estimated amounts
- Waiting too long to file returns causes problems

Amended Income Tax Returns

Failure to file a required amended income tax returns will impact the dischargeability of an assessment.

- Ohio Revised Code 5747.10(B)(1):

If any of the facts, figures, computations, or attachments required in a taxpayer's annual return to determine the tax charged by this chapter or Chapter 5748. of the Revised Code must be altered as the result of a final federal adjustment, and the federal adjustment is not required to be reported under division (C) of this section, the taxpayer shall file an amended return with the tax commissioner in such form as the commissioner requires. The amended return shall be filed not later than ninety days after the federal adjustment has been agreed to or finally determined for federal income tax purposes.

- See *In re Giacci*, 213 B.R. 517 (Bankr. SD Ohio 1997). Failure to file amended returns can make an assessment nondischargeable.

Amended Returns continued

Assessment types that require an amended return:

- CP – Assessments for additional income not report on the original return per IRS
- RAR – Assessment based on an audit done by IRS
- FAGI – If the discrepancy is due to an amended IRS return
- Other assessments stemming from ODT audits, including ones that may have been issued by ODT's Discovery Unit

***ODT's POC will not indicate the type of assessment or our dischargeability determination.

Paper Returns/courtesy copies

Mail:

Ohio Department of Taxation

Attn: Bankruptcy Division

PO Box 530

Columbus, Ohio 43215-0530

or

Fax: 614-995-0164

or

Email AAGS

**Don't forget to include employer-
issued W-2s or 1099s!**

ODT Contacts

Bankruptcy Division Phone: 1-614-752-6864

- Call to discuss a proof of claim, refund offsets, other issues related to the bankruptcy.

Taxpayer Services

- Income tax: 1-800-282-1780
- Copies of Transcripts; questions on previously filed returns.

Business taxes: 1-888-405-4039

- Ohio Business Gateway issues

Ohio Online Services

- View Transcripts
- View 1099s
- File Returns
- Make and View Payments

Online Services

Dashboard
File Ohio IT 1040
File SD 100
File Ohio IT 10
View / Make Payments
View Ohio 1099s

Account Settings
My Profile
My Notification Settings

rel 2016 34.118 - 06/10/2016 on 2

Welcome to the Ohio Department of Taxation's Individual Income Tax Online Services for taxpayers.
Select a service from the Online Services menu on the left, or take action on a dashboard entry below.

Dashboard - Your data at a glance

Outstanding Balance

Tax Year	Notice ID	Notice Type	Due Date	Amount	Pending Payments	Actions	Help
You have no outstanding liabilities.							

Tax Returns Awaiting Action

Tax Year	School Dist	Form	Status	Actions
You have no tax returns awaiting action.				

Tax Returns On File

Tax Year	School Dist	Form	Post Date	Actions
2008		IT-1040	04/09/2009	View Transcript
2009		IT-1040EZ	04/12/2010	View Transcript
2010		IT-1040ELF	03/16/2011	View Transcript
2011		IT-1040ELF	04/03/2012	View Transcript
2012		IT-1040ELF	04/10/2013	View Transcript
2013		IT-1040WEB	02/18/2014	View Transcript
2014		IT-1040WEB	02/09/2015	View Transcript
2015		IT-1040WEB	02/24/2016	View Transcript
2016		IT-1040X AMENDED	04/18/2017	View Transcript
2016		IT-1040WEB	02/27/2017	View Transcript
2017		IT-1040WEB	03/26/2018	View Transcript


The returns available to view reflect line items as filed or adjusted through the current date.

Keep in mind:

- If you wish to change your user ID or password, click on the **My Profile** link under Account Settings to the left on this page. You will also be able to view and update your contact and security information.
- If you wish to sign up for additional services, click on **My Notification Settings**.
- Don't forget to log out when you are done, especially if you are viewing this page from a public location such as a library, school, or work. If you are logged in, you may log out at any time by clicking on **Log Out**.

IRS Tax Account Transcript

Account Transcript [REDACTED] 1040 Dec. 31, 2012 [REDACTED] Page 1 of 2

 Internal Revenue Service
United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

Account Transcript Request Date: 07-02-2015
Response Date: 07-02-2015
Tracking Number: [REDACTED]

FORM NUMBER: 1040
TAX PERIOD: Dec. 31, 2012

TAXPAYER IDENTIFICATION NUMBER: [REDACTED]
SPOUSE TAXPAYER IDENTIFICATION NUMBER: [REDACTED]

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	-3,591.00	
ACCRUED INTEREST:	0.00	AS OF: Jan. 19, 2015
ACCRUED PENALTY:	0.00	AS OF: Jan. 19, 2015

ACCOUNT BALANCE PLUS ACCRUALS
(THIS IS NOT A PAYOFF AMOUNT): -3,591.00

** INFORMATION FROM THE RETURN OR AS ADJUSTED **

EXEMPTIONS:	04
FILING STATUS:	Married Filing Joint
ADJUSTED GROSS INCOME:	98,266.00
TAXABLE INCOME:	51,105.00
TAX PAID RETURN:	5,274.00
RE TAXABLE INCOME TAXPAYER:	0.00
RE TAXABLE INCOME SPOUSE:	0.00
TOTAL SELF EMPLOYMENT TAX:	0.00

RETURN DUE DATE OR RETURN RECEIVED DATE (WHICHEVER IS LATER): Apr. 15, 2015
PROCESSING DATE: Apr. 22, 2015

<https://eup.irs.gov/esrvtds/requests/TdsProductAction.do?method=productDetails> 7/2/2015

- Provide this to ODT when we need to verify your clients Federal Adjusted Gross Income, Exemptions, or Filing Status.
- This can be requested via the IRS website
 - <https://www.irs.gov/individuals/get-transcript>

Other IRS Transcripts

The screenshot shows the IRS website's navigation bar with the IRS logo, a search box, and links for 'Help', 'News', 'Language', 'Charities & Nonprofits', and 'Tax Pros'. Below the navigation bar are tabs for 'File', 'Pay', 'Refunds', 'Credits & Deductions', and 'Forms & Instructions'. The main content area is titled 'Transcript Types and Ways to Order Them' and includes a breadcrumb trail: 'Home > File > Individuals > Your Information > Tax Record (Transcript)'. The page content is organized into three columns: 'Individuals' with links for 'How to File', 'When to File', 'Where to File', and 'Your Information'; 'Ways to Get Transcripts' with text explaining online registration and mail-order options; and 'Related Items' with links to 'Get Transcript', 'Tax Return Transcript Types and Ways to Order Them', 'Transcript Availability', and 'Get Transcript FAQs'. A 'Tax Record (Transcript)' button is highlighted in the 'Individuals' column.

- Wage and income: Details income statements the taxpayer received for a specific tax year (will not include Ohio withholding).
- Tax Return Transcript: Line-by-line reproduction of a previously filed return. Available for the current tax year and three previous years

Secured Federal Tax Claims

Types of IRS Secured Claims –

the IRS will assert two different types of secured claims in bankruptcy based upon

- (a) a federal tax lien, notice of which was properly filed; and/or
- (b) a right of setoff.

Characteristics of a Federal Tax Lien

- A federal tax lien is a statutory lien that arises automatically upon assessment of the underlying tax liability.
- Section 6321 of the Internal Revenue Code provides:

If an person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal belonging to such person.

Property Encumbered by Federal Tax Lien

- A federal tax lien arises on the date of assessment and attaches to all property and rights to property acquired by a taxpayer during the life of the lien. 26 U.S.C. 6321, 6322; *Glass City Bank v. United States*, 326 U.S.C. 265, 268 (1946).
- A tax lien encumbers both real and personal property.

Term of Federal Tax Lien

- A tax lien continues “until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.” 26 U.S.C. 6322.
- Unless a tax liability is reduced to judgment, the IRS generally has 10 years from the date of assessment to collect it. 26 U.S.C. 6502. However, the period for collection will be extended by certain events, such as the period during which the IRS is prohibited from collecting the tax liability because of a bankruptcy case, plus an additional six months. 26 U.S.C. 6502(h)(2).

Exempt property subject to federal tax liens

- 11 U.S.C. 522(c)(2)(B).
- See also *In re Barbier*, 896 F.2d 377 (9th Cir. 1990) (a federal tax lien attaches to all of the equity in a debtor's assets, regardless of exemptions available under bankruptcy law)

Not a preference

- The filing of a notice of federal tax lien is not avoidable as a preference.

11 U.S.C. 547(c)(6)

- Debtors may not use Section 522(f)(1) to avoid a federal tax lien because a federal tax lien is a statutory lien which arises by operation of law. See 26 U.S.C. 6321; 11 U.S.C. 101(36) (definition of judicial lien); 11 U.S.C. 101(53)(definition of statutory lien); *In re Carolina Resort Motel, Inc.*, 51 B.R. 447 (Bankr. S.C. 1985); *In re J.B. Winchells, Inc.*, 106 B.R. 1384 (Bankr. E.D. Pa. 1989).

Tax Lien Avoided...or Not?

- Tax liens remain valid and attach to property acquired postpetition if the underlying tax is not discharged. *In re Olsen*, 154 B.R. 276 (Bankr. N.D. Ohio 1993).
- A Chapter 7 discharge does not avoid a federal tax lien. While a Chapter 7 discharge removes a debtor's personal liability, the IRS may still take collection action against the debtor's pre-petition property. *In re Isom*, 901 F.2d 744 (9th Cir. 1990).
- In Chapter 13, a lien will be avoided if the underlying tax debt is provided for in the plan, the tax debt is dischargeable, the plan is completed and a discharge is entered. 11 U.S.C. 1352(a)(5)(B)(i).

Tax Claims Secured by Setoff Rights

- IRS may be secured by the right of setoff. The IRS has both a commonlaw and statutory right of setoff. See 26 U.S.C. 6402 (statutory setoff right).
- Setoff is expressly authorized by Section 553. Notwithstanding any other provision of the Bankruptcy Code except for Sections 362 (automatic stay) and 363 (adequate protection), Section 553(a) allows a creditor to setoff a pre-petition claim owed by a debtor against a pre-petition debt owed by the creditor to the debtor. To be permitted to setoff under Section 553, the debts must be mutual, that is owed by the same parties. Clearly, there is mutuality between a tax liability and a tax overpayment. There also is mutuality between different federal agencies for setoff purposes.

Tax Setoff Exception to Automatic Stay

- The setoff of a prepetition income tax refund against a prepetition income tax liability does not violate the automatic stay. 11 U.S.C. 362(b)(26). This exception only applies to income taxes.

Priority Tax Claims - Section 507(a)(8)

- Three Year Rule
- 240 Day Rule
- Still Assessed Rule

Three Year Rule

- Income taxes for which a return is last due, considering extensions, within 3 years of the date of the filing of the bankruptcy case. 11 U.S.C. ' 507(a)(8)(A)(i). The operative date is the due date (as extended) for such return, not the actual filing date

240 Day Rule

- Income taxes assessed within 240 days of the petition date. 11 U.S.C. 507(a)(8)(A)(ii). The 240 day period is extended in two situations. First, it is extended by the time which an offer in compromise was pending or in effect during the 240 day period, plus 30 days. Second, it is extended by the time a stay against collection proceeding was in effect during the 240 day period, plus 90 days.

Still Assessed Rule

- 11 U.S.C. 507(a)(8)(A)(iii). If an income tax has not been assessed, but is still assessable, then it is entitled to priority status unless the statute of limitations is still open because of a late or unfiled return or the taxpayer's fraud.
- The rule also applies if the statute of limitations on assessment is open for some other reason, such as a consent to extend the statute executed by the debtor or pending Tax Court litigation.

Priority Tax Issues

- Interest which accrues on a prepetition tax claim is entitled to the same priority as the underlying tax claim. In re Larson, 862 F.2d 112, 119 (7th Cir. 1988)
- Tolling: time during which a collection due process request, hearing, and appeal prevented collection, plus 90 days
- More Tolling: time during which the automatic stay was in effect or during which one or more confirmed plans prohibited collection, plus 90 days

Business Tax Issues

If your client has ever owned or operated a business, there's a possibility that business taxes may be included on a Proof of Claim. Be sure to review possible business tax liability with your client and understand the general nature of their operations.

Possibilities Include:

- Sales and withholding taxes (trust taxes): Personal liability and criminal penalties exist for failure to remit and file returns.
 - Habitual Offender Program: The Department may suspend a vendor's license, prohibiting taxable sales, for continued sales tax noncompliance.
 - Liquor Permits: Not an asset of the bankruptcy estate.
- Commercial Activity tax: If the account is registered to an individual or single-member LLC.
- All returns must be filed electronically, using the Ohio Business Gateway (OBG)

Business Taxes – Personal Liability

ODT will include the business tax assessments on the Proof of Claim. Corporations and LLCs are separate entities with their own liabilities, but personal liability can exist.

- Trust Taxes
 - Sales Tax ORC 5739.33
 - Employer Withholding 5747.07(G)
 - Seller's Use 5741.25
 - Direct Pay Use Tax 5739.33
- Excise Taxes
 - Motor Fuel 5735.35
 - Cigarette / Tobacco 5743.57
- Pass-Through Entity Taxes 5747.453

Petition for Reassessment

Can still be filed by taxpayers in Bankruptcy.

- Will be reviewed by bankruptcy Division counsel, the process will be expedited. TP can choose for a resolution inside or outside the bankruptcy.
- Must be filed within 60 days of receiving the initial assessment.
- Submit any available documentation with the Petition for Reassessment.
- Usually can be resolved without a hearing, but a hearing is available. This is an informal conference between the taxpayer, their representative (optional), and the hearing officer.
- Not stayed by bankruptcy filings.

For property, public utility, commercial activity, excise, or motor fuel taxes, mail to:

- Ohio Department of Taxation PO Box 530, Columbus, Ohio 43216-0530

○ For all other taxes, mail to:

- Ohio Department of Taxation PO Box 1090, Columbus, Ohio 43216-1090

○ Petition may be hand delivered to:

- 4485 Northland Ridge Blvd. Columbus, Ohio 43229
- 30 E. Broad St., 22nd Floor, Columbus, Ohio 43205

Ohio Tax Criminal Enforcement Actions

- If your client has been contacted by either ODT's **Criminal Investigation Division (CID)** or the **Habitual Offender Program (HOP)**, contact the Bankruptcy Division or the AGO immediately.
- Ohio Revised Code section 5739.30 details the HOP Process. Your client would receive numerous contacts, by phone and by mail, if they were in this program.
- If your client has a liquor permit, be sure to know when they are up for renewal and that they are tax compliant.

Discharge - Individual Ch. 7 and Ch. 11

Withholding and Sales Tax (trust taxes)

- Tax and interest never discharged - 507(a)(8)(C) and 523(a)(1)(A)

Personal Income Tax, School District Income Tax, and Commercial Activity Tax

- Tax and interest not discharged if the relevant tax return was last due, including extensions, within 3 years before petition date - 507(a)(8)(A)(i) and 523(a)(1)(A)
- If return (or amendment) was not filed - 523(a)(1)(B)(i)
- Returns filed late after 2 years prior to petition - 523(a)(1)(B)(ii)
- Fraudulent returns or willful attempts to evade taxes - 523(a)(1)(C)
- Taxes assessed within 240 days before petition date - 507(a)(8)(A)(ii) and 523(a)(1)(A)
- Taxes assessable as of, but not assessed until after petition - 507(a)(8)(A)(iii) and 523(a)(1)(A)

Penalty not discharged if 3 year rule is satisfied - 523(a)(7)

Discharge – Ch. 13

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- 1328(a)(2) excepts the following from discharge:
 - Trust taxes - 507(a)(8)(C)
 - Taxes for when no return was filed or was filed late in the 2 years before the petition date - 523(a)(1)(B)
 - Fraudulent or willful attempt to evade taxes - 523(a)(1)(C)
 - Debts described in 523(a) not affected by 1328(b) Hardship Discharge by way of 1328(c)
 - What are “trust taxes”?
 - A tax required to be collected or withheld and for which the debtor is liable in whatever capacity – 11 U.S.C. 507(a)(8)(C)
 - Sales tax ORC 5739
 - Employer Withholding ORC 5747
 - Seller’s Use ORC 5741
 - Direct Pay Use Tax 5739.33

State Debt Discharge Disputes

AAGs and Special Counsel review all accounts for dischargeability.

Call us with questions about claims or dischargeability before filing objection or AP complaint.

Complaints to Determine Discharge

- ODJFS Unemployment Benefit Overpayments (fraud only)
- Workers' Compensation Fraud
- Attorney Discipline Fines, Penalties, Costs
- AG Consumer Protection

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