

DEBTOR AUDITS

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), Pub. L. No. 109-8, § 603, 119 Stat. 23, 122 (2005) established procedures to mandate a new regimen for debtor audits beginning with cases filed on October 20, 2006.

A. Auditing Standards.

1. The United States Department of Justice has developed and published the "Debtor Auditing Standards," which consist of 9 separate standards. Debtor Audit Standards, 71 Fed. Reg. 58,005 (Sept. 27, 2006).

2. The U.S. DOJ has authority to enter into contracts with independent certified or licensed public accountants to conduct audits using the 9 standards.

B. Purposes of the Audits.

1. Determine accuracy, veracity, and completeness of the petition, schedules, and other information that the debtor is required to provide under 11 U.S.C.A. §§ 521 and 1322. BAPCPA § 603.

2. Compile statistical information on bankruptcies filed by individual debtors with primarily consumer debts filing under Chapter 7, 11 and 13. The new data must be collected starting October 17, 2006, and the Administrative Office must present reports containing those new data to Congress by October 2007 and annually thereafter.

C. Mechanics of the Audits.

1. Cases will be selected for random and targeted audits. No less than 1 out of every 250 cases filed in a district will be randomly audited. *See*, BAPCPA § 603.

2. According to the EOUST, an estimated 7,338 cases will be audited in FY 2007, with 6,338 random audits at an average cost of \$500 each and 1,000 targeted audits at an average cost of \$1,500 each.

3. Shortly after a case is filed, selected debtors or their attorneys will receive notification of the audit. According to the EOUST, most audits will be completed within 70 days after a debtor's bankruptcy papers are filed.

4. A letter will be sent to the selected debtor or his attorney indicating that the case has been selected for audit, identifying the audit firm and enclosing the following documents:

- a) Request for Documents;
- b) Instructions to Audit Firm Regarding Communications with Debtor; and
- c) Information on Debtor Audits.

5. The "Request for Documents" directs the debtors or their attorneys to produce to the audit firm the following within 21 days:

- a) Pay stubs for six calendar months prior to filing;
- b) Two years of federal tax returns, including all schedules and forms;
- c) Account statements for all depository and investment accounts for the six calendar months preceding the date of filing of the petition, plus the month which the petition was filed, along with sufficient documentation to reasonably explain the source of deposits or credits, and the purpose of checks, withdrawals or debits; and
- d) A copy of any divorce decree and/or property settlement entered within the last three years, and any current child support/alimony obligation involving the debtor.

6. The "Instructions to Audit Firm Regarding Communications with Debtor" directs the debtor's attorney to elect whether the audit firm shall communicate directly with the debtor. The original must be returned to the audit firm within 3 business days.

7. Before including a material misstatement in the Audit Report, the audit firm will contact the debtors or their attorneys, in writing, notifying the debtor of the concern and offering the debtor the opportunity to provide an immediate written explanation for the item(s) in question.

8. Identification of a material misstatement.

a) The Audit Report will be filed with the Court and transmitted to the United States trustee by the audit firm. *See*, 28 U.S.C.A. § 586(f). § 586(f), states, in part: Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit.

b) The Clerk of Courts shall send a notice to creditors in the cases in which one or more material misstatements have been identified in an audit report. *See*, 28 U.S.C.A. § 586(a).

9. A debtor's discharge shall be revoked pursuant to 11 U.S.C.A. § 727(d)(4), on request of the trustee, a creditor, or the United States trustee, and after a notice and a hearing, if the debtor has failed to explain satisfactorily:

a) A material misstatement in an audit referred to in section 586(f) of title 28; or

b) A failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.

10. The United States trustee may take appropriate civil action and, where advisable, make a criminal referral to the U.S. Attorney. *See*, 28 U.S.C.A. § 586(f)(2)(B)(1).

COMMON ERRORS IN BANKRUPTCY PAPERS TO AVOID¹

In 1998, an empirical study of 200 randomly selected consumer bankruptcy cases filed in the Eastern District of Michigan was conducted by Chief Judge Steven W. Rhodes. The study found that:

In 70% or more of the cases,

1. Failure to disclose the lease and security deposit.
2. Failure to disclose pre-petition debt payments.
3. Debtor with life insurance expense who failed to disclose life insurance.
4. Debtor engaged in business who does not attach detailed statement.

In 40% or more of the cases,

5. Debtor with pension contributions who does not disclose pension interest.
6. Chapter 7 debtor with expenses not within 10% of income.

In 20% or more of the cases,

7. Chapter 7 debtor who does not list expenses for all debts to be reaffirmed.
8. Asset/no asset estimation incorrect.

In 10% or more of the cases,

9. Failure to date bankruptcy papers.
10. Bankruptcy papers dated more than 15 days before filing.
11. Attorney fee disclosures inconsistent.

D. Alexander Martin
DeWitt Ross & Stevens, S.C.
2 East Mifflin Street, Suite 400
Madison, Wisconsin 53703
(Tel) 608-255-8891
(Fax) 608-252-9243
dxm@dewittross.com

¹ Honorable Steven W. Rhodes, *An Empirical Study of Consumer Bankruptcy Papers*, 73 AM. BANKR. L.J. 653, 678-79 (1999)

PREPARATION OF STATEMENTS & SCHEDULES

Things to Watch For

- 1) Make sure personal property listing "makes sense" – ie. If they own a home, have you listed the lawn mower, etc.
- 2) Look over the tax returns – is there interest income? Dividend income? 401K or IRA withdrawals? If so – are there corresponding items reflected in Schedule B?
- 3) If schedule I or J reflect deductions for life insurance or retirement savings, are they reflected on Schedule B?
- 4) If they own a business don't forget SoFA questions 18 and after.
- 5) Review Bank Statements – anything out of the ordinary should be discussed with client. For example – if there are withdrawals at the Potawotami ATM – is there a corresponding disclosure on the SoFA? Audit Firms will ask for documentation concerning every deposit and withdrawal.
- 6) Look at credit card statements for the 2-3 months prior to filing. Question debtor about any large purchases, cash advances, etc. Again, look for consistency between statements and petition.

DOCUMENTS WHICH SHOULD BE IN FILE PRIOR TO FILING

- 1) Bank Statements minimum two months prior to filing (Audit firm asked for 6 months)
- 2) Copies of Vehicle Titles and Proof of Insurance
- 3) Last two years tax returns
- 4) Income verification for six months prior to filing
- 5) Real estate documentation – deed, mortgages, tax bill
- 6) IRA/Pension account statements – minimum most recent quarter or two months prior to filing
- 7) Credit Bureau Report



MAR 2 2007

U.S. Department of Justice

Office of the United States Trustee

Eastern District of Wisconsin

517 E. Wisconsin Avenue
Suite 430
Milwaukee, Wisconsin 53202

(414) 297-4499
FAX (414) 297-4478

March 1, 2007

Attorney Robert W. Stack
Flanner, Stack & Fahl, LLP
16535 W. Bluemound Road, Suite 203
Brookfield, WI 53005

Re: [REDACTED]
Case No. [REDACTED]

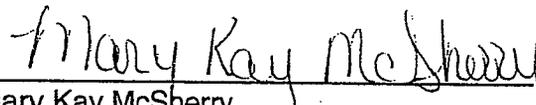
Dear Attorney Stack:

After a review of the petition and schedules filed in this case, I would request that you provide this office with the following additional documentation within 10 days:

1. Tax returns for the past two years with all supporting documentation (11 U.S.C. § 521(e)(2)(A));
2. All pay statements which support the calculations on Form B22A, the Statement of Current Monthly Income and Mean Test Calculation Form (the "MTF") (11 U.S.C. § 521 (a)(1)(B)(iv));
3. All bank statements for the last 90 days. (L.R. 1007.4).
4. A current credit report with balance history and copies of credit card statements for all debt listed on Schedule F. If you do not have a credit report, a free report may be obtained by the debtor at www.annualcreditreport.com every 12 months. If you do not have access to the Internet, please contact the U.S. Trustee's Office for an annual credit report request form that may be mailed or faxed.

In addition to the above materials, please also provide this office with copies of any amendments to the schedules that have been filed. I look forward to receiving your written response. If I do not receive a response by March 12, 2007, this office may move to dismiss your case.

Sincerely,


Mary Kay McSherry
Bankruptcy Analyst

c: [REDACTED]

that would have been incurred absent a bankruptcy case and those not); and

"(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed."

(b) CLERICAL AMENDMENT.—The table of sections for chapter 39 of title 28, United States Code, is amended by adding at the end the following:

"589b. Bankruptcy data."

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information that the debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph

(1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;

(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

(C) require audits of schedules of income and expenses that reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and

(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

(b) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

"(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,"; and

(2) by adding at the end the following:

"(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

"(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the district court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

"(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

"(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

"(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11."

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as so designated by section 106, is amended in each of paragraphs (3) and (4) by inserting "or an auditor serving under section 586(f) of title 28" after "serving in the case".

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "or" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(4) the debtor has failed to explain satisfactorily—

"(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

"(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress

- for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
 - Enhance the quality, utility, and clarity of the information to be collected; and
 - Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

- (1) *Type of Information Collection:* New data collection.
- (2) *Title of the Form/Collection:* National Inmate Survey.
- (3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form numbers not available at this time. The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for the collection.
- (4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to develop surveys to produce estimates for the incidence and prevalence of sexual assault within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108-79).
- (5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 90,100 respondents will spend approximately 30 minutes on average responding to the survey.
- (6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 45,360 total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: September 27, 2006.

Lynn Bryant,
Department Clearance Officer, PRA,
Department of Justice.
[FR Doc. E6-16179 Filed 9-29-06; 8:45 am]
BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

Debtor Audit Standards

AGENCY: Executive Office for United States Trustees, Justice.

ACTION: Notice.

SUMMARY: This notice sets forth the standards that will be utilized to determine the accuracy, veracity, and completeness of petitions, schedules, and other information that a debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual.

ADDRESSES: Comments on the standards may be submitted electronically via e-mail to UST.DebtorAudits.Help@usdoj.gov, or by postal mail at Executive Office for United States Trustees, Debtor Audit Team, 20 Massachusetts Ave, 8TH Floor, Washington, DC 20530. To ensure proper handling, please reference EOUST Debtor Audit Standards on your correspondence. Comments received are public records.

FOR FURTHER INFORMATION CONTACT: Mark A. Redmiles, Chief, Civil Enforcement Unit, Executive Office for United States Trustees, 20 Massachusetts Ave, 8th Floor, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: The authority for these standards is located at 28 U.S.C. 586(f)(1), and section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (enacted April 20, 2005), Public Law 109-8, 119 Stat. 37.

Dated: September 26, 2006.

Lynn Bryant,
Department Clearance Officer, U.S.
Department of Justice.

Debtor Audit Standards

Debtor Audit Standard No. 1

The debtor audit engagement shall be performed by individuals having adequate technical training and proficiency for performing attest engagements.

Debtor Audit Standard No. 2

The debtor audit engagement shall be performed by individuals having adequate knowledge of bankruptcy petitions, schedules, and statements; the Bankruptcy Code; and the Federal Rules of Bankruptcy Procedure.

Debtor Audit Standard No. 3

In all matters relating to the debtor audit, an independence in mental attitude shall be maintained by the individuals performing the engagement.

Debtor Audit Standard No. 4

Due professional care shall be exercised in the planning and performance of the engagement.

Debtor Audit Standard No. 5

The work shall be adequately planned and assistants, if any, are to be properly supervised.

Debtor Audit Standard No. 6

Sufficient evidence must be obtained to provide a reasonable basis for the conclusion expressed in the report filed with the court.

Debtor Audit Standard No. 7

The report shall identify that the subject matter of the debtor audit is the petition, schedules, and other information as originally filed by the debtor in the bankruptcy case and state that the debtor audit was conducted in accordance with the Debtor Audit Standards and the procedures established by the United States Trustee Program.

Debtor Audit Standard No. 8

The report shall clearly and conspicuously state the conclusion as to the presence or absence of material misstatements in income, expenses, or assets, in the petition, schedules, and statements originally filed by the debtor in the bankruptcy case.

Debtor Audit Standard No. 9

The report shall state that it is intended solely for the information and use of the United States Trustee and other parties in interest to the bankruptcy case and that it is not intended to be and should not be used by anyone other than these specified parties; noting however, that since the report is a matter of public record, its distribution is not limited.

[FR Doc. E6-16129 Filed 9-29-06; 8:45 am]
BILLING CODE 4410-40-P

Debtor(s): _____
Attorney: _____

Case No.: _____
Petition Date: _____

DOCUMENT REQUEST

Please provide copies of the documents listed below. *Do not provide originals.* Return this form and the attached documents by [DATE-3 weeks from date of Audit Notification Letter] to: Debtor Audit Firm; Street Address; City, State, Zip.

In the space provided next to each document category listed below, indicate whether all the documents requested are provided by marking Yes, No, or N/A. Explain all No or N/A answers at the end of this form. You do not need to explain a N/A answer to Question No. 4.

1	Payment advices or other evidence of payment from an employer for the six full calendar months preceding the date of the bankruptcy petition from the debtor(s), or from an individual debtor and the individual debtor's non-filing spouse unless the debtor has checked Box 2.b on Form B22A.	_____
2	Federal income tax returns, including all schedules and all W-2, 1099, and K-1 forms, for the two most recent taxable periods prior to the date of the bankruptcy petition. If either of the returns has not been filed, provide copies of the two most recently filed federal income tax returns. (If joint case and debtors filed separate returns, provide both returns.)	_____
3	Account statements for the six months preceding the date of the bankruptcy petition for all depository and investment accounts in which the debtor(s) had an interest in any of the six months, including statements (even if received post petition) that reflect activity in the month in which the petition was filed; along with sufficient documentation to explain the source of every deposit or credit, and the purpose of every check, withdrawal, or debit. (Include information for checking, savings, money market, mutual fund, and brokerage accounts. Examples of documentation for deposit and withdrawal transactions include canceled or imaged checks, check registers, and annotations on or attached to the account statements.)	_____
4	If the debtor(s) is divorced, (a) the divorce decree, (b) any orders regarding property settlements entered within the last three years, and (c) any alimony or child support orders currently in effect and amendments thereto.	_____

Explanation for any "No" or "N/A" responses (attach pages as necessary): _____

I declare under penalty of perjury that the responses to this Document Request are true and correct.

Date: _____

Signature: _____

Debtor

Date: _____

Signature: _____

Joint Debtor, if any

Information on Debtor Audits

Individuals who file for relief under chapter 7 or chapter 13 of the Bankruptcy Code are subject to audits. At least one out of every 250 chapter 7 and chapter 13 individual cases will be randomly selected for audit. In addition, other cases will be selected for audit.

Your case has been selected for audit. The audit involves the verification of the income, expenses, and assets reported by you in the bankruptcy schedules and statements. You are required to provide some additional information and records and cooperate with the audit firm and provide this information promptly. There is no cost to you for the audit, except for the cost of making copies of documents needed for the audit. The information that you provide in connection with your case is subject to examination by the Attorney General or his designee.

The audit firm will file a report containing the results of the audit. A copy of the report will be provided to your attorney (or directly to you if you are not represented). If the audit firm finds material misstatement(s) of income, expenses, or assets, the clerk of the bankruptcy court will notify your creditors.

Failure to cooperate with the audit firm, or failure to reasonably explain to the bankruptcy court any material misstatements contained in the audit firm's report, may result in the dismissal of your case or in the denial or revocation of your discharge, and, possibly, in referral of the matter to the United States Attorney for criminal investigation.

Debtor(s):
 Attorney: Robert W. Stack

Case No.:
 Petition Date: 10/28/06

DOCUMENT REQUEST

Please provide copies of the documents listed below. Do not provide originals. Return this form and the attached documents by November 29, 2006 to:

McBride Lock & Associates
1111 Main Street, Suite 900
Kansas City, MO 64105-2155

In the space provided next to each document category listed below, indicate whether all the documents requested are provided by marking Yes, No, or N/A. Explain all No or N/A answers at the end of this form. You do not need to explain a N/A answer to Question No. 4.

1 Payment advices or other evidence of payment from an employer for the six full calendar months preceding the date of the bankruptcy petition from the debtor(s), or from an individual debtor and the individual debtor's non-filing spouse unless the debtor has checked Box 2.b on Form B22A.	<u>Yes</u>
2 Federal income tax returns, including all schedules and all W-2, 1099, and K-1 forms, for the two most recent taxable periods prior to the date of the bankruptcy petition. If either of the returns has not been filed, provide copies of the two most recently filed federal income tax returns. (If joint case and debtors filed separate returns, provide both returns.)	<u>Yes</u>
3 Account statements for the six months preceding the date of the bankruptcy petition for all depository and investment accounts in which the debtor(s) had an interest in any of the six months, including statements (even if received post petition) that reflect activity in the month in which the petition was filed; along with sufficient documentation to explain the source of every deposit or credit, and the purpose of every check, withdrawal, or debit. (Include information for checking, savings, money market, mutual fund, and brokerage accounts. Examples of documentation for deposit and withdrawal transactions include canceled or imaged checks, check registers, and annotations on or attached to the account statements.)	<u>Yes</u>
4 If the debtor(s) is divorced, (a) the divorce decree, (b) any orders regarding property settlements entered within the last three years, and (c) any alimony or child support orders currently in effect and amendments thereto.	<u>N/A</u>

Explanation for any "No" or "N/A" responses (attach pages as necessary):
(4) Debtor New-Married

I declare under penalty of perjury that the responses to this Document Request are true and correct.

Date: Nov. 30, 2006

Signature: 