

OFFICE OF THE U.S. TRUSTEE LAUNCHES CIVIL ENFORCEMENT INITIATIVE

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The Office of the United States Trustee in Boston is implementing an initiative to curb abuse in the bankruptcy system. The Executive Office for U. S. Trustees in Washington, D.C. announced the initiative in October of last year and the Boston office started implementing it in November of last year.

The priorities of the civil enforcement initiative are:

- to ensure that chapter 7 is not abused and that chapter 7 debtors are held accountable. The office is filing §727 complaints objecting to discharge, a remedy that historically it has left to creditors and trustees;
- to protect consumer debtors, creditors and others from being misled or misinformed by false representations or ineptitude. Attorneys and bankruptcy petition preparers are being scrutinized for professionalism and compliance with §110 of the Code;
- to ensure that chapter 11 debtors proceed with their cases promptly; and
- to ensure the detection and referral of bankruptcy crimes and to promote prosecution by the United States Attorney.

In November of last year the Boston office started reviewing chapter 7 petitions with more focus on three key areas: (i) credit card load-up or bust-out; (ii) ability to repay under §707(b); and (iii) sloppy schedules, excessive attorney's fees and §110 issues. Initially, the office sent letters to panel trustees asking them to inquire about specific questions that arose from the review, such as inordinately high credit card debt in relation to assets or income. However, the office is now making direct inquiry of debtors' counsel, asking for documents to explain or corroborate unusually high debt, income, or expenses.

Other offices in the region, and indeed throughout the country, are also reviewing petitions more closely. While the different offices may have somewhat different standards and procedures, the goal is the same of trying to detect and redress abuse.

In Boston, the review is subjective. No one item or number invites inquiry, nor does a particular debt level. Instead, disparities or deficiencies determine whether there is an inquiry. For example, in one instance, a debtor with low income, approximately \$1200 per month, listed credit card debt in excess of \$120,000 or 100 times monthly income. How did that happen? In another case, a debtor listed a home valued in excess of \$600,000 and personal property of nominal value. In other cases, we have questioned credit card debt that approached \$500,000. Likewise, high income and expenses on Schedules I and J, or incomplete information, may invite inquiry as to whether the debtor has sufficient disposable income to fund a chapter 13 plan.

Once a case is under review, the office will ask for informal discovery by the production

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of documents in advance of the creditors' meeting. By far, most of the cases are disposed of by the debtor and counsel producing documents and answering the questions that arise from review of the schedules. Better yet, schedules that are well prepared and detailed will be much less likely to prompt any question at all.

We have found that in the vast majority of the cases, the debtors are honest and desperately in need and deserving of a fresh start. We want to protect those debtors and not burden them. We have also found that in the vast majority of the cases debtor's counsel is professional, honest, and diligent. However, we have also found cases in which the debtor is not deserving or is not playing by the rules or is represented by someone who does not know or properly advise on the rules. Some of these cases are compelling. Some are infuriating. In those instances, the resources of our offices are being re-channeled and focused on addressing the abuse by filing complaints objecting to discharge under §727, motions to dismiss under §707(b), or motions to reduce excessive fees.

As part of this initiative, we are aggressively pursuing petition preparers that do not comply with §110. In the Boston office alone, we are currently pursuing three pending complaints against petition preparers and we are investigating four other potential cases. We are also investigating petition preparers who use the internet to ply their trade and to hide from regulation.

While we have always attacked fraud and abuse by encouraging referrals from trustees, filing §707(b) motions and assisting the U.S. Attorney with criminal prosecutions, we are now doing it in a more aggressive and concerted way. Detection is the first problem, so we started reviewing petitions more closely. Detection, however, is easy compared to investigation, tracking, and seeking remedies. Over time, we expect to develop better methods for conducting discovery, reviewing documents, and deciding which cases should be pursued. To date, we have received excellent cooperation from the members of the bar. This cooperation has allowed us to avoid formal discovery requests, which might be more burdensome on debtors.

Panel trustees have also been helpful in conducting inquiries and referring cases. However, our intention is to make this initiative an undertaking of the Office of the U.S. Trustee. We are streamlining our procedures, spending less time on oversight of the trustees, and allocating resources to civil enforcement. With cooperation from the bar and the panel, we are confident that these efforts will make the bankruptcy system more fair and more effective, and will build public confidence in its integrity.