



U.S. Department of Justice

Executive Office for United States Trustees

Office of the Director

Washington, DC 20530

September 14, 2017

MEMORANDUM

TO: United States Trustees

FROM: Clifford J. White III
 Director

SUBJECT: Enforcement Guidelines for Bankruptcy Debtors Affected by Natural Disasters

All of us watched with deep concern the devastation caused by Hurricane Harvey and Hurricane Irma. We know that many people lost their lives, and many thousands more lost homes and other property. The storms also adversely affected the infrastructure of many communities.

In light of these storms and for the benefit of all, we wanted to re-issue our enforcement guidelines for bankruptcy debtors affected by natural disasters (see attached). In the wake of Hurricane Katrina in 2005, the Program adopted these policies to ensure that we administer bankruptcy cases in a manner that takes into account the hardships experienced by victims of hurricanes and other natural disasters. At that time, we carefully reviewed the law and determined that the guidance was within our statutory authority and consistent with principles of prudent prosecutorial discretion. We encourage you to share this memorandum with your staff.

For those United States Trustees in areas impacted by Hurricane Harvey and Hurricane Irma, please notify the chapter 7, 12, and 13 trustees in the affected districts of the Program's guidelines and ask that they, too, demonstrate prosecutorial discretion and coordinate with you as appropriate. We plan to post this memorandum and the guidelines to the Program's Web site shortly.

As questions arise, you should consult with Bill Neary, Acting Deputy Director for Field Operations, on the appropriate application of this guidance. Your continuing support and cooperation is greatly appreciated.

Attachment

cc: Assistant United States Trustees
 EOUST Senior Staff

UNITED STATES TRUSTEE PROGRAM'S ENFORCEMENT GUIDELINES FOR BANKRUPTCY DEBTORS AFFECTED BY NATURAL DISASTERS

The following considerations shall guide the enforcement activities of the United States Trustee Program in the event of a natural disaster.

- **Document Requirements.** United States Trustees shall not file enforcement motions against debtors who are unable, as a result of a natural disaster, to file or produce documents required by the Bankruptcy Code, if they otherwise are eligible for bankruptcy relief. Further, United States Trustees should generally not oppose any reasonable requests filed with the court by debtors seeking relief from filing requirements due to a natural disaster.
- **Means Test.** In determining whether to file an enforcement action on grounds of presumed abuse, United States Trustees shall consider the adverse impacts of a natural disaster, including a major decline in anticipated income or a major increase in anticipated expenses, to constitute “special circumstances” for purposes of rebutting the presumption of abuse.
- **Attendance at Section 341 Meetings of Creditors.** When, due to a natural disaster, debtors are unable to appear personally in the district where the case is filed for the mandatory section 341 meeting of creditors, United States Trustees shall exercise flexibility and offer alternative means for attendance. The debtors, however, must be able to present acceptable personal identification to the individual administering the oath in the alternate location.
- **Credit Counseling.** Even if conditions do not justify a United States Trustee issuing a waiver of the credit counseling requirement under 11 U.S.C. § 109(h)(2) for a district affected by a natural disaster, United States Trustees shall exercise prosecutorial discretion in considering whether to take action to dismiss the case of debtors who, as a result of the natural disaster, experienced difficulty in obtaining a credit counseling certificate prior to filing or whose filing was delayed beyond the 180-day period following the debtor’s receipt of credit counseling.
- **Small Business Chapter 11 Bankruptcies.** United States Trustees shall not: (1) take enforcement actions against small business chapter 11 debtors who, as a result of a natural disaster, cannot reasonably be expected to perform statutory duties such as attending an initial debtor interview and filing financial reports; (2) seek conversion or dismissal of small business chapter 11 cases if the grounds for filing the case are attributable to a natural disaster and there are reasonable prospects for reorganization; or (3) oppose reasonable and necessary requests filed with the court by small business chapter 11 debtors to extend the time to file a disclosure statement and confirm a plan of reorganization due to a natural disaster.
- **Venue.** United States Trustees shall not raise or support venue objections in cases in which the debtor was displaced due to a natural disaster, unless the filing constitutes systemic abuse or presents extraordinary circumstances.