

THE OFFICE OF THE CHAPTER 13 TRUSTEE
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Richard V. Fink, Trustee

January 11, 2024

TO: Western District of Missouri Debtor Bar

FROM: Richard V. Fink, Trustee *RVF*

Re: Section 1325(a)(4) Hypothetical Chapter 7 Trustee Fees in Liquidation Analysis Procedure

My office is modifying our internal procedure regarding liquidation analysis under 11 U.S.C. §1325(a)(4) to more accurately represent Chapter 7 trustee fees pursuant to 11 U.S.C §326(a).

Since 2013, we have calculated the hypothetical Chapter 7 trustee fee using the hypothetical disbursements to unsecured creditors, both priority and non-priority. The new procedure will be used for all cases filed on or after February 1, 2024; the new procedure calculates the Chapter 7 trustee fee on the hypothetical payments to all creditors, including secured creditors. However, we review the hypothetical chapter 7 trustee fees for reasonableness as they apply to the overall distributions to unsecured creditors.ⁱ

WHAT THIS MEANS FOR YOU:

1. The change affects Chapter 13 cases filed on or after February 1, 2024. If you have an unconfirmed case in which you wish to use the updated calculus, please amend the plan to clarify the amount you are proposing to pay in Part 7 of the plan. You also may contact my office to come up with an agreed dividend or POT plan before filing the amended the plan.
2. This will not change the amount listed in Part 5.2 for the non-exempt equity in LAP plans. You still must list the full non-exempt equity. However, it will change the way in which my office sets the dividend to the non-priority unsecured creditors for those cases. This could mean that plans run shorter than you anticipate due to the increase in the deduction on the non-exempt equity because of the higher Chapter 7 trustee fee resulting in a lower dividend to the non-priority unsecured creditors.
3. It also will change how my staff analyzes cases to determine our analysis that a sufficient amount is being proposed for the non-priority unsecured creditors in order to comply with 11 U.S.C. §1325(a)(4).

A spreadsheet showing our updated liquidation analysis is attached. My staff always is available if you have further questions.

ⁱ Section 326 creates a limitation on compensation of a Chapter 7 trustee and allows the court to award “reasonable” compensation and caps the trustee fees using a sliding sale. My office has had informal discussions with the Chapter 7 trustees in our district; and, it is my understanding that, in certain situations, the trustees reduce their fees in order to provide a “meaningful distribution” to the non-priority unsecured creditors.