



**MEMORANDUM**

TO: All Chapter 7 Trustees, Region 2

FROM: Kathleen Dunivin Schmitt, Assistant U.S. Trustee - Rochester  
Lisa Penpraze, Assistant U.S. Trustee – Albany  
TFR/TDR Consolidation Supervisors

SUBJECT: TFR/TDR Updates and News

DATE: October 28, 2015

We look forward to working with you in 2015. Remember, to please feel free to call the reviewers, Sharon, Rhonda and Ercilia, our team leader, Erin, or AUSTs Penpraze or Schmitt if you have any questions or concerns. We value your comments.

**OBJECTING TO CLAIMS:**

There appears to be some confusion on whether as trustee you are required to file an objection to a claim that is technically objectionable. The quick answer is that you are not. 11 U.S.C. § 704(a)(5) requires a trustee to review and object to claims, “only if a purpose would be served.” The Handbook clarifies this by providing the following example: “if it is clear that there are only sufficient assets to pay priority creditors, then no purpose would be served by examining or objecting to general unsecured claims.” Handbook at page 4-26 ¶ F. Indeed, the Handbook goes on to provide that the claims review process should not even begin until the trustee “is certain that there will be a distribution to creditors.”

What does this mean to you in practical terms? It means that trustees or their attorneys should not file objections to secured claims where there will be no benefit to the estate (i.e., does not change distribution to unsecured creditors or the benefit is only to the debtor.) Likewise, the trustee or his attorneys should not incur legal fees to review and object to claims when the case is administratively insolvent or the trustee knows that she will not be paying the particular class of claims to which that creditor belongs.

**Ask the Reviewers:**

Question: In our last newsletter, you let us know that we could file interim TFRs when we had money on hand to distribute to unsecured creditors but the remaining assets could not be liquidated for some period of time (a PI action, for example). What exactly does an interim TFR look like?

Answer: An interim TFR works and looks just like a regular TFR. The only differences are that 1) you would explain in the notes of Form 1 that additional assets are still being collected and 2) you would speak with your individual clerk’s office to find out how they would like you to notice that this is an interim TFR and not a final TFR. For example, in some districts, the clerk requires a cover notice on the NFR that explains to parties that this is an interim TFR only. In other districts, they prefer that the trustee change the Notice/NFR (it’s a Word document and thus able to be edited within your systems) to say

Interim TFR. Another option would be to file an explanatory cover letter with the interim TFR.

Question: Should I file the Interim TFR with the court?

Answer: No, interim TFRs should be sent to the consolidation team for review like a regular TFR. As further guidance, attached to this memo are samples of interim TFRs and cover notices.

Question: What is the difference between an interim distribution request and an interim TFR?

Answer: Great question. Some trustees have used interim distribution requests (via application or motion) in lieu of filing interim TFRs but this practice is no longer permitted in Region 2. All disbursements to unsecured creditors must be done through a TFR, whether it's an interim TFR or a final TFR. If your court requires a motion with the interim TFR, that is ok, but an interim TFR should be submitted to the TFR team for review prior to filing the motion.

Question: Can my law firm and I get paid on an interim basis for work done on behalf of the estate?

Answer: If you are making a distribution to unsecured creditors, generally we do not object to interim payments to the trustee or his attorney. However, if there is no distribution being made to unsecured creditors, then the field office will, in most instances, object to such a request.

We understand that this may be a revision to previous field office policy but it is consistent with national policies and the Handbook. See Handbook page 4-24.

### **PROCESS FOR RESOLVING TFR /TDR ISSUES**

What if you get a call from a consolidation team member who raises concerns regarding your TFR or TDR? Now what? In most instances, the reviewer is asking for clarification on an item or for documentation. Our protocols ask that you provide the information within 48 hours of the request. If you do not timely provide the information, the reviewer is instructed to withdraw the TFR or TDR. When you resubmit the amended TFR or TDR or provide the necessary information, in most instances, the reviewer will put the TFR or TDR at the head of the queue and if no additional issues are identified, will file the TFR or TDR on your behalf.

What if instead of asking for amendments, clarification or documents, the reviewer is instead calling to bring to your attention that a time entry, an expense or overall costs to the estate are a concern, but is not asking for an explanation and will not be asking for an amendment or reduction? No formal written response is required by the trustee. The team is simply letting the trustee know that the item or items identified raised concerns. In many instances, the team is aware that the case is an anomaly or that the dollars involved do not rise to the level of an objection.

Where do these notes go and who reviews them? The team sends all notes regarding TFRs and TDRs to an electronic folder that the field office can review periodically to understand what the team is seeing. For instance, while a trustee may be concerned that a case was flagged for having administrative costs above 50% but believes that the higher administrative costs were unavoidable due to the nature of the case (a PI case for example) the field will see this. Indeed, if this note is the only case flagged in the folder for administrative costs, it would be clear to the field that high administrative costs are not an issue for this trustee. In contrast, if the trustee had 10 TFRs and all but one was flagged for high administrative costs, the field office may choose to review the trustee's TFRs in more detail and reach out to the trustee for further discussion.

What if the reviewer and trustee speak about an issue, but the matter cannot be resolved by the team informally? While we hope to avoid this issue, sometimes disagreements are inevitable. In those rare instances, we would reach out to the field office, alert them to our concerns and make them aware of your response(s). In most instances, they also would reach out to you to see if a resolution is possible. Failing that, the field office would file an objection to the TFR and/or to the applications for fees or commissions and the matter would then be resolved by the Court. Since the consolidation project began in December of 2013, all concerns have been resolved through this informal process with very few exceptions.