



U.S. Department of Justice

Office of the United States Trustee

Southern District of New York

201 Varick Street, Room 1006
New York, NY 10014

(212) 510-0500 x207
FAX (212) 668-2256

MEMORANDUM

TO: All Chapter 7 Panel Trustees, Region 2

FROM: William K. Harrington, United States Trustee - Region 2

SUBJ: Interim Distributions to Creditors - Interim TFRs

DATE: January 16, 2015

As the result of the consolidated Region 2 review of TFRs since December 9, 2013, we have noticed varied approaches that our panel trustees use when making interim distributions.

The Handbook for Chapter 7 Trustees allows trustees to make interim distributions under certain limited circumstances. The key to interim distributions is that the chapter 7 trustee cannot pay his own compensation or interim attorneys' fees **UNLESS** there is also a distribution to unsecured creditors. Interim distributions can benefit creditors by providing them with a partial payment on their claims without having to wait until the case is fully administered. Interim distributions also reduce the costs associated with maintaining estate funds in an approved depository.

The Handbook at Page 4-24 states:

The United States Trustee will ordinarily object to a trustee's application for interim compensation, **unless the application is linked to an interim distribution to creditors.** However, when a trustee is heavily engaged in the administration of a case over an extended period of time and the trustee is providing substantial services to the estate, those factors may present good cause for interim compensation to the trustee.

In furtherance of our goal of increased uniformity of procedures throughout Region 2, I am implementing the following uniform procedures for handling interim distributions by panel trustees.¹ These procedures will go into effect immediately.

¹ Non-panel trustees submit all TFRs to the applicable field office.

The trustee should consider the following when deciding whether to seek approval of an interim distribution:

1. Whether the circumstances support the use of an interim distribution;
2. anticipated time frame for case closing;
3. reasons why trustee cannot presently file final report;
4. whether the trustee proposes to pay unsecured or other creditors (not just professionals);
5. if no distribution to unsecured creditors:
 - a. how long case has been open;
 - b. has the administration of the case has been complicated;
 - c. what services has trustee provided to the estate.

If the trustee determines that an interim distribution to creditors is warranted under the specific facts of the case, the trustee should prepare an Interim Trustee's Final Report ("Interim TFR") using the USTP's uniform TFR form. To the extent the trustee's software permits, the forms and Notice of Final Report ("NFR") should be modified to clearly indicate that it is an "interim" final report.

The trustee should electronically submit the Interim TFR and interim fee applications to the Region 2 TFR Consolidation Team Mailbox: USTPRegion02.TFR@UST.DOH.GOV **and** cc the AUST of the applicable field office. The "subject line" of your email should contain the word "INTERIM" before the case number. This will alert the Consolidation Team that you are submitting an Interim TFR. Once the Consolidation Team files the Interim TFR and interim fee applications, the trustee should file an NFR.

Keep in mind that requests for interim trustee compensation or attorney's fees alone (without any distribution to creditors) are generally prohibited. Only in the most extraordinary circumstances where "good cause" has been shown will the United States Trustee agree to such a request.²

If you have any questions regarding this procedure, please contact Kathleen D. Schmitt, Assistant U.S. Trustee, Rochester, New York at Kathleen.D.Schmitt@usdoj.gov and Lisa M. Penpraze, Assistant U.S. Trustee, Albany, New York at Lisa.Penpraze@usdoj.gov. Thank you for your anticipated cooperation.

² Requests for interim trustee compensation or attorney's fees alone (without a distribution to creditors) also must be submitted electronically to the Consolidation Team Mailbox with a cc to the AUST. These are subject to review and approval by the UST.