



U. S. Department of Justice

Office of the United States Trustee

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Oregon and Washington

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TO: Region 18 Chapter 7 Trustees

FROM: Gail Brehm Geiger /s/ **Gail B. Geiger**
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Region 18

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RE: Region 18 Consolidated Review of Trustees' Final Reports and Final Accounts
Summary of Guidance Memoranda

DATE: March 10, 2016

Region 18 adopted a consolidated procedure for reviewing Trustees' Final Reports ("TFRs") and Trustees' Distribution Reports ("TDRs") on December 9, 2013. The U.S. Trustee previously provided seven guidance memoranda or emails addressing the review of TFRs and TDRs as follows:

- 1) Initial Memorandum dated November 25, 2013 addressing both TFRs and TDRs;
- 2) First Supplemental Memorandum dated December 10, 2013;
- 3) Second Supplemental Memorandum dated December 27, 2013;
- 4) Third Supplemental Memorandum dated February 6, 2014;
- 5) Fourth Supplemental Memorandum dated March 10, 2015;
- 6) Guidance for Issues in TIR/FE and TFR Reviews via an e-mail sent by Roy Hilmer in July 2014; and
- 7) Guidance for Chapter 7 Trustees Concerning Tax Issues dated August 31, 2015.

This document is intended to consolidate the above communications and to note revised procedures or requirements. Also, Attachment A, included at the end of this memo, contains a list of common but avoidable TFR errors. If the TFR Reviewers return a TFR due to one of the common errors on this list, the revised TFR will be considered to be a new TFR and reviewed in the order received.

Submitting the TFR to the U.S. Trustee

A trustee must prepare and submit a TFR and Notice of Final Report (“NFR”) to the U.S. Trustee for review. The TFR must be signed by the trustee under penalty of perjury and certify that all assets have been liquidated or properly accounted for and funds of the estate are available for distribution. The TFR must be prepared as soon as the trustee has collected all monies, the bar dates have expired for non-governmental and governmental claims to be filed, the trustee has reviewed all claims, and claim disputes, if any, have been resolved by the court. The TFR must be submitted prior to any distribution of funds to creditors, unless the trustee has previously made an interim distribution in accordance with local rules or practice. A TFR must be submitted before the final distribution of funds in the case and must set forth the distributions to be made under section 726 of the Bankruptcy Code.

Under the consolidated procedure, trustees submit all TFRs electronically. No hardcopy is submitted to the U.S. Trustee unless specifically requested by the TFR Reviewer. The trustee will maintain the original wet signature TFR for the longer of two years after the date the trustee was discharged (*see Handbook for Chapter 7 Trustees (Oct. 2012), at pp. 5-18*) or the time period set forth in any applicable local court rule regarding electronically filed documents and the retention of original verified documents or documents signed under penalty of perjury. Idaho trustees must send hardcopy pages of just the TFR (pages 1 and 2, without exhibits) bearing the trustee’s “wet signature” to the Boise U.S. Trustee’s office.

1. Submitting TFRs in Cases with \$25,000 or Less in Gross Receipts

The following procedures apply when submitting a TFR where the trustee’s gross receipts are \$25,000 or less.

- Prepare the TFR, ensuring the TFR contains the trustee’s electronic signature and required exhibits. The four exhibits are:

Exhibit A	Individual Estate Property Record (Form 1)
Exhibit B	Cash Receipts and Disbursement Record (Form 2)
Exhibit C	Claims Review Analysis
Exhibit D	Proposed Distribution Report

- Ensure that all personally identifiable information (“PII”) is redacted on Exhibits A and B. PII includes full social security numbers, taxpayer-identification numbers, birth dates, names of minor children, and financial account numbers.
- Prepare and submit a NFR.
- Submit a bank statement or interim (snapshot) bank statement that reflects the balance matching the TFR. *See the **Bank Statement** section below for further explanation.*
- To the extent applicable, attach any additional documents that may be required by the bankruptcy court through administrative order, local rule, or current practice, such as fee applications or a proposed order.
- In surplus cases, attach a worksheet (entitled "**Surplus Funds**") that sets forth the surplus

to the debtor and interest on claims.

- In cases containing wage claims, attach a worksheet (entitled "**Wage Claims**") that breaks out the deduction and payment of taxes for each wage claimant.
- Attach or provide any additional supporting documents requested by the TFR Reviewer.
- Email the data-enabled TFR, NFR, interim bank statement, and any attachments to: USTP.Region18.TFR@usdoj.gov.
 - Normally the size of the email is within the U.S. Trustee's size restrictions; however, if the email is too large it may be rejected. A trustee may need to divide the attachments and send the TFR and attachments in more than one email. If multiple emails are needed the subject line will need to be changed for the second email. See the examples under **Naming Conventions** section below.
 - The subject line of the email must contain the information shown below in the **Naming Conventions** section.

2. Submitting TFRs in Cases with More Than \$25,000 in Gross Receipts

The following **additional** procedures are to be followed when submitting a TFR where the trustee's gross receipts exceed \$25,000.

- Add "+25" to the end of the subject line of the transmittal email. This lets the Mailbox Manager know to send an email to the trustee with further instructions.

Example: 7721301234 Jones TFR Smith +25.

- After submitting the electronic TFR, the trustee will receive an email from the U.S. Trustee with instructions concerning the assigned TFR Reviewer and where to send bank documents. Immediately after receiving the email, the trustee should send the original bank statements and cancelled checks to the assigned TFR Reviewer. The U.S. Trustee will return the bank documents via FedEx Ground to the trustee after the TFR is processed.
- Additional documents may be requested depending on the complexity of the case.

Submitting TDRs to the U.S. Trustee

A trustee must submit a TDR to the U.S. Trustee after all checks have cleared and the trustee has the original zero balance bank statements and all cancelled checks. A trustee should submit the TDR within 125 days after the entry of the order allowing final compensation and expenses. Below is an outline of the procedures to be followed when submitting a TDR to the U.S. Trustee for review.

- Assemble the bank statements, separated by each individual estate account, as follows: most current account statement on top, with all cancelled, voided and returned checks in numeric order, to the extent possible, attached to the top of the bank statements. Do not

include deposit advices. When clipping or stapling documents together for each case, please ensure bank statements and checks can be reviewed easily without having to remove staples. If the case was over \$25,000, only send those statements and cancelled checks generated after the TFR review.

- For TDRs in the District of Idaho **only**, provide hard copy of pages one and two of the TDR containing the trustee’s “wet signature”.
- Prepare the data-enabled electronic TDR, ensuring that the report contains the trustee’s electronic signature and all nine exhibits. The nine exhibits are:

Exhibit 1	Gross Receipts
Exhibit 2	Funds Paid to Debtor and Third Parties
Exhibit 3	Secured Claims
Exhibit 4	Chapter 7 Administrative Fees and Charges
Exhibit 5	Prior Chapter Administrative Fees and Charges
Exhibit 6	Priority Unsecured Claims
Exhibit 7	General Unsecured Claims
Exhibit 8	Form 1 – Individual Estate Property Record
Exhibit 9	Form 2 – Cash Receipts and Disbursements Record

- Ensure that all personally identifiable information (“PII”) is redacted on Exhibits 8 and 9. PII includes full social security numbers, taxpayer-identification numbers, birth dates, names of minor children, and financial account numbers.
- Email the data-enabled TDR to: USTP.Region18.TDR@usdoj.gov
 - Normally the size of the email is within the U.S. Trustee’s size restrictions; however, if the email is too large it may be rejected. A trustee may need to divide the attachments and send the TDR and attachments in more than one email. If multiple emails are needed, the subject line will need to be changed for the second email. *See* the examples under **Naming Conventions** section below.
 - The subject line of the email must contain the information shown below in the **Naming Conventions** section.
- The attachments to the email will follow the same naming convention format. *See* the **Naming Conventions** section below.
- Deliver the bank records package to the assigned TDR Reviewer. The Mailbox Manager will send an email if there is more than one Reviewer assigned to your area.

After the review is complete, the U.S. Trustee will return the original bank statements and checks to the trustee via FedEx Ground. These records, along with all estate records, must be retained in accordance with the *Handbook for Chapter 7 Trustees (Oct. 2012)*, at pages 5-17 to 5-19, and any local rules regarding the electronic filing of verified documents or documents signed under penalty of perjury. The U.S. Trustee will not retain any original or paper copy of the TDR after it is filed with the court.

No Hard Copy of NFR or TDR Required

In the original memorandum concerning TDRs, the U.S. Trustee asked trustees to provide Reviewers a hard copy of the NFR with the TDR. This requirement is eliminated. The U.S. Trustee will rely upon the electronic NFR. In addition, trustees were originally asked to provide a hard copy of the TDR in cases with \$50,000 or more in disbursements. This requirement also is eliminated. The U.S. Trustee will rely on the electronic TDR.

Naming Conventions

The subject line of the transmittal email must contain the following information, in the stated order: ten digit Case Number, including the three digit U.S. Trustee court designator prefix (a list of which is set forth in Attachment B); space; debtor's last name or first two words if a business; space; document abbreviation (as listed below); space; and trustee's last name.

Example 1: 7721301234 Jones TFR Smith

Example 2: 7721301234 Jones TDR Smith

For example 1, this subject line signifies that trustee Smith submitted a TFR in the Jones case with Case Number 13-01234, for a case filed in Montana with U.S. Trustee designator 772. For example 2, this subject line signifies that the trustee Smith submitted a TDR in the Jones case with Case Number 13-01234, for a case filed in Montana with the U.S. Trustee designator 772.

If the debtor had been a business named The Foundry Limited, the words The Foundry would replace Jones in the subject line of the email.

Example: 7721301234 The Foundry TFR Smith

Example: 7721301234 The Foundry TDR Smith

When a trustee is submitting a document that needs the Reviewer's immediate attention, the words **SPECIAL ATTENTION** should follow the standard language in the subject line.

Example: 7721301234 Jones TFR Smith – SPECIAL ATTENTION

However, a document does not warrant SPECIAL ATTENTION unless there is a court deadline or other special circumstance that requires immediate attention. *See* the **Request for Special Attention** section below for further explanation.

When a trustee files an Amended TFR, as opposed to a Report of Distribution (ROD) or a Corrected TFR, the email transmittal subject line should include the abbreviation AMD. For example if trustee Smith discovers and administers a new asset in the Jones case after the original TFR was filed, the subject line of the email should read as shown in the example below.

Example: 7721301234 Jones TFR-AMD Smith

When a trustee needs to send more than one email because of a size limitation, the email number should be added to the end of the subject line. Using the Jones TFR example above, but adding a second email transmittal, the two email transmittal subject lines would be:

Example first email: 7721301234 Jones TFR Smith 1

Example second email: 7721301234 Jones TFR Smith 2

If the case involves an estate in excess of \$25,000, the subject line should end with +25.

Example second email: 7721301234 Jones TFR Smith 2 +25

The attachments to the email will follow the same naming format: ten digit Case Number (no spaces or hyphens); space; debtor's last name; space; document abbreviation; space; and trustee's last name. Please use the following abbreviations for the documents:

TFR	Trustee's Final Report
TFR-AMD	Amended Trustee's Final Report
TFR-COR	Corrected Trustee's Final Report
TDR	Trustee's Final Account
TDR-COR	Corrected Trustee's Final Account
TDR-AMD	Amended Trustee's Final Account
NFR	Notice of Final Report
FA-Applicant's Name	Fee Application, including the last name of the applicant
ROD	Report of Distribution
NDR	NDR Minimal Funds
SUR	Surplus/Interest Worksheet
WAG	Wage Claim Worksheet
WET SIG	Wet Signature
BK STMT	Bank Statement
PROPOSED ORD	Western Washington Proposed Order

Request for Special Attention

The purpose of a SPECIAL ATTENTION request is to alert the Reviewer to look at an email as soon as it arrives to determine what special instructions the trustee wishes to convey about a particular matter. An example of a situation in which a special attention request is appropriate is when a trustee changed the original TFR or TDR and wants the Reviewer to disregard the initial document and replace it with the new document.

If a trustee needs to request expedited treatment of a TFR or TDR, or if something else requires immediate attention or is otherwise unique about the submission, the email to the TFR Reviewer should include **SPECIAL ATTENTION** at the end of the subject line. The body of the email should explain the reason for the request for expedited review.

Treatment of Requests for Administrative Expenses

The trustee should follow local practice concerning filing or submitting applications for the trustee's fees and expenses and professionals' fees and expenses. If local practice requires a trustee to send the trustee or professional fee applications to the U.S. Trustee prior to filing the TFR, the fee applications should be included as attachments to the email containing the TFR.

Unless previously filed and approved by the Court, final fee applications will be considered by the TFR Reviewer when the TFR is reviewed. If the TFR Reviewer identifies a concern with an application, the TFR Reviewer will contact the local AUST to address the issue.

Trustees File the NFR

The trustee files the NFR, providing a 21-day notice to parties in interest of their right to object. The trustee should file the NFR as soon as the electronic notice is received through ECF indicating that the Reviewer has filed the TFR with the Court. The U.S. Trustee will not send the trustee an email advising that a TFR has been filed. Instead, the trustee must have a system to identify when a TFR is filed.

Bank Statements

The last bank statement or interim bank statement (snap shot) must reflect a balance that matches the TFR. If the trustee conducts a short sale (or sells another large asset and is in a position to close the estate), the trustee should deposit the funds from closing into the estate bank account and, if possible, immediately file a TFR. If the trustee has not received a bank statement when a TFR is submitted following a large sale, then the TFR can be submitted to reduce bank fees. The required bank statement must be submitted to the TFR Reviewer as soon as available. The TFR Reviewer will not finalize the TFR review until a bank statement or an interim bank statement (snap shot) is provided.

Because the trustee will have previously submitted bank statements and cancelled checks at the TFR stage in cases involving gross receipts in excess of \$25,000, only the statements and checks generated after the TFR review need be sent to the TDR Reviewer.

Proposed Orders

Local practices concerning proposed orders vary across the Region. Some courts' orders approve only the trustee's fees and expenses, while others approve the TFR and all compensation. Also, some courts require a proposed form of order when the TFR is filed. Trustee's should follow local rules and requirements concerning the submission of orders. This can include one of the following:

- The trustee lodges a form of order with the court separately from the TFR.
- The trustee uploads a form of proposed order after the period for objecting to the TFR/NFR expires.
- The trustee provides a separate pdf document of a proposed form of order with the TFR when the trustee submits the TFR to the U.S. Trustee (such a document should be named, for example: **7721301234 Jones TFR Smith – Proposed Order**). For Western District of Washington cases, the TFR Reviewer will file the proposed order as an "attachment" to the TFR in Seattle's ECF system. After the trustee files the NFR, the notice of the hearing on the TFR is sent to creditors, and the objection period runs, the trustee lodges a new form of order with the court that is identical to the one that was attached to the TFR.

Report of Distribution (“ROD”) Versus Amended TFR

If a creditor returns funds to a trustee indicating that the funds were not owed, a ROD is

required and the Reviewer examines and approves the ROD like a TFR. If the trustee receives “new money” (additional funds from assets that were collected after an initial TFR was filed), then an Amended TFR is required.

RODs – Redistribution of Funds

When a trustee distributes funds to a creditor after a TFR is filed, and the creditor returns the funds to the trustee, then the trustee must submit a ROD to the U.S. Trustee. The ROD must reflect the receipt and proposed disposition of the funds and include a new Form 2 reflecting the deposit of the returned funds. The trustee submits the ROD to the USTP.Region18.TFR@usdoj.gov mailbox using the abbreviation ROD in the subject line of the email. After the TFR Reviewer reviews the ROD, the trustee will be notified by the Reviewer in an email that the trustee may send payments to the creditors as proposed in the ROD. Unless required to do so by the local court, nothing is required to be filed with the court. The TFR Reviewer will retain copies of the ROD and associated documents so that the materials may be accessed by the TDR Reviewer at that stage of the process. Trustee compensation was already paid on the funds being redistributed when the trustee initially paid them to the creditor, so no additional trustee compensation should be paid.

Amended TFR

When administering new and additional assets, either after a TFR was filed or after the case is closed and then reopened, a trustee should submit an Amended TFR to the USTP.Region18.TFR@usdoj.gov mailbox. This situation is different than when funds are returned and redistributed as addressed above. If other events occur in the case affecting the accuracy of the TFR, **after the TFR has been filed with the Court**, trustees should submit an Amended TFR.

Hearing Date Information on TFRs

The Local Rules in the Western District of Washington require the inclusion of hearing dates on documents such as TFRs. However, the Chief Judge advised the U.S. Trustee that this information need not be included on TFRs. Trustees still must include the hearing information on their NFRs. As trustees file the NFRs, they determine the dates to insert for court hearings.

Dating NFRs

When creating an NFR to submit with the TFR the trustees’ software will automatically place the current date on the NFR. By the time the NFR is ready to be filed with the Court some days or weeks later, after the TFR has been reviewed by the U.S. Trustee and filed, the date will not be current. Accordingly, the trustee should generate a new NFR on the date that it is filed with the Court, so that the NFR is dated the same date that it is filed. For some districts, the NFR contains hearing and objection dates, and for other districts it contains language that the objection period will run 21-days from the date of the NFR (rather than from the date of mailing of the NFR to creditors), so it is important that the date of the NFR match the date it is filed with the Court.

For U.S. Trustee purposes, it is acceptable for the NFR submitted to the U.S. Trustee with the TFR to contain the trustee’s e-signature - rather than a scanned wet signature.

As noted above, the U.S. Trustee will not send an email to the trustee when a TFR is filed. Each trustee must note that a TFR has been filed based on the Court's CM/ECF email notification. When notice is received that a TFR has been filed, the trustee should immediately generate a new NFR with a current date and file it.

Notice of Final Report (NFR) Not Required for Small Estates

A NFR is generally not necessary when a trustee has net proceeds less than or equal to \$1,500 unless the trustee or another entity is seeking compensation or reimbursement of expenses in excess of \$1,000. *See* Fed. R. Bankr. P. 2002(a)(6) and (f)(8).

Amended Proof of Claim

If an original proof of claim ("POC") has been superseded by an amended POC, the trustee's TFR should list the amount of the final amended POC and not the original POC amount.

Final Review of Claims Register

Trustees must review the Court's "Claims Register" one last time before sending checks to look for additional POCs that may need to be considered. Section 726(a)(1) provides that property of the estate shall be distributed first in payment of claims filed under section 507, proof of which are timely filed "*or tardily filed* on or before the *earlier* of (A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report" (i.e., 10 days after the NFR is mailed); "or (B) the date on which the trustee commences final distribution under this section" (i.e., after the required notice period has run and the checks are ready to cut). Thus, POCs for such things as domestic support obligations, wages, or certain taxes must still be paid as priority claims even if they were filed late but before the earlier of the two dates noted above. In addition, trustees should re-check the Claims Register for additional issues that may affect distribution, such as the withdrawal of a claim or reduction of a claim amount.

Proper Claims Analysis

Some trustees simply attach an unedited copy of the Court's Claims Register to the TFR, as Exhibit C. Exhibit C is intended to be a claims "analysis" that tracks the trustee's analysis of each POC to demonstrate the trustee's compliance with the trustee's duty under section 704(a)(5) to review and analyze claims.

The Claims Analysis will contain the Court's Claims Register, modified as necessary to reflect all activity that affected the POCs filed in the case. The following types of information should be noted on the claims analysis, next to each claim:

- The date any objection was filed to the POC, either by the trustee or any other party such as the debtor.
- Resolution of all objections. For example, note if the court disallowed the POC in whole or part, and any allowed amount.
- If a creditor withdrew or amended the POC, then next to the original POC reference the entry on the register of the amendment or withdrawal.

- The trustee should contact the trustee's software provider if unsure how to input information in Exhibit C.

The POCs set forth in the TFR should be consistent with the final results of the trustee's Claims Analysis.

Treatment of Secured POCs in TFRs

Some trustees do not list all of the secured claims in the Trustee's Proposed Distribution portion of the TFR (Exhibit D). A section of the proposed distribution is specifically reserved for secured claims. It begins with "Claims of secured creditors will be paid as follows" and there are columns for claim numbers, names of the claimants, and other information. The claims of all secured creditors must be listed here according to the General Information and Instructions for TFRs, which states in pertinent part:

For each secured claimant, enter the claim number, the claimant's name, the amount of the claim asserted, the allowed amount of the claim, any interim payments to date, and the amount of the proposed payment. Enter the total amount that will be paid to secured claimants and the balance of funds remaining to be distributed, but not less than zero.

All creditors who filed POCs in a case must receive notice concerning how their POCs will be treated, regardless of classification. If it is the trustee's intention to not pay anything to a secured claimant, listing the POC in the TFR with a notation that the POC will be paid \$0.00 provides appropriate notice to the creditor.

Filing Proofs of Claim for Creditors

Although Section 501(c) and Fed. R. Bankr. P. 3004 permit the trustee to file a claim if the creditor does not file one, trustees should be wary of doing so because the trustees will be verifying that the POC is accurate and valid. If a trustee sells an asset subject to a lien, the trustee must, of course, verify the validity of the debt and any lien securing the debt, as well as the proper perfection of the lien. If the debt must be satisfied so the trustee can transfer clear title to the seller, but the lien creditor has not filed a POC, the trustee should not do so. The secured claim is typically paid directly by the closing agent (*e.g.*, escrow or title company) so the trustee can transfer clear the title. In the motion to sell, the trustee should request an order providing that the closing agent can pay the lienholder directly at closing.

Short Sales – Carve Out or Buyer's Premium

If a trustee receives a carve-out or buyer's premium, the trustee should list the funds on Form 2 and refer to the real property being sold, rather than listing the carve-out or buyer's premium as a separate asset. A buyer's premium should be separately listed in the transaction description. Gross proceeds should be reported on Form 2.

Sales of Real Property – Property Taxes

Pro rata real estate property taxes paid by the buyer at closing should not be considered part of the sales price. This payment would be credited against any property taxes the trustee

pays at closing as the seller or prior to closing, if the trustee was operating the property and paying ongoing taxes, insurance, etc.

Real estate taxes typically have a UTC of either 2820 (other state or local tax – postpetition) or 4700 (other government tax liens or real property tax liens - prepetition).

Some closings may occur where there is a real estate tax credit but no deduction from the estate's sales proceeds for real estate taxes because the taxes were previously paid by the debtor or the secured creditor. The reporting will depend on the facts. If the debtor paid the property taxes just before the case was filed and the trustee sold the property shortly after the case was filed, the real estate tax credit would be reported as a separate asset entirely – it was a pre-paid expense that existed on the petition date (likely UTC 1229). If the secured creditor paid the taxes, the tax credit would be assigned UTC 4110, as an offset to the secured claim paid out of the sale proceeds.

Rental Property

If a trustee is acting as a landlord and is responsible for property expenses, the trustee should obtain an Operating Order. Employment of a property manager should be noted either in the Motion to Operate the Business or in a separate Employment Application. Property managers must provide the trustee with monthly management reports detailing all rental receipts received and all property expenses paid. Receipts and expenses made by the property manager that are deducted from the gross rental receipts should be summarized and reported in the Form 2 monthly via memo entries. The trustee's records should sufficiently document the monthly rental receipts and expenses for each property. When an Operating Order is obtained, rent receipts should have a UTC of 1130/1230, and operating expenses should have a UTC of 2690.

Preferences or Fraudulent Transfers

If a trustee sends correspondence with a demand for payment or initiates an adversary proceeding, the claim should be listed on Form 1 as an asset. Each claim should be listed individually, rather than lumped into a single category. If the payment underlying the preference or the transfer is noted in the Statement of Financial Affairs (SOFA), the asset is considered a scheduled asset.

Cases Converted from Chapter 13

Cases in which a Chapter 13 trustee made payments to creditors pursuant to the plan before the case converted to chapter 7 require special consideration. Section 348(d) provides, "A claim against the estate or debtor that arises after the order for relief but before conversion in a case that is converted under ... 1307 of this title, ..., shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition." Ideally, when a trustee makes the distribution in the chapter 7 case, the chapter 7 POCs should be paid until the trustee reaches the percentage distribution paid to claimants in the chapter 13, then all creditors should be paid pro rata. The trustee's software may not be able to do this. At a minimum, the chapter 13 claims must be edited by the amounts paid by the chapter 13 trustee. If this situation comes up, the trustee should discuss the case with the trustee's software provider.

Trustee Wet Signatures

Idaho Trustees:

A unique local rule in Idaho requires that Idaho trustees send the wet signature pages of TFRs and TDRs to the Boise U.S. Trustee Office. The first two pages should be provided so that the Reviewer can match the signature page with the first page containing the debtor's name and case number.

Oregon Trustees:

An Oregon local rule allows Reviewers to confirm that trustees have signed their TFRs and TDRs by reviewing scanned copies of the wet signatures. Thus, Oregon trustees must submit scanned copies of their wet signature pages along with their TFRs and TDRs to the Reviewers. Oregon trustees should scan their wet signatures, and email the first two pages of the TFR or TDR and the wet signatures when submitting TFRs and TDRs to the email Inbox. The Reviewers will not file a TFR or TDR without first reviewing the scanned wet signatures. Trustee's should submit the scanned signatures as attachments to the TFRs or TDRs, using the following naming convention example:

7721301234 Jones TFR Smith – Wet Signature

Unpaid Court Fees

Before submitting a TFR, trustees must check with the Clerk's Office to verify that no unpaid fees are owed for certified copies, reopening fees, adversary proceeding filing fees or other matters. Sometimes the Clerk's Office defers the collection of fees when there are no assets in a case from which to collect fees incurred by trustees. All deferred and unpaid fees must be paid. Some trustees make it a practice to contact the Clerk's Office when it comes time to close a case to inquire about the existence of any unpaid fees. Other trustees create claims or other notes in their software for these court costs as they are being incurred (e.g., when an adversary proceeding is filed). Trustees must have a system in place to check for unpaid court fees before final distribution is made, and make an affirmative statement on the Claims Analysis (Exhibit C) that all outstanding court costs have been paid.

Notations on TFRs

Trustees do not always include notes in the attachments to TFRs (Forms 1 and 2) that assist Reviewers. For example, if an asset on the schedules or SOFA is not administered, it assists the review process if a trustee notes on Form 1 why the asset was not administered. This is not a requirement, but would decrease the amount of emails between the trustee and the Reviewer.

Unclaimed Funds

Unclaimed funds turned over to the court should have the same UTC as the one used for the original payment that went unclaimed. The payment to the court should have a wildcard (digit 7 in a UTC) of 1. For example, if a former employee of the debtor did not cash a priority wage check that was coded with UTC 5300-000, the trustee's reversing entry would be coded

with UTC 5300-000, and the trustee's check to turn over the funds to the court would be coded with UTC 5300-001.

UTC Sub-Codes

Region 18 trustees should not use optional sub-codes (digits 5 and 6 in a UTC).

Reports of Sales

Fed. R. Bankr. P. 6004(f)(1) provides as follows:

All sales not in the ordinary course of business may be by private sale or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of a sale. If the property is sold by an auctioneer, the auctioneer shall file the statement, transmit a copy thereof to the U.S. Trustee, and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement and transmit a copy thereof to the U.S. Trustee.

The Report of Sale formally provides notice of what occurred following the trustee's Notice of Intent to Sell. To ensure consistency throughout the Region, all trustees should file a Report of Sale immediately following the sale of any estate asset. By filing a Report of Sale immediately, the record contains confirmation that the noticed sale took place on the terms specified in the notice. Further, parties in interest do not have to look for this information buried in the trustee's eventual TFR.

The Report of Sale must contain the information required by Rule 6004, *i.e.* the name of the purchaser; the price received for each item or lot; and the date of the sale. When the sale involves real property, trustees should attach a copy of the sale closing statement to the Report of Sale. This will allow the UST and others to track all of the income and expenses associated with the sale.

Unscheduled Assets

According to the *Handbook for Chapter 7 Trustees* assets are to be considered "scheduled" for Form 1 purposes if they are referenced in the debtor's original Schedules or SOFA. Therefore, if intangible assets such as possible recoverable fraudulent or preferential transfers are mentioned in debtor's SOFA, but are not reflected in Schedules A or B, they are considered "scheduled" for purposes of Form 1. Assets that are not disclosed in the debtor's original Schedules or SOFA, or any assets added by amendment, are designated as "unscheduled" on Form 1.

Blanket Bond Amounts

Trustees should update the blanket bond amount shown on Forms 2 and 3 each year when the bond endorsement is received. This should occur on or about April 1. The current blanket bond does not have a per case limit, but only the aggregate bond amount.

Errors and Corrections

If a TFR or TDR has one or more errors, the Reviewer will send the trustee an email describing the problem. The trustee will have five business days to submit the required corrections. All corrections must be directed to the Reviewer and sent by email using the standard subject lines set forth above, with TFR-COR or TDR-COR as the document abbreviation. If the correction is not received within 5 business days, the TFR will be noted as returned. Subsequently, upon receipt of the correction, the Reviewer will deem the corrected report as new and will process it based upon the date the correction was received. Trustees who will be out of the office for an extended period of time should communicate this information to the Reviewers and indicate a date by which corrected TFRs or TDRs will be submitted, if necessary.

Errors and corrections will be tracked to ensure trustees submit accurate TFRs and timely corrections. Trustees should double check TFRs and TDRS before they are submitted to the U.S. Trustee to ensure that technical problems and deficiencies are resolved before submission. Habitual problems cause frustration for Reviewers and trustees alike, delay distributions to creditors, and slow down the review process for the entire region.

Communication Between Trustees and Reviewers

Previously, all communications occurred directly between the Reviewers and the trustees. Some trustees have requested that Reviewers include their staff in some communications. Because it is anticipated that most communications will occur via email, the solution will be to copy the trustee's staff members with the email exchanges and to use "reply to all." This way the trustee will always be aware of the information exchanges that occur.

Finally, when responding to a Reviewer's initial email communication concerning an error or other issue use "Reply" to the original email. By doing this the entire email communication can be captured in a single, unified "string," which the U.S. Trustee will save for future reference during the trustee's bi-annual performance review.

When communication occurs between the U.S. Trustee staff and the trustee's office concerning errors or other issues, please ensure at a minimum that the subject line of all email correspondence begins with the ten digit case number followed by a space.

NDR – Minimal Funds

The "Overview" for Reports of No Distribution (a copy of which is attached to this Memo as Attachment C) indicates that there are six versions of NDRs. For cases in which minimal funds were collected but which were insufficient to administer, the trustee is to make a virtual docket text entry denoting that minimal funds were collected. Because the trustee actually received estate funds in such instances, before filing the minimal funds NDR with the Court, the trustee must provide the TDR Reviewer with proof of the receipt and distribution of the funds. This should be done by submitting Forms 1 and 2 in pdf to the TDR Inbox using the following naming convention example:

Example: 7721301234 Jones NDR Smith

Original hard copies of all of the bank statements and cancelled checks should be mailed to the Reviewer identified. The bank statements should reflect a final zero balance. After the TDR Reviewer has received and reviewed the materials the trustee will receive an email indicating that the minimal funds NDR may be filed with the Court by making the appropriate virtual docket text entry.

The TDR Reviewer will return the original bank statements and cancelled checks to the trustee via FedEx Ground.

Interim Distributions

All interim distributions, and all interim applications for fees and expenses, will continue to be reviewed by the local U.S. Trustee field office staff and not by the Reviewers under the consolidation protocol. Also, when a case converts from Chapter 11 to Chapter 7, all final applications for fees and expenses will be reviewed by the local U.S. Trustee field office.

Tax Issues

The Ninth Circuit Court of Appeals has held that a trustee must provide notice and a hearing under 11 U.S.C. § 503(b) prior to paying taxes incurred by the bankruptcy estate that are an administrative expense under section 503(b)(1)(B). *In re Cloobek*, 788 F.3d 1243 (9th Cir. 2015). Further, the Court noted that the trustee must pay the estate taxes on or before the due date other than in limited situations. *See also* 28 U.S.C. § 906(b) and 11 U.S.C. § 503(b)(1)(D). Finally, the Court noted that the hearing requirement insures that interested parties have an opportunity to contest the taxes before they are paid. This ruling resulted in a change in procedure for trustees operating in districts that did not previously require notice or a hearing before paying administrative taxes.

The U.S. Trustee reviewed its policies and guidance concerning tax issues in Chapter 7 cases in light of *Cloobek*, and the decision in *In re 800Ideas.com, Inc.*, 496 B.R. 165 (B.A.P. 9th Cir. 2013) (addressing a trustee's unexcused failure to timely file tax returns and the administrative treatment of the resulting tax penalties), and tax-related problems and issues noted during TIR and TFR reviews of cases. Based on *Cloobek*, *800Ideas.com* and section 503(b), the U.S. Trustee provided the following guidance concerning timely filing tax returns, providing notice/hearing before paying administrative taxes, and timely paying taxes.

1. As required by *Cloobek*, trustees must provide notice and an opportunity for hearing prior to paying bankruptcy estate taxes that are an administrative expense. Plan ahead and allow sufficient time for the court to enter any order required before the taxes are due.
2. The notice or motion for approval to pay administrative taxes should disclose the amount and type of taxes that are proposed for payment; the year or other period for which the taxes are incurred; if penalties and interest have been incurred and are proposed for payment from the estate, the amount of each; and the justification for paying penalties and interest.

When the TFR is submitted in a case that may raise tax-related questions, trustees should include a brief note in the transmittal e-mail concerning any estate tax issues, if it is not obvious

from the TFR or other documents filed in the case.

Finally, because of the importance of the trustee's obligation to timely file tax returns and pay taxes, the trustee should consider adopting the following practices in case administration:

- Obtain necessary records from the debtor as soon as possible;
- Employ an accountant early in the case if tax returns are, or are likely to be, required;
- Evaluate tax consequences prior to sale;
- Evaluate tax issues regarding assets the trustee does not intend to liquidate and abandon them if appropriate;
- Discuss potential tax consequences of sale or settlement in the notice;
- Know which cases are likely to require tax returns and flag them;
- Assess all asset cases at the beginning of each year for tax filing requirements;
- File tax returns timely;
- If an extension is requested and taxes will be owed, make an estimated tax payment; and
- Attempt to obtain abatement of penalties, if there was a good cause for delay.

Assistance

Trustees with questions should contact Jim Files in the Eugene Office (541-465-6332) for TFR questions or Roy Hilmer in the Seattle Office (206-553-2000, ext. 241) for TDR questions.

Thank you for your continuing assistance and cooperation.

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Copies: Region 18 Assistant U.S. Trustees
 TFR/TDR Teams

ATTACHMENT A

Common TFR Errors Identified by the Reviewers (February 2016)

- A. Most errors relate to trustees failing to include the following required documents:
- 1) Bank statements, either not included, or the amounts do not match the TFR.
 - 2) Exhibit C not included or in error.
 - 3) Fee applications not submitted prior to the TFR.
 - 4) No surplus/interest worksheet included.
- B. Substantive and more significant errors include the following:
- 1) UTC errors.
 - 2) Secured claims and/or unsecured claims not included in TFR & NFR.
 - 3) Deferred filing fees not paid.
 - 4) Trustee's compensation incorrectly calculated.
 - 5) Claim amounts entered incorrectly, evidencing that the trustee did not review the actual proof of claims and did not review the TFR to ensure the dollar figures (and categories) matched the actual proofs of claim
 - 6) Form 1 errors
 - 7) Data from amended schedules or SOFA not included.
 - 8) New asset entered on Form 1 when that same asset is already on Form 1.
 - 9) Sale of real property misreported on Forms 1 and 2.
 - 10) Form 2 errors.
 - 11) Improper characterization of unsecured versus scheduled assets.
 - 12) Chapter 13 payments not considered.
 - 13) Report of Sale fails to include information or was not filed.
 - 14) Standardized naming conventions not used in email subject line or names of the pdf attachments.
 - 15) **TFR pdf not opened/reviewed before submission to Reviewer so that obvious errors were not prevented.**

Attachment B

ACMS Division Codes by Rgn/GD/Div v1.0

RGN	GRP	ACMS Div Code	ACMS Division Name	ACMS Division City	ACMS Div State	ACMS Judicial Dist Name
18	AK	710	Juneau	Juneau	AK	District of Alaska
18	AK	720	Nome	Nome	AK	District of Alaska
18	AK	730	Anchorage	Anchorage	AK	District of Alaska
18	AK	740	Fairbanks	Fairbanks	AK	District of Alaska
18	AK	750	Ketchikan	Ketchikan	AK	District of Alaska
18	BS	761	Boise	Boise	ID	District of Idaho
18	BS	762	Coeur d'Alene	Coeur d'Alene	ID	District of Idaho
18	BS	763	Moscow	Moscow	ID	District of Idaho
18	BS	764	Pocatello	Pocatello	ID	District of Idaho
18	BS	768	Twin Falls	Twin Falls	ID	District of Idaho
18	EG	796	Eugene	Eugene	OR	District of Oregon
18	GF	772	Butte	Butte	MT	District of Montana
18	PL	793	Portland	Portland	OR	District of Oregon
18	SE	812	Seattle	Seattle	WA	Western District of Washington
18	SE	813	Tacoma	Tacoma	WA	Western District of Washington
18	SP	801	Yakima	Yakima	WA	Eastern District of Washington
18	SP	802	Spokane	Spokane	WA	Eastern District of Washington

Attachment C

Reports of No Distribution (NDRS) – Overview – see below

REPORTS OF NO DISTRIBUTION (NDRS) - OVERVIEW

- NDRs are filed in cases when chapter 7 trustee will make no distribution to creditors (i.e., will not file a TFR and TDR)
- Six versions of NDR: four versions are virtual text entries, two are filed as PDF documents using single case docketing ("special" or ad hoc NDRs)
 - No funds collected by chapter 7 trustee - no distribution to creditors
 - Minimal funds collected by chapter 7 trustee - no distribution to creditors
 - Case dismissed or converted to another chapter - no funds collected by chapter 7 trustee
 - Case dismissed or converted to another chapter - minimal funds collected by chapter 7 trustee
 - "Special" or ad hoc NDR – no funds collected by chapter 7 trustee
 - "Special" or ad hoc NDR – funds collected by chapter 7 trustee
- "Special" or ad hoc NDRs are filed only through single case docketing; the other four NDRs are filed either through the Trustee 341 Filings program in ECF *or* through single case docketing

ECF DOCKET TEXT FOR EACH NDR VERSION

1. No funds collected by chapter 7 trustee – no distribution to creditors:

Chapter 7 Trustee's Report of No Distribution: I, {trustee name}, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for {# months pending} months. Assets Abandoned (without deducting any secured claims): \${assets abandoned}, Assets Exempt: \${assets exempt}, Claims Scheduled: \${claims scheduled}, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): \${claims discharged}.

2. Minimal funds collected by chapter 7 trustee – no distribution to creditors:

Chapter 7 Trustee's Report of No Distribution: I, {trustee name}, having been appointed trustee of the estate of the above-named debtor(s), report that I collected funds totaling \${funds collected}. After making diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate, I have determined that there are insufficient assets to administer. All funds have been returned. All bank statements and canceled checks, if any, have been submitted to the United States Trustee. The bank statements reflect a final zero

balance and no other funds or assets of the estate remain in my custody. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for (# months pending) months. Assets Abandoned (without deducting any secured claims): \$(assets abandoned), Assets Exempt: \$(assets exempt), Claims Scheduled: \$(claims scheduled), Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): \$(claims discharged).

3. Case dismissed or converted to another chapter – no funds collected by chapter 7 trustee:

Chapter 7 Trustee's Report of No Distribution: I, (trustee name), having been appointed trustee of the estate of the above-named debtor(s), report that this case was dismissed or converted. I have neither received any property nor paid any monies on account of this estate. I hereby certify that the chapter 7 estate of the above-named debtor(s) has been fully administered through the date of conversion or dismissal. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for (# months pending) months. Assets Abandoned (without deducting any secured claims): Not Applicable, Assets Exempt: Not Applicable, Claims Scheduled: Not Applicable, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): Not Applicable.

4. Case dismissed or converted to another chapter – minimal funds collected by chapter 7 trustee:

Chapter 7 Trustee's Report of No Distribution: I, (trustee name), having been appointed trustee of the estate of the above-named debtor(s), report that this case was dismissed or converted. I collected funds totaling: \$(funds collected). All funds have been returned or transferred to the successor trustee. All bank statements and canceled checks, if any, have been submitted to the United States Trustee. The bank statements reflect a final zero balance and no other funds or assets of the estate remain in my custody. I hereby certify that the chapter 7 estate of the above-named debtor(s) has been fully administered through the date of conversion or dismissal. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for (# months pending) months. Assets Abandoned (without deducting any secured claims): Not Applicable, Assets Exempt: Not Applicable, Claims Scheduled: Not Applicable, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): Not Applicable.

5. "Special" or ad hoc NDR – no funds collected by chapter 7 trustee (PDF explaining unique or unusual circumstance must be attached):

Chapter 7 Trustee's Report of No Distribution: Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for

{# months pending} months. Assets Abandoned (without deducting any secured claims): \${assets abandoned}, Assets Exempt: \${assets exempt}, Claims Scheduled: \${claims scheduled}, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): \${claims discharged}.

b. **"Special" or ad hoc NDR – funds collected by chapter 7 trustee (PDF explaining unique or unusual circumstance must be attached):**

Chapter 7 Trustee's Report of No Distribution: Funds Collected and Returned: \${funds collected}. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for {# months pending} months. Assets Abandoned (without deducting any secured claims): \${assets abandoned}, Assets Exempt: \${assets exempt}, Claims Scheduled: \${claims scheduled}, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): \${claims discharged}.