

**2/23/2011**

**Subject:** Protocol -- Rule 2002(f)(8) when "net proceeds realized" are less than \$1,500

The Court Clerk's office has asked for input from our office on how we calculated "net proceeds realized exceed \$1,500" for purposes of Rule 2002(f)(8). They discovered that they were not uniform in how they were approaching this issue. Unfortunately, there is no explicit guidance in either the Bankruptcy Code or Rules, or in the 1999 Memorandum of Understanding between the USTP and the Bankruptcy Court regarding TFR and TDR review.

I then conferred with numerous individuals in the office and with several trustees regarding this issue. In this process, I discovered that our office and the trustees were also not uniform on this issue. So that everyone is on the same page, I have informed the Court that the following will be our approach going forward. It is my understanding that in their review, the clerk's office will also follow the same approach.

**Conclusion.**

We and the court will be using the "Balance to be Disbursed" line on the Exhibit A to the Trustee's Application For Compensation to calculate the "net proceeds realized" for purposes of 2002(f)(8). This is **not** to be confused with "balance on hand" / "funds available for distribution" in paragraph 4 of the TFR form. For determining whether the \$1,500 threshold is met, the clerk's office and our office will be looking at the Exhibit A to the Trustee's Application For Compensation.

**Using "Total Proceeds" as the benchmark.**

I understand that some trustees were instructed by our office in the past to use the "Total Proceeds" on the Exhibit A as the benchmark, as a conservative approach. That will remain acceptable going forward. If a trustee wishes to take the more conservative approach and to provide more notice, we do not want to discourage that. Further, there is scant jurisprudence on this issue and it is possible that if litigated, a court could determine that it is "total proceeds" that governs 2002(f)(8).

**Net Result.**

It is unlikely this clarification will require a change in your current protocol. If you currently take the more conservative approach, this issue probably never arose in any of your cases. If you have been utilizing the "Balance to be Disbursed" as the benchmark, hopefully any inconsistent approach by our office and the court will come to an end.