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Subject: Chapter 7 Trustees - Cases administration guidance
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Trustees,

Based on the United States Trustee's consolidation of Field Exams and the review of TIRs, TFRs, and TDRs, we have developed the following additional guidance for reporting assets, receipts, and disbursements.

1. **Preference or Fraudulent Transfers Claims:** These claims or assets should be listed on Form 1 as soon as you identify them as potential assets, but in any event no later than when you send correspondence with a demand for payment or initiate an adversary proceeding. Any avoidance actions or claims 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, the asset or claim is considered a "scheduled asset" for reporting on Form 1. *See Handbook for Chapter 7 Trustee, Supplemental Materials, Instructions for Form 1.*

2. **Short Sales:** When closing a short sale of real property, report the gross sales proceeds in Form 2. Any receipt of a carve-out or buyer's premium should be referenced back to the real property sold, rather than listed as a separate asset.

A trustee's administration of real property via a short sale should be guided by the principals that the administration of assets should result in a meaningful distribution to unsecured creditors and assets should not be administered solely for the benefit of the secured creditors and the professionals in the case. The United States Trustee has an expectation that unsecured creditors (not including administrative priority claims) should receive at least 50% of the carve-out or buyer's premium negotiated for a short sale involving real property. Your order approving the sale should include this provision unless your local rules or practice provide otherwise.

3. **Rental Property:** If you are acting as a landlord and are collecting rent and paying property expenses, you should discuss the reporting requirements with the United States Trustee's office and whether an operating order is necessary. The best practice is to obtain an operating order if you are collecting rental income and paying rental expenses. If you have employed a property manager, this should be noted either in the motion to operate the business or in a separate employment

application. In addition, the manager must provide you with *monthly* management reports detailing all gross rental receipts and all property expenses paid with rental income, including any deductions for a management fee. Total rental income received and all expenses made by the property manager that are deducted from the gross rental receipts must be summarized and reported in the Form 2 via memo entries. When an operating order is obtained, rent receipts should have a UTC of 1130/1230, and operating expenses should have a UTC of 2690. Your records should be sufficient to determine, per property, the gross monthly rental receipts, total expenses, and net rents turned over to the trustee.

Trustees should pay particular attention to the activities of professionals who are not closely regulated by state authorities or who take physical possession of estate property and funds, such as auctioneers, liquidators, brokers, collection agents and property managers. The general standards for supervising auctioneers (*see Handbook,* Chapter 4.C.10.g) apply equally to other professionals who take possession of estate funds and property.

4. Sales of Real Property: Real estate property taxes received in closing from the buyer should not be considered part of the sales price. These taxes should be credited against any property taxes paid at closing by the trustee or estate, as the seller, or prior to closing if the trustee has been operating the property and paying ongoing expenses such as taxes and insurance. Real estate taxes typically have a UTC of either 2820 (other state or local tax (post-petition)) or 4700 (other gov. tax liens real property tax liens pre-petition).

There also may be instances where there is a real estate tax credit but no deduction for real estate taxes from the sale proceeds because the taxes were previously paid by the debtor or the secured creditor. The reporting will depend on the facts. Check with your TIR or TFR reviewer or your U.S. Trustee's office if you have questions.

5. Cases Converted from Chapter 13: Special claims considerations exist when a case converts from chapter 13 to chapter 7 after the Chapter 13 trustee made payments to creditors based on a confirmed plan, and post filing/pre-conversion claims are filed in the chapter 7 case. Section 348(d) provides that claims that arise after the chapter 13 case is filed but before the case is converted to a chapter 7 proceeding are to be treated as if the claim arose prepetition. The provision states:

> A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section . . . 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.

Section 348(d). Ideally, when a trustee makes a distribution in the chapter 7 case, the post filing/pre-conversion claims should be paid until the percent distributed to claimants in the chapter 13 is reached, and then all creditors should be paid the same pro rata amount. Thus, if during the chapter 13 case unsecured creditors received a distribution of 10 percent of their claims then the post filing/pre-conversion claims should receive the same 10 percent distribution before any further funds are distributed to the pre-filing claimants. We are not sure if your software can do this. At a minimum, trustees must reduce the chapter 13 claim by the amount paid by the chapter 13 trustee. If this situation arises, discuss the case with your software provider.

6. **Unclaimed Funds:** The UTC for unclaimed funds turned over to the court should be the same UTC used for the original distribution to the creditor that was 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 does not cash a priority wage check that was coded with UTC 5300-000 then the trustee's reversing entry is 5300-00**0** and the trustee's check to turn over the funds to the court would have UTC 5300-00**1**.

7. **UTC Sub-Codes:** Region 18 does not use optional sub-codes (digits 5 and 6 in a UTC). We've seen disbursements with a sub-code used (e.g., 3210-600, 3220-610, and 4800-070). Please make sure sub-codes are not utilized.

8. **Form 3 Disposition Dates:** The date of disposition by TFR or TDR in Column 7 should be the date submitted to the U.S. Trustee, not the date the TFR or TDR is filed with the Court. *See Chapter 7 Trustee Handbook*, Supplementary Materials, Instructions for Form 3.

9. **Blanket Bond Amounts Reported on Forms 2 and 3:** Please be sure to update the blanket bond amount each year on Forms 2 and 3 when you receive the renewal endorsement, on or around April 1. Please note that the current blanket bond does not have a per case limit, so the only limit is the aggregate amount of the bond.

10. **Untimely TFRs:** We have noted instances where a trustee's failure to file a TFR promptly after all assets are fully administered results in unnecessary bank service fees. In some cases, the trustee has been surcharged or has agreed to forego a portion of the fees. Trustees should close cases promptly to avoid unnecessary bank fees. Trustee responsibilities such as obtaining a claims bar date, reviewing claims, and retaining a CPA to prepare and file tax returns should be performed concurrently with other case administration duties wherever possible, rather than routinely waiting until the end of the case and then doing these tasks consecutively which delays the case closing.

11. **Employment Applications:** We have noted instances where professionals are commencing work prior to their employment by the estate. Effective immediately, please note in the employment order the date that the professional commenced work for the estate.

12. **Public Sales:** FRBP 2002(c)(1) requires that the notice of a proposed use, sale, or lease of property, other than in the ordinary course, include the time and place of any public sale. We have noticed that many sale notices do not include this information. Please include the time and place of any auction or other public sale in your notice of the sale.

Please contact me should you have questions

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