
From: Burnette, Cindy (USTP)
Sent: Saturday, July 11, 2015 9:51 AM
To: Andrea P. Bauman; Angela Stathopoulos [REDACTED]; Angela Welch [REDACTED]; Carolyn Chaney; Christine Herendeen [REDACTED]; Dawn Carapella [REDACTED]; Douglas N. Menchise; Larry S. Hyman; Lauren P. Greene; Nicole Cameron [REDACTED]; Richard Dauval [REDACTED]; Shari S. Jansen; Stephen L. Meininger; Susan Woodward; Traci Stevenson [REDACTED]; V. John Brook, Jr.; Diane L. Jensen; Luis Rivera [REDACTED]; Robert E. Tardif [REDACTED]
Subject: Memorandum dated July 10, 2015 from Acting United States Trustee Guy G. Gebhardt regarding "IMPORTANT INFORMATION" Review Procedures for Case Administration, Trustee Final Reports and Final Accounts
Attachments: Memorandum dated 7-10-15 from UST Guy Gebhardt to Chapter 7 Trustees regarding-- Important Information Review Procedures for Case Administration, Trustee Final Reports and Final Accounts.pdf; Attach 1 TR Ltr 042015.msg.pdf; Attach 2 TR Ltr 042015.pdf; Trustee ltr Attachment 3.pdf
Importance: High
Sensitivity: Private

Dear Chapter 7 Trustees:

Please carefully review the guidance provided in the attached Memorandum dated July 10, 2015, from Acting United States Trustee Guy G. Gebhardt regarding **"IMPORTANT INFORMATION"** Review Procedures for Case Administration, Trustee Final Reports and Final Accounts. Please inform your case closing staff of the contents and go over the information with them to make sure you and your office are complying with the guidance set forth therein. Make special note of attachment 3 which provides an updated contact list for TFR and TDR matters.

If you have any questions, please contact Regional Bankruptcy Auditor Mary Kay Baltzell or me to discuss.

Again, please make sure that this information is provided to your case closing staff immediately.

Thank you.

Cynthia P. Burnette
Assistant United States Trustee
Office of the United States Trustee
501 E. Polk Street, Suite 1200
Tampa, Florida 33602
(813) 228-2000
Cindy.P.Burnette@usdoj.gov



U.S. Department of Justice

Office of the United States Trustee

362 Richard Russell Building
75 Spring Street SW
Atlanta, GA 30303

(404) 331-4437
FAX (404) 730-3534

MEMORANDUM

TO: Region 21, Chapter 7 Trustees

FROM: Guy G. Gebhardt, Acting United States Trustee

RE: UPDATED Review Procedures for Trustee Final Reports and Final Accounts **“IMPORTANT INFORMATION”¹**

DATE: January 15, 2014

The Executive Office for United States Trustees has approved and implemented the consolidation of review of Trustee Final Reports (TFRs) and Trustee Final Accounts (TDRs) nationwide. Region 21 served as a pilot region for the consolidation effort. The goal continues to be to provide a more efficient, consistent, and timely review of these reports. In order to conform to the review procedures that were approved for nationwide rollout, some adjustments must be implemented for the processing of TFRs and TDRs. Please carefully review the guidelines and procedures set forth in this memorandum and ensure that your staff is informed concerning the changes that will be implemented beginning with all TFRs and TDRs submitted on or after February 1, 2014. **Most importantly, note that the mailbox addresses and naming conventions have been changed.** This memorandum supersedes the letter regarding the Consolidation of Review of Trustee Distribution Reports dated March 13, 2012, sent by Donald F. Walton, United States Trustee, and the memorandum regarding Consolidation of Review of Trustee Final Reports dated June 28, 2013, sent by Guy G. Gebhardt, Acting United States Trustee.

The TFR and TDRs reviews will continue to be completed by a team of United States Trustee staff members from around the Region who may not be stationed in your local United States Trustee's office. Please see the below chart which sets forth the division of responsibilities for the review of documents related to case closings.

¹ Please read this memorandum fully and carefully paying close attention to all bolded information.

FUNCTION	CONSOLIDATION TEAM	FIELD OFFICE
TFRs – Trustees (initial submission)	X	
TFRs – Converted 11s (initial submission)	X	
TFRs – Revisions, corrections, amendments, supplements, re-distributions	X – if they reviewed the initial submission	X – if they reviewed the initial submission
Approval of interim distributions		X
Interim fee applications		X
Final fee applications (submitted in connection with the TFR and noticed on the NFR)	X	
Final fee applications (submitted prior to TFR and separately noticed)		X
Final fee applications (converted 11s)		X
TDRs – All submissions	X	
TDRs – related documents filed under seal or with restricted access		X
NDR cases with minimal funds or Ad Hoc NDR – bank statements only		X

If the field office retains responsibility for the review of the closing documents, as set forth in the chart above, please continue to submit the case closing documents to your local United States Trustee's office in accordance with the procedures established by the local office. **If you receive this letter and are currently not on a panel of trustees in Region 21 because of retirement or resignation, you are requested to comply with the procedures included herein.**

TFR SUBMISSIONS

When a case is ready to close, the trustee must prepare and submit a Trustee's Final Report (TFR) and Notice of Final Report (NFR) to the United States 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 that funds of the estate are available for distribution. The TFR must be prepared as soon as all monies have been collected, all claims have been reviewed or determined by the court, and the bar date has expired for creditors to file claims. The report must be submitted prior to any distribution of funds to creditors, unless the trustee has previously made an interim distribution pursuant to a court order. In any event, a TFR must be submitted before final distribution of all funds in the case and must set forth the distributions to be made under section 726.

Under the new consolidated procedure, all TFR submissions will be electronic and no hardcopy will be submitted to the United States Trustee unless specifically requested. The trustee will maintain the original wet signature TFR for the longer period of at least two years after the date the trustee was discharged,² or the time period set forth in any applicable local court rules regarding electronically filed documents and the retention of original verified documents or documents signed under penalty of perjury.

Case Assignments

Cases will be assigned to Reviewers based on the last two digits of the case number. The assignment list and contact information for the Reviewers is included as **Attachment A**. Please be aware that cases may be reassigned based on inventory levels, duty assignments, leave requests, and at the discretion of the team leaders or supervisors.

Submission in cases with \$25,000 or less in Gross Receipts or single asset cases regardless of amount³

- Prepare the data-enabled electronic TFR, ensuring the report contains your electronic signature and required exhibits. The four exhibits are:

Exhibit A	Individual Estate Property Record (Form 1)
Exhibit B	Cash Receipt and Disbursement Record (Form 2)
Exhibit C	Claims Review Analysis (Optional)
Exhibit D	Trustee's Proposed Distribution

- Financial account numbers must be redacted and only the last four digits of a financial account number may be shown.
- Prepare the Notice of Final Report (NFR).
- Obtain an interim (snapshot) bank statement or submit the most recent bank statement that reflects the balance matching the TFR. (**The bank statement must be provided by the bank and cannot be generated from your software system.**)
- **Obtain a current Claims Register which is dated at least within three days of the submission of the TFR.⁴**

² See *Handbook for Chapter 7 Trustees* at p 5-18.

³ A “single asset case” is a case in which only one asset is administered by the trustee. All other assets were exempt or abandoned by the trustee.

⁴ It is helpful and greatly assists the reviewers if the Claims Register is annotated with any docket number that references an order related to the claim.

- Gather any additional documents that may be required for submission with the TFR by the bankruptcy court either through administrative order, local rule, or current practice, such as fee applications.
- In all surplus cases include a worksheet which sets forth the surplus to debtor and interest on claims. In all cases containing wage claims include a worksheet which breaks-out gross and net amounts, deductions, and payments of taxes for each wage claimant.
- Additional supporting documents may be requested by the Reviewer.
- Following the naming convention set forth below, email the data-enabled TFR, NFR, interim bank statement, the trustee's request for compensation, claims register, and any additional attachments to: [**USTP.Region21.TFR@usdoj.gov**](mailto:USTP.Region21.TFR@usdoj.gov).
THE EMAIL SIZE MUST NOT EXCEED 25 MEGABYTS. If the email exceeds the size limit, it may be rejected. You may need to divide the attachments and send them in more than one email. See below regarding the subject line of the email. **Please DO NOT send the TFR and NFR in a zip file as this delays the review process.**

Submission in cases with more than \$25,000 in Gross Receipts

- Follow the guidance set forth for cases with \$25,000 or less in gross receipts.
- In addition, the trustee must provide all original bank statements and canceled checks from all estate accounts. These should be provided in electronic (PDF) format.⁵ No physical documents need to be transmitted.⁶ If the banking records are voluminous, please contact the Reviewer and arrange for transmission of the paper statements. Please do not send the statements without first speaking with the Reviewer as addresses will vary depending on the Reviewer. If original paper bank statements and checks are provided, they will be returned to you to be maintained with the case file.
- Additional documents or docket reference numbers may be requested depending on the complexity of the case.

⁵ Electronic bank records should be submitted in one file, if possible. At a minimum the bank records should be in the same order as Form 2 with each bank account separated or easily distinguished.

⁶ Original paper bank statements and canceled checks for all accounts must be provided at the time of the TDR review.

Treatment of Requests for Administrative Expenses

With the exception of the trustee's application for compensation, which should be provided electronically as part of your submission, follow local practice with regard to the filing or submission of applications for professional fees and expenses, and only attach those applications as appropriate.

Except in converted chapter 11 cases, final fee applications will be considered by the Reviewer at the time the TFR is reviewed. If the Reviewer identifies a concern with an application, the Reviewer will contact the appropriate party, identify the problem, and propose an appropriate reduction or resolution. The professional will have 48 hours (excluding weekends) to respond. If the Reviewer is unable to resolve the concern, the matter will be referred to the appropriate local office to resolve.

Miscellaneous Matters Relating to TFR Review

- If current practice requires the entry of a notice on the court docket when the TFR is submitted to the United States Trustee for review, please discontinue this practice.
- Orders on administrative expenses (fee orders) do not need to be submitted to the Reviewer or the local office for approval if the order(s) match the distribution set forth in the TFR and NFR. These orders can be submitted by you directly to the court for entry.
- If professional fees or expenses have been modified affecting the distribution set forth in the TFR and NFR, send a modified distribution (dividend) report directly to the Reviewer together with the proposed order(s) on administrative expenses. The Reviewer will check for accuracy, file the distribution report, and submit the fee order(s).
- If other events occur in the case which affect the accuracy of the TFR, **after submission of the TFR to the UST but prior to processing and filing**, please notify the Reviewer that you would like to withdraw the TFR so that you can make the necessary revisions. The revised TFR must be resubmitted to the USTP mailbox identified above.
- If other events occur in the case affecting the accuracy of the TFR, **after the TFR has been filed with the Court**, please submit an Amended TFR directly to the Reviewer for processing and filing.
- In the event a supplemental distribution is required when a creditor has returned a dividend because the claim is no longer due, please provide a supplemental

distribution (dividend) report directly to the Reviewer. Upon the filing of the report by the Reviewer, you can proceed forward with the distribution.

TDR SUBMISSIONS

Within 125 day after the entry of the order allowing final compensation and expenses, a trustee must submit to the United States Trustee a TDR, signed under penalty of perjury, certifying that the estate has been fully administered. Before submission, please ensure that all checks have cleared and you have the original zero balance bank statement and all canceled checks. **All** original bank statements and **all** canceled checks must be submitted in original paper form to the United States Trustee in conjunction with the TDR review.

Case Assignment

Cases will be assigned to Reviewers based on trustee location. The assignment list and contact information for the Reviewers is included as **Attachment A**. Please be aware that cases may be reassigned based on inventory levels, duty assignments, leave requests, and at the discretion of the team leaders or supervisor.

TDR Case Submissions

- Assemble the bank statements with most current statement on top (reverse order), separated by account, with canceled checks, voided checks, and returned checks in numeric order, to the extent possible, placed at the top of the most current bank statement. Do not include deposit advices. When clipping or stapling the information together for each case, please make sure that the bank statements and check information can be reviewed easily without removing any staples.
- **Print and attach to the top of the bank statements the NFR**, and if applicable, followed by any corrected or changed Report of Distribution/Trustee's Distribution Report ("ROD"). **Either the NFR or the ROD must match the actual disbursements made after the approval of the TFR.**
- No hard copy TDR is required in cases with \$50,000 or less in disbursements. The only papers you need to submit are the bank records, the NFR, and if appropriate, the ROD. In cases with more than \$50,000 in disbursements, you also must include a hard copy of the TDR with the bank statement submission.⁷
- Prepare the data-enabled electronic TDR, ensuring that the report contains your electronic signature and all nine required exhibits. The nine exhibits are:

⁷ In lieu of providing a hard copy of the TDR in case with \$50,000 or more in disbursements, you may provide the information on a CD that is attached to the bank records. Bank records cannot be provided in electronic or digital format.

Exhibit 1	Gross Receipts
Exhibit 2	Funds Paid to Debtor & 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 ⁸
Exhibit 9	Form 2 – Cash Receipts and Disbursement Record

- Financial account numbers must be redacted and only the last four digits of a financial account number may be shown.
- Using the naming convention discussed below, email the data-enabled TDR to : **USTP.Region21.TDR@usdoj.gov**
- The bank records package (banking records, NFR, ROD in appropriate cases, and hard copy of the TDR in cases with over \$50,000 in disbursements) **must be mailed to the appropriate reviewer in either Atlanta or Miami at the following addresses:**

**Office of the United States Trustee
Room 362
75 Spring Street SW
Atlanta, GA 30303**

**Office of the United States Trustee
Room 1204
51 SW First Avenue
Miami, FL 33130**

NAMING CONVENTION

The subject line of all emails must contain the following information, separated by a space, in the stated order: case number (10 digit number, including three digit UST court designator prefix), debtor's last name, document abbreviation, and trustee's last name. **Example: 3081301234 Black TFR White.** This subject line would signify that Trustee White submitted a TFR in the case of Black, case number 13-01234 for a Tampa case with UST designator 308. **Please do not include any hyphens or spaces within the case number. If the correct naming convention is not followed, the email submission may be returned to you without review for resubmission.**

If the debtor is a business, use the first two words in the business name for the debtor's name. For example, The Foundry of America, Ltd. would be 3081301234 The Foundry TFR White.

Attachments to the emails and email communications regarding errors, corrections, and inquiries should follow the same format. Approved document abbreviations are as follows:

⁸ Ensure that all personally identifiable information is redacted on Exhibits 8 and 9.

TFR	Trustee's Final Report
TDR	Trustee's Final Account
TFR-COR	Corrected or Amended Trustee's Final Report
TDR-COR	Corrected or Amended Trustee's Final Account
NFR	Notice of Final Report
BST	Bank Statements
CLR	Claims Register
FA-(Name)	Fee Application, include last name of applicant
ROD	Report of Distribution
SUR	Surplus/Interest Worksheet
WAG	Wage Claim Worksheet

If you need to send in more than one email because of the size limitation, add the number to end of the subject line as follows: **3081301234 Black TFR White 1.**

ERRORS, CORRECTIONS, AND INQUIRIES

The United States Trustee reviews the TFRs to assess whether the trustee has properly and completely administered estate property and reviews TDRs to ensure that the distributions have been made properly and that the TDR is correct.

- Problems or mistakes will be brought to your attention for corrective action.
- If TFRs or TDRs have one or more errors, you will be sent an email that contains a description of the problem.
- You will have **48 hours (excluding weekends)** to submit the required corrections. With the exception of bank statements, corrections must be directed to the Reviewer and sent by email with a subject line and any attachments that conform to the naming convention stated above. Missing original bank statements must be mailed to the appropriate Reviewer.
- If the correction is not received within 48 hours (excluding weekends), the TFR or TDR will be noted as returned. Subsequently, upon receipt of the correction, the Reviewer will deem the corrected report as new and will process the review based on the date the correction was received.⁹
- Most common errors are: 1) missing bank statements which may cause additional delay because the original statements must be provided for TDR reviews and in cases with over \$50,000 in disbursements; and 2) incorrect uniform transaction codes (“UTC”) and improper use of “wildcards.” Please refer to the Primary Uniform Transaction Code, Reference Guide for a discussion of the proper use of

⁹ Reviewers are instructed to rigorously enforce the errors and corrections policy so that it is uniformly applied. Please make sure that your reports are accurate prior to submission to avoid delay.

UTCs and wildcards located at:

http://www.justice.gov/ust/eo/private_trustee/library/chapter07/docs/utc/Primary_UTC_Reference_Guide.htm

- Errors and corrections will be tracked to ensure the accurate submission of reports and the timely resubmissions of corrections. Habitual problems will be addressed promptly with the trustee by the local office.
- If there is a dispute between the United States Trustee and the trustee concerning a report, and it cannot be resolved between the parties, the United States Trustee will file the report with objection.
- There may be an occasion when the Reviewer needs additional information to facilitate the review of either the TFR or TDR. Inquiries are **not** considered an error, but you are encouraged to respond promptly to facilitate the timely review of the report.

QUESTIONS AND CONCERNS

If you would like all inquiries and corrections to be sent to someone other than you or if you have any questions or feedback concerning the consolidation review process, please contact Cindy Burnette, Assistant United States Trustee, Tampa, FL at cindy.p.burnette@usdoj.gov.

REGION 21 FEE APPLICATION EXPENSE WORKSHEET

Instructions: You may add or delete categories as appropriate. The description must include the name of the document(s) being processed.

Case Name: _____
Case Number: _____
Applicant's Name: _____
Date of Application: _____
Interim or Final: _____

TFR & TDR CASE ASSIGNMENTS

Effective 07/01/2015

	TFR Reviewers	Assigned Nos.	EMail	Telephone
AT	Mary Kay Baltzell	Supervisor	MaryKay.Baltzell@usdoj.gov	O 404.331.4437 x129
AT	Sheri Ewen (Team Leader)	01-10	Sheri.L.Ewen@usdoj.gov	O 404.331.4437 x128
MA	Karen Boylan	11-26	Karen.R.Boylan@usdoj.gov	O 478.752.3547
TP	Cheryl Childers	27-42	Cheryl.A.Childers@usdoj.gov	O 813.228.2118
TL	Michelle Brooks	43-58	Michelle.Brooks@usdoj.gov	O 850.942.1662
MM	Heather Barfus (Team Leader)	59-68	Heather.L.Barfus@usdoj.gov	O 305.536.6660
OR	Kathy Appel	69-84	Kathy.M.Appel@usdoj.gov	O 407.648.6301 x123
AT	Nathan Garmon	85-00	Nathan.P.Garmon@usdoj.gov	O 404.331.4437 x126 C 678.451.5077
	TDR Reviewers			
AT	Mary Kay Baltzell	Supervisor	MaryKay.Baltzell@usdoj.gov	O 404.331.4437 x129
AT	Michele Stephens-Taylor 75 Spring St., SW, Room 362 Atlanta, GA 30303	AT,MA,TL OR, SJ, SA, FTM	Michele.Stephens-Taylor@usdoj.gov	O 404.331.4437 x134
MM	Diane DeZinno 51 SW First Ave., Room 1204 Miami, FL 33130	MM, TP	Diane.M.DeZinno@usdoj.gov	O 305.371.2081

Attachment 3



U.S. Department of Justice

Office of the United States Trustee

362 Richard Russell Building
75 Spring Street SW
Atlanta, GA 30303

(404) 331-4437
FAX (404) 730-3534

MEMORANDUM

To: Region 21, Chapter 7 Trustees

From: Guy G. Gebhardt, Acting United States Trustee

Re: **“IMPORTANT INFORMATION”** Review Procedures for Case Administration, Trustee Final Reports and Final Accounts

Date: July 10, 2015

Over the past three years, Region 21 has successfully implemented the consolidated review of Trustee Final Accounts (TDRs) and Trustee Final Reports (TFRs). The overall review time for TFRs has dropped considerably, allowing for a quicker return to creditors and administrative claimants. The TFR and TDR reviews will continue to be completed by a team of U. S. Trustee staff members from around the Region (“Consolidation Team”) whose goal is the timely, accurate review of the closing documents in a consistent and uniform manner.

Region 21 is comprised of eight U. S. Trustee offices, spread over eight judicial divisions, three circuits, two states, a commonwealth, and a territory, with approximately 100 active chapter 7 panel members. Although this leads to some variances in case administration and the closing review process due to existing court procedures, local rules, and case law, the focus of the Consolidation Team is to achieve a more uniform approach in the application of the Bankruptcy Code and Rules and the requirements set forth in the *Handbook for Chapter 7 Trustees* (“Handbook”) to case administration and the case closing process.

The purpose of this memorandum is to provide information to you and your staff regarding specific areas of case administration where there appears to be a lack of consistency or practices that are not in compliance with the Bankruptcy Code and Rules or the Handbook, that could lead to action by the Office of the United States Trustee and delay the closing of the case.

SALE OF ESTATE PROPERTY

General

Sales of estate property are governed by 11 U.S.C. § 363 and Rule 6004 of the Federal Rules of Bankruptcy Procedure. Generally, Section 363 requires notice to creditors and a hearing before estate assets can be sold outside the ordinary course of the debtor's business. Although local rules may vary concerning the requirements for notices, motions, and orders, all creditors must receive 21 days' notice of the proposed sale, unless otherwise shortened by the court. (See Fed. R. Bankr. P. 2002(a)(2), 6004(a) and 9006(c)). The notice of sale must include the following information: 1) type of sale; 2) location, date, and time of public sale; 3) description of assets; 4) terms and condition of sale; 5) factors used to establish value for a private sale; 6) procedure and time period for filing objections; 7) amount of liens and identity of lien holders; and 8) in a private sale, the identity of the purchaser and relationship, if any, to any creditor or party in interest. *See Handbook*, pp 4-14 to 4-15. If a sale or transfer of estate assets is the subject of a compromise, settlement, or stipulation, the information required in the notice should be included in the compromise, settlement, or stipulation that is noticed to creditors and parties in interest.

A trustee may sell assets only if the sale will result in a meaningful distribution to unsecured creditors. If the asset is encumbered, the trustee must perform an analysis considering the value of the property, valid liens and encumbrances, costs of sale, including professional fees, and any tax consequences to determine whether the sale will result in a meaningful distribution to unsecured creditors.

Once a sale is approved by notice, order, settlement, or compromise, the transfer of the property has occurred, and all payments have been received, the trustee must file a notice of sale which includes an itemized statement listing the property sold, the names of the purchasers, and the price received for each item as required by Fed. R. Bankr. P. 6004(f)(1). This includes sales and transfers back to the debtor. If the property sold was real estate, the notice should attach a closing statement.

When assets are sold, the gross sales price must be listed on Form 1, Column 5, even if this is more than the amount of money actually received from the sale because of payments to secured creditors, taxing authorities or for other costs and expenses, whether paid directly or through a broker, auctioneer, etc. (Note: This does not necessarily mean that it is appropriate to seek a fee on the entire amount disbursed in a sale. Trustee compensation is governed by 11 U.S.C. § 326, 330, and the prevailing case law.) The only exception is co-owned property. Only the debtor's share of the value is recorded on Form 1, Column 2. If the property is sold, the gross proceeds realized by the estate (based on the debtor's share) are recorded in Column 5.

In those instances where a trustee receives less than the gross sales proceeds, the transaction must also be reflected properly on Form 2. Column 4 of Form 2 should detail the sales transaction by listing the gross sales price (as listed on Form 1) and all deductions with proper Uniform Transaction Codes. Column 5 of Form 2 should reflect the net proceeds received from the sale and equal the amount of funds actually deposited in the trustee's bank account from the sale.

Sales of Real Property

Sales of real property should be completed only after the filing of a motion with notice and an opportunity for a hearing. The motion must set forth the information included in the first paragraph under “General” set forth above and, if applicable, state all liens and encumbrances which will be paid at the time of sale or attach to the proceeds, and provide an estimate of the closing costs and other miscellaneous expenses. The order approving the sale should authorize any anticipated disbursements that will be made at the time of closing.

If the assets are to be sold free and clear of liens, encumbrances, and other interests, the trustee must file a motion to sell the asset(s) free and clear of liens pursuant to 11 U.S.C. § 363(f). The motions should be filed as a contested matter, serving all parties with an interest in the property and the motion must identify the particular subsection of § 363(f) under which relief is sought.

Residential Short Sales – the motion to approve the sale should attach a draft HUD-1 statement that includes an estimate of all proposed disbursements and the net proceeds to the estate. The order approving the sale should authorize the trustee to make the disbursements that are anticipated upon closing. Although an estimate of professional fees and costs should be included in the motion and on the draft HUD-1, if appropriate, any payments to professionals must comply with 11 U.S.C. §§ 327 and 330.

Installment Sales

Generally, the trustee should avoid sales of estate assets involving buyer payments that extend beyond one year. However, there may be instance where a sale in this manner would be in the best interest of the estate. When the purchase price will be paid in installments, the trustee must obtain and perfect a security interest in the asset sold and take other suitable precautions to protect the estate against loss or nonpayment. Handbook, pp 4-17 to 4-18.

DISTRIBUTIONS

Administratively Insolvent Cases

If there are insufficient funds with which to fully pay all administrative expenses within a particular priority class, then all of the administrative expenses within the class must be paid pro rata in accordance with section 726(b). Administrative expenses allowed under section 503(b), including professional fees and expenses of the trustee, together with charges assessed against the estate under chapter 123 of title 28 (U.S. Trustee fees and court costs) are generally afforded first priority in payment under section 507(a). There is no distinction afforded to administrative expenses which are considered costs, fees, or charges and all administrative expenses share pro rata.

The only exception to this pro rata requirement is in cases where a claim for a domestic support obligation exists. Section 507(a)(1)(C) provides the trustee with a limited right to receive reimbursement with a priority ahead of that granted by sections 507(a)(1)(A) and (B) and certain other administrative expenses in section 503(b) . This priority applies

to administrative expenses incurred by a trustee under section 503(b)(1)(A), (2), and (6). After payment of these expenses, the trustee pays any domestic support obligations claimed in the case before paying other administrative expenses allowed under section 503(b). Accordingly, if a chapter 7 case is administratively insolvent with a domestic support obligation, the actual and necessary costs of preserving the estate, compensation and reimbursement awarded under section 330(a), and applicable fees and mileage payable under chapter 119 of title 28, are paid before other administrative expense allowed under section 503(b), special payments under the Federal Reserve Act, and any fees and charges assessed against the estate under chapter 123, title 28, United States Code. The purpose of this special priority is to incentivize trustees to administer assets that could be used for payment of these claims and to protect trustees who do so. *See 4-507 Collier on Bankruptcy P 507.03.*

Interim Distributions

Interim distributions should occur only after claims are resolved and sufficient assets have been reserved to administer the estate. Consideration should be given to banking costs and length of time the case will remain open. The United States Trustee field office with oversight over your trusteeship must review and approve any proposed interim distributions. Contact your local office for guidance on the submission of the proposed interim distributions.

Case Converted From Chapter 11 to Chapter 7

If a case is converted from chapter 11, the trustee must verify whether any U.S. Trustee fees are owed and may need to file or provide disbursement reports based on the debtor's bank records.

Modified or Amended Reports of Distributions

If the court modifies professional fees and expenses, the trustee must submit a revised distribution report to the TFR Consolidation Team member assigned to the case for review and filing prior to distribution.

The trustee may encounter a situation in which a creditor refuses a dividend payment because the creditor was previously paid. Depending on the amount and the number of other creditors, the trustee may be required to redistribute the funds. A supplemental distribution should be provided to the TFR Consolidation Team member assigned to the case for review and filing prior to distribution. The supplemental distribution report should be included as part of the submission with the TDR documents.

Errors in Distribution

The trustee is responsible for all errors that may occur in the distribution to creditors. Please ensure the accuracy of any payments, check the docket for any transfer or assignment of claims, review the claims register and any orders related to claims, review compromises or other settlements that may have addressed claims, and ensure that the distribution scheme set forth in section 726 has been followed. If an error occurs, the United States Trustee may request that the trustee claw-back payments made to creditors or contribute his or her own funds to correct the mistake.

PROFESSIONAL COMPENSATION

Auctioneer's Buyer's Premium and Calculation of Trustee's Compensation

In cases where an auctioneer is employed to assist the trustee in the liquidation of assets and the compensation arrangement includes the collection of a buyer's premium from the purchasers of assets, the trustee fee is not calculated on the payment of the auctioneer's fee that represents the buyer's premium, even if the buyer's premium is deposited into the bankruptcy estate. The buyer's premium is not considered property of the estate, and in all instances, trustee compensation is calculated based only on the disbursement of funds that are property of the estate.

Trustee Fee Application and Expense Worksheet

Section 330(a)(7) provides that the trustee fee is to be treated as a "commission." Absent extraordinary factors, the United States Trustee will not object to a trustee receiving the full statutory commission. Extraordinary factors may include situations where the trustee's case administration falls below acceptable standards or where it appears a trustee has delegated a substantial portion of his or her duties to an attorney, other professional, or paraprofessional.

Notwithstanding section 330(a)(7), fee applications submitted by trustees are subject to a standard of review that comports with section 330, Fed. R. Bankr. P. 2016, and the United States Trustee Fee Guidelines (28 C.F.R. § 58 (1996)). Fee applications at a minimum should include a summary of the administration of case, including all moneys received and disbursed in the case. If the trustee is seeking an interim award, the total compensation requested, and the basis used for the calculation of the compensation (commission) must be included. If there is to be no distribution or an insignificant distribution to unsecured creditors, the application should include an explanation of the reasons the estate was administered.

The trustee also must provide a detailed itemization of all expenses, including the date incurred, description of expense, and method of computation. Please use the attached worksheet format or a similar format for the submission of expenses. (**Attachment 1**)

Trustees Serving as Attorneys or Accountants

A trustee, upon proper application and with court authorization, can be retained to act as an attorney or accountant for the estate if the employment is necessary to assist the trustee in carrying out his or her duties and in the best interest of the estate. *See* 11 U.S.C. §§ 327(a) and (d); Handbook, pp 4-19 to 4-20 (October 1, 2012). Such an application should only be made after careful consideration of any conflict of interest posed by acting as both trustee and an attorney or accountant. From the onset of the retention, the trustee must stay mindful of the distinction between the duties of the trustee and the services which can only be provided as an attorney or accountant. *See* 11 U.S.C. § 328(b). Compensation as a professional under these circumstances is limited to services performed as attorney or accountant for which detailed time records are required to be maintained. In order to be compensable, the matter must be complex in nature or

involve a legal issue or other specialized service that cannot be performed practically or lawfully by the trustee without engaging the services of a professional. *See In re Holub*, 129 B.R. 293, 296 (Bankr. M.D. Fla. 1991).

The trustee's application to allow compensation for the professional should not include services for the performance of trustee duties which are generally performed without the assistance of an attorney or accountant for the estate. 11 U.S.C. § 328(b). The statutory duties of the trustee are set forth in 11 U.S.C. § 704 and Fed. R. Bankr. P. 2015(a).

Examples of services which are trustee duties and generally not compensable as legal or accounting services include, but are not limited to: examining proofs of claims and filing routine objections, investigating the financial affairs of the debtor, collecting and liquidating assets of the estate by employing auctioneers or other agents, preparing and filing required reports including reports and notices of sale, reviewing routine or procedural notices and orders, and supervising professionals retained by the estate. *See Handbook*, p 4-21.

The application to compensate the trustee retained as an attorney or accountant will be carefully scrutinized to ensure that costs of administration are appropriate and limited to professional services as attorney or accountant.

Compensation and Credit Bids

It is the USTP's position that credit bids are not monies disbursed under section 326. *See In re Hokulani Square, Inc.*, 776 F.3d 1083 (9th Cir. 2015).

Summary of the Ninth Circuit court's holding:

In drafting section 326(a), Congress may not have chosen the most sensible path. But between the statute's clear language and on-the-button legislative history, it appears that Congress's choice was deliberate. We hold that section 326(a) does not permit a trustee to collect fees on a credit bid transaction in which the trustee disburses only property, not "moneys," to the creditor. Other courts of appeals have reached the same conclusion and we find no basis for creating a circuit conflict.

UNIFORM TRANSACTION CODES

UTCs introduce a standardized chart of account used to ensure a more accurate and consistent accounting for trustee reporting. The common UTC form is xxxx-00x. The last digit is known as the wildcard. The most common errors are discussed below.

8000 Series (Disbursements Only)

UTC 8100 applies to funds distributed to the debtor from the exempt portion of proceeds received from the liquidation of estate assets.

UTC 8200 applies to funds distributed to the debtor after all allowed claims, including interest on claims, have been paid. The funds distributed to the debtor represent surplus funds.

UTC 8500 applies to funds, other than exempt and excess funds, disbursed to the debtor or funds disbursed or turned over to third parties who are not parties in interest. This generally occurs when the trustee collects funds which are not property of the estate and must pay those funds over to a person other than a creditor or professional of the bankruptcy estate. Examples: A tax refund that includes a portion belonging to the debtor; refunds of earnest monies or returned bids; and proceeds paid over to a non-debtor co-owner of property which was sold by the trustee.

Typically in these instances, the “wildcard” should be “2” because these types of transactions are non-compensable to the trustee, involving payments to the debtor or payment of non-estate funds. The only exception would occur if these funds were returned as unclaimed. In this instance, the wildcard would be changed to “1” for the check which turns the funds over to the court. (Note: Although using the same wildcard, receipts may be treated differently. Typically non-estate receipts for scheduled assets use UTC 1180 and UTC 1280 for unscheduled assets. Please see Primary Uniform Transaction Code Reference Guide.)

Wildcards

0 is the default wildcard and applies to all receipts and disbursements unless otherwise noted.

1 is used when funds are turned over to the bankruptcy court, including small dividends of less than \$5 and unclaimed funds. The first four digits of the payment are the same as the original check.

2 applies to transactions that are non-compensable for the trustee. See examples above in 8000 series. Another example is mis-deposits (funds belonging to another estate) which uses UTC 1280-002 to mark the receipt and uses the same transaction code as a negative receipt when the funds are disbursed to the proper estate.

3 and 4 are reserved for software vendor use. Although these two wildcards may appear on Forms 1 and 2 of the TFR and TDR, they should not appear on TDR exhibits 1-7.

PLEASE REMEMBER TO USE THE CORRECT UTCs, AND INQUIRE IF YOU HAVE ANY QUESTIONS.

CASE CLOSING PROCEDURES/COMMON ERRORS

Email Naming Conventions

Please keep in mind that the Consolidation Team addresses hundreds of emails on a weekly basis. Thus, it is very important that trustees and their staff follow the naming convention that was set forth in the January 15, 2014 Memorandum, UPDATED Review Procedures for Trustee Final Reports and Final Accounts. Any correspondence that does not follow the naming convention is subject to being returned to the sender without consideration. See letter attached at pages 7-8. (**Attachment 2**)

Lost Bank Statements

Currently, the USTP is working with the software providers to transition from paper to electronic bank statements for chapter 7 estate accounts. Once the switch occurs and the trustee elects to use the system, it would provide a secure method for the USTP to access banking records without the costs and waste associated with mailing paper statements back and forth between the trustee and USTP personnel. However, until this system is fully in place for all software providers and trustees who elect to use the system, it is the trustee's responsibility to obtain original replacement bank statements when the bank statements are lost in the mail. The statements must come from the bank and CANNOT be reproduced from the trustee's software system. Please note that if a TDR has not been approved within 45 days, it is likely that we have not received the banking records and the trustee should contact the reviewer to inquire regarding the same. Please note that we do not look through the electronic stored TDRs for cases where we have not received banking records. The TDR is not placed into our records system until the hard copy original bank statements and imaged canceled checks are received. This deficiency must be addressed in a timely fashion to avoid delay in closing cases.

Under Seal

Because of a strong public interest, the USTP will generally oppose a request to file pleadings, papers, and reports under seal unless the requirements of 11 U.S.C. § 107(b) and (c) are met. **BEFORE FILING A MOTION REQUESTING THAT INFORMATION BE FILED UNDER SEAL, PLEASE CONTACT YOUR LOCAL AUST/FIELD OFFICE TO DISCUSS THE REASONS FOR THE RELIEF.** If a trustee has obtained the requisite permission to file a TFR or TDR under seal, those reports are sent to the local field office for review and not to the Consolidation Team.

Report Submissions

Avoid the most common mistake in TDR submission and ensure that all original bank statements and imaged canceled checks are provided to the Reviewer and that the final statement has a zero bank balance.

When submitting bank statements with the TDR, attach the NFR and any corrected or changed Report of Distribution to the top of the banking records.

Prior to submitting a TFR, please make sure all fee applications, other than those submitted in conjunction with the TFR and included in the NFR, have been filed, the order approving the fee application has been entered, the approved amount has been paid, and the check has cleared the bank.

The most recent bank statement or interim statement provided with the TFR must match the balance on hand included on the TFR. This requires that all checks, written to date, have cleared the bank before submission of the TFR.

Please use a landscape page layout for Forms 1 and 2 in TFR and TDR electronic reports.

Ensure that the notes on Form 1 are reviewed, redacted, and updated, and that the note is clear and concise.

Check your work before submitting TFR and TDR reports.

TDRs - Two simple checks that may help identify UTC coding errors and duplicate entries are:

- 1) Verify that paragraph 3 on page 1, matches Total Gross Receipts on Exhibit 1, Column 5 of Form 1; and
- 2) Verify that the yielded net receipts in paragraph 3 on page 1 matches the Total Disbursements included in the chart on page 2 of the report.

Procedures for submitting corrections and 48 hour turnaround policy are set forth on pages 8-9 of Attachment 2.

MISCELLANEOUS

Please note that there has been a change in the case assignments for TFRs. An update case assignment list with contact information is attached. (Attachment 3**)

To ensure prompt communication, please make sure that any changes in your office contact information are provided to the Asst. United States Trustee for the field office with oversight responsibly for your trusteeship and to the “Team Leaders” listed on Attachment 3.

Any email communication with a trustee’s office, will be copied to the trustee.

Attachments

cc: Region 21, Asst. United States Trustees
 Region 21, TFR and TDR Consolidation Teams
 Region 21, TIR Consolidation Team
 Region 21, IT Specialists