

airplane to a location where the requirements of this AD can be accomplished, provided that the flight to the flight service center is at the minimum allowed weight.

Concurrence by the Manager, Wichita Aircraft Certification Office (ACO), FAA, is required prior to issuance of the special flight permit.

#### Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Wichita ACO, FAA, Attn: William Griffith, Aerospace Engineer, Airframe Branch, ACE-118W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4116; fax (316) 946-4107; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

#### Material Incorporated by Reference

(m) You must use Hawker Beechcraft Mandatory Service Bulletin SB 32-3920, dated August 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67206.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on September 20, 2008.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-23400 Filed 10-6-08; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9321]

RIN 1545-BE79

#### Application of Section 409A to Nonqualified Deferred Compensation Plans; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final regulations (TD 9321) which were published in the *Federal Register* on April 17, 2007 (72 FR 19323), corrected July 31, 2007 (72 FR 41620) and September 24, 2007 (72 FR 54945). The final regulations relate to section 409A and nonqualified deferred compensation plans.

**DATES:** This correction is effective October 7, 2008.

*Applicability date:* April 17, 2007.

**FOR FURTHER INFORMATION:** Guy R. Traynor, (202) 622-3693 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The final regulations that are subject to this document are under section 409A of the Internal Revenue Code.

##### Need for Correction

As published, the correcting amendment of September 24, 2008 (72 FR 54945) to final regulations (TD 9321) contains errors that may prove to be misleading and is in need of clarification.

##### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

##### Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment.

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.409A-6(a)(3)(i), the third sentence is corrected to read as follows:

**§ 1.409A-6 Application of section 409A and effective dates.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(i) *Nonaccount balance plans.* \* \* \*

For purposes of calculating the present value of a benefit under this paragraph (a)(3)(i), reasonable actuarial assumptions and methods must be used.

\* \* \*

\* \* \* \* \*

**Guy R. Traynor,**

*Federal Register Liaison, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E8-23652 Filed 10-6-08; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF JUSTICE

### 28 CFR Part 58

[Docket No: EOUST 101]

RIN 1105-AB29

#### Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of the Bankruptcy Code

**AGENCY:** Executive Office for United States Trustees (EOUST), Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice, through its component, EOUST, is issuing this final rule (rule) pursuant to Section 602 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).<sup>1</sup> The BAPCPA requires the Department to issue rules requiring uniform forms for final reports (Uniform Forms) by trustees in cases under chapters 7, 12, and 13 of title 11. The BAPCPA requires the rule to strike the best achievable practical balance between (1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system, (2) economy, simplicity, and lack of undue burden on persons with a duty to file these reports, and (3) appropriate privacy concerns and safeguards.

**DATES:** *Effective Date:* This rule is effective April 1, 2009.

**ADDRESSES:** Executive Office for United States Trustees (EOUST), 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Ramona Elliott, General Counsel, or Larry Wahlquist, Office of General Counsel, at (202) 307-1399 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On February 4, 2008 at 73 FR 6447, the Department published a proposed rule

<sup>1</sup> Codified at 28 U.S.C. 589b.

on this topic. Before the comment period closed on April 4, 2008, EOUST, within the Department, received comments from 71 commenters. The comments received and EOUST's responses are discussed below. This final rule finalizes the proposed rule with changes that reduce the burden on trustees.

### Discussion

The administration of all chapter 7, 12, and 13 bankruptcy cases is entrusted to private persons who are trustees under the supervision and oversight of a regional United States Trustee.<sup>2</sup> As distinguished from trustees, United States Trustees are employees of the Department of Justice.

In every case, a trustee must file with the court and submit to the United States Trustee a final report and final account of his or her case administration. The United States Trustee reviews these reports and they are then filed with the court.

While the trustee final report forms currently used across the country essentially serve the same purpose and convey the same information, the format of the forms and required attachments, and even the names of the forms, can be different. In fact, there are over a hundred different versions of these forms in use throughout the country. With the passage of BAPCPA, Congress directed the Attorney General to draft rules creating nationally uniform forms for trustee final reports. The Attorney General delegated this authority to the Director, Executive Office for United States Trustees. In response to this congressional mandate, the Director publishes this rule, which requires trustees to utilize nationally uniform final report forms rather than the local forms currently in effect. This rule does not impose requirements on the general public; it imposes requirements only upon trustees who are supervised by United States Trustees. UST Forms 101-7-TFR, 101-7-NFR, 101-7-TDR, 101-7-NDR, 101-12-FR-S, 101-13-FR-S, 101-12-FR-C, and 101-13-FR-C<sup>3</sup> are the final report Uniform Forms required by this rule. The information required by these forms is set forth in section 58.7 in the amendatory text below. These Uniform Forms will facilitate the review of a trustee's case

administration, which will assist in maintaining the public's trust in the bankruptcy system. In addition, these reports, once filed in a case, will be available to the general public at the office of the clerk of the United States Bankruptcy Court where a case is pending during the hours established by the bankruptcy court clerk. Members of the public should contact individual United States Bankruptcy Courts to obtain information about the policies and procedures for inspection of final reports filed in any particular case. Final reports in cases are also available through the Internet by accessing the Electronic Case Filing System under PACER at [www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov).

These Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a "smart form" that has been approved by EOUST unless the court offers an automated process, such as the virtual event through CM/ECF described below. A smart form is a document that is data enabled. When it is saved into the industry standard Portable Document Format (PDF), stored data tags are then available for extraction and searching. This is contrary to a form that is not data-enabled, where the PDF is simply an image of the form and data is not uniformly available for searching. The data-enabled form builds upon the existing Adobe PDF/A standard (Version 1.4). Specifically, the standard incorporates the use of XMP metadata or Acroform field and value (F/V) tags within an Adobe PDF document. The current data schema (DTD) is found on [www.usdoj.gov/ust](http://www.usdoj.gov/ust). Trustees may obtain these "smart form" Uniform Forms from their vendor of trustee case management software. Members of the public may obtain blank Uniform Forms from each United States Trustee field office or from EOUST's Web site at [www.usdoj.gov/ust](http://www.usdoj.gov/ust).

Regarding UST Form 101-7-NDR (used for "no asset" cases), the Administrative Office of the United States Courts (AOUSC) is enhancing the courts' CM/ECF system to allow for the filing of this form as a virtual docket event. After a local court adopts this enhancement, trustees will be able to complete the UST Form 101-7-NDR as a virtual entry form electronically via the court's CM/ECF system in lieu of filing an attached PDF. In addition, the CM/ECF system is being designed to collect pertinent NDR data elements and automatically include them with the virtual NDR event, to the extent the data is collected. This will significantly streamline the process for trustees since they will not have to enter additional

data in most cases. Based upon representations by AOUSC, this enhancement will be included in CM/ECF version 3.3, which is scheduled to be released to the bankruptcy courts in September of 2008. Given the above release date, and based on past practice, it is reasonable to anticipate that bankruptcy courts will implement version 3.3 by or before March 2009. Therefore, EOUST makes this rule effective April 1, 2009. However, some cases filed within 60 days prior to the rule's effective date may not be filed under the courts' new CM/ECF version 3.3, which will collect the pertinent data elements for the virtual NDR. To prevent confusion and undue burden, trustees are not required to manually enter the information for the NDR for cases filed within 60 days prior to this rule's effective date.

The usage of these Uniform Forms will accomplish Congress' mandate to develop nationally uniform forms for trustee final reports as directed in the BAPCPA. The Uniform Forms will also assist policy-makers, scholars, and the public to better understand the bankruptcy system. Instead of many different versions of trustee final reports, trustees throughout the country will use the same eight forms. This will greatly assist consumers in being able to understand the administration of bankruptcy cases, especially when a consumer is located in a different region from where the bankruptcy case is located. Additionally, the information from the Uniform Forms may be nationally aggregated, which will assist Congress in compiling data to accurately analyze bankruptcy trends when making policy decisions. Scholars and members of the public may also be able to obtain aggregate data with the necessary software.

### Summary of Changes in Final Rule

The final rule differs from the proposed rule in the following ways: First, UST Form 101-7-NDR has been modified from an Adobe PDF document to make it a virtual entry form that trustees can complete electronically in the court's docket. Additionally, via the court's CM/ECF virtual event, multiple NDR forms can be filed with the court simultaneously in batch mode format. These changes will significantly reduce the burden on trustees in completing the NDR. Second, the penalty of perjury language has been deleted from the NDR. Third, when trustees file the NDR in cases that have been converted and funds collected, the certification has been altered to read, "all funds have been returned or transferred to the successor trustee." Fourth, the trustee

<sup>2</sup> The United States Trustee Program does not operate in Alabama and North Carolina. Therefore, United States Trustees do not supervise trustees in these two states.

<sup>3</sup> TFR (Trustee's Final Report); NFR (Notice of Trustee's Final Report); TDR (Trustee's Final Account and Distribution Report); NDR (Trustee's Report of No Distribution) FR-S (Standing Trustee's Final Report and Account) FR-C (Case Trustee's Final Report and Account).

certification in UST Form 101–7–TFR that all tax returns have been filed has been deleted.

### Discussion of Public Comments

EOUST received 71 comments on the proposed rule, many of which had several sub-comments within them. EOUST has considered each comment carefully and appreciates the time and effort required to prepare and submit each comment. EOUST's responses to the comments are discussed below and are organized according to the structure provided in the Uniform Forms.

#### A. General Comments

##### 1. General Questions About Completing the Uniform Forms

*Comment:* Several comments had specific questions about how to complete the Uniform Forms, such as whether the phrase in the Uniform Forms "assets abandoned" refers to the specific assets or their monetary value, and whether the phrase "claims discharged without payment" refers to the balance amount of claims unpaid or claims for which no payment was made.

*Response:* The phrase "assets abandoned" refers to the monetary amount of the assets abandoned. The phrase "claims discharged without payment" refers to both the balance amount of unpaid claims and allowed claims for which no payment was made. Answers to questions such as these about how to complete the Uniform Forms and the meaning of terms or phrases are contained in the instructions that accompany the forms. The instructions are available on EOUST's Web site at [www.usdoj.gov/ust](http://www.usdoj.gov/ust).

##### 2. Trustee Compensation

*Comment:* Several comments stated that trustees are only paid \$60 for no-asset cases and that this compensation for no-asset cases has not increased in several years, and that it is unfair to require trustees to do extra work without additional compensation. Three of the comments stated it is especially unfair when debtors file in *forma pauperis*.

*Response:* EOUST recognizes that BAPCPA requires additional work by trustees without corresponding compensation and that compensation for no-asset cases has not increased for several years. However, the authority to increase trustees' compensation is vested with Congress.

##### 3. Entities Affected by the Rule

*Comment:* One comment stated the rule affects courts and others in addition to trustees.

*Response:* This comment is correct; the rule does affect more entities that just trustees. However, the rule imposes requirements only upon trustees and not upon the general public or upon the courts.

##### 4. Costs to the Government

*Comment:* One comment questioned whether the costs identified in the section entitled Executive Order 12866 included costs to the judiciary.

*Response:* The costs to the government identified in the rule reflect only those costs to EOUST.

##### 5. Number of Cases

*Comment:* One comment stated that some trustees close more than 500 cases per year.

*Response:* The 500 cases per year figure was an average number of cases. EOUST recognizes that some trustees close more than 500 cases per year and that some trustees close fewer than 500 cases per year.

##### 6. Data-enabled Court Forms for Pro Se Debtors

*Comment:* One comment stated that courts should ensure pro se debtors use data enabled court forms and provide the means necessary for them to do so.

*Response:* Only the Judicial Conference of the United States is authorized to mandate requirements regarding the format of bankruptcy court documents and whether to require pro se debtors to use data enabled court forms.

#### B. UST Form 101–7–NDR

##### 7. Discussion of Public Comments

EOUST received 71 comments on the proposed rule, many of which had several sub-comments within them. EOUST has considered each comment carefully and appreciates the time Substantial Increase in Burden.

*Comment:* Many comments stated that the NDR form will substantially increase trustees' costs and workload, and is an undue burden upon trustees.

*Response:* EOUST recognizes that the NDR will impose a significant burden upon trustees and has worked with AOUSC to reduce this burden. Accordingly, EOUST and AOUSC have developed a virtual entry NDR form that will greatly reduce the burden upon trustees.

##### 8. Automated NDR

*Comment:* Many comments stated that EOUST should not implement the rule until the NDR can be generated by a more automated process.

*Response:* EOUST has worked closely with AOUSC to modify the current

virtual text entry NDR to incorporate the new data required by BAPCPA. The new virtual entry NDR will be automatically populated in most cases.

##### 9. Balancing of Public Need vs. Burden Upon Trustees

*Comment:* Many comments stated that the NDR did not sufficiently balance the needs of the public for information with the burden upon trustees as required by the BAPCPA.

*Response:* With the development of the virtual entry NDR form, the burden upon trustees is greatly reduced. In most cases, the NDR form will be populated by an automated process and trustees may also file multiple NDR forms in batch file method. Accordingly, the needs of the public for information and the burden upon trustees appear now to be appropriately balanced.

##### 10. Economic Impact

*Comment:* Many comments stated that the economic impact of the NDR is understated and will actually cost trustees more money than EOUST anticipated.

*Response:* This issue is now moot with the development of the virtual entry NDR.

##### 11. Penalty of Perjury

*Comment:* Many comments stated that EOUST does not have the authority to require the NDR to be filed under penalty of perjury.

*Response:* EOUST has removed the requirement to file the NDR under penalty of perjury because the NDR will be a virtual-text entry.

##### 12. Relying Upon Debtors' Schedules

*Comment:* Many comments stated that the NDR does not provide guidance on whether trustees may rely solely upon debtors' schedules when completing the NDR.

*Response:* Trustees may rely upon debtors' schedules. In the Instructions that EOUST will post on its Web site, EOUST explains that trustees may rely solely upon the schedules submitted by debtors.

##### 13. Time To Complete NDR

*Comment:* Many comments stated that the estimated 10 minutes to complete the NDR is understated and that it will actually take longer.

*Response:* This issue is now moot with the development of the virtual entry NDR.

##### 14. Value of Information

*Comment:* Several comments stated that there is little value in the information gathered from the NDR and

that the statistics will be invalid or duplicative.

*Response:* The NDR will enable Congress, academics, and the general public to better understand the bankruptcy process and what happens in a no-asset bankruptcy case. For instance, the amounts of abandoned assets and claims scheduled to be discharged without payment will be available on a national basis.

#### 15. Government Clerk Capturing Data From NDR

*Comment:* Several comments stated that a government clerk could capture the information from the NDR rather than trustees.

*Response:* This issue is now moot with the development of the virtual entry NDR. However, it should be noted that Congress mandated trustees, not government clerks, to file final reports.

#### 16. Out of Business

*Comment:* Several comments stated that increased costs associated with the NDR may drive trustees out of business.

*Response:* This issue is now moot with the development of the virtual entry NDR.

#### 17. Staff To Input Information

*Comment:* A few comments stated that not all trustees have staff to input information for the NDR and that it will, therefore, be more costly for them.

*Response:* This issue is now moot with the development of the virtual entry NDR.

#### 18. Review of Impact of NDR

*Comment:* Three comments stated that the NDR should not be implemented until its impact upon trustees has been further studied.

*Response:* Since the virtual entry NDR will now be implemented, there is no need to delay its implementation to study the effect of the Adobe PDF NDR.

#### 19. Batch Filing

*Comment:* Three comments stated that the NDR should not be implemented until a batch filing method is approved.

*Response:* Trustees may utilize batch filing with the virtual entry NDR.

#### 20. Data Enabled Forms

*Comment:* Three comments stated that implementation of the NDR should be delayed until bankruptcy practitioners were mandated to use data enabled bankruptcy court forms.

*Response:* Only the Judicial Conference of the United States is authorized to mandate requirements regarding the format of bankruptcy court

documents. However, AOUSC has worked with EOUST to develop a virtual entry NDR, which will greatly reduce the burden on trustees in completing the NDR.

#### 21. Number of Bankruptcy Cases

*Comment:* Two comments stated that EOUST should not rely upon the decreasing number of bankruptcy cases as a basis for imposing the NDR since bankruptcy cases will probably increase.

*Response:* EOUST did not rely upon the number of bankruptcy cases filed as a basis for creating the NDR. Congress mandated creation of uniform forms for trustee final reports in the BAPCPA, now codified at 28 U.S.C. 589b. It is this statutory mandate from Congress that EOUST relied upon in developing the NDR.

#### 22. Simplify NDR

*Comment:* Two comments stated that EOUST may simplify the NDR and still discharge its statutory duties.

*Response:* EOUST has simplified the NDR by working with AOUSC to develop the virtual entry NDR.

#### 23. Timing of Filing NDR

*Comment:* One comment stated that EOUST should require the new NDR be filed only in cases where the current virtual text entry NDR is not filed 90 days from the date the petition was filed or 45 days after conclusion of the creditors' meeting.

*Response:* This issue is now moot with the development of the virtual entry NDR.

#### 24. Uniformity

*Comment:* One comment questioned how the NDR can be uniform when debtors in some states may use state exemptions, which can vary.

*Response:* Congress mandated the usage of uniform trustee final reports. Varying state exemptions will not alter the uniformity of the NDR form.

#### 25. Virtual Entry NDR

*Comment:* One comment stated that EOUST should issue a rule authorizing the current practice of filing virtual entry NDR forms for no-asset cases.

*Response:* EOUST has developed, in conjunction with AOUSC, a virtual entry NDR for no-asset cases.

#### 26. Rewording of NDR

*Comment:* One comment questioned whether it is appropriate to require trustees to certify on the NDR that "all funds have been returned" in cases which are converted and funds have been collected.

*Response:* EOUST has modified the trustee certification for cases that were

converted to read in part, "all funds have been returned or transferred to the successor trustee."

#### 27. Courts' Requirements

*Comment:* One comment stated that the NDR may not meet with courts' requirements.

*Response:* EOUST has worked with AOUSC in developing the virtual entry NDR to respond to courts' concerns. Therefore, it should meet courts' requirements.

#### 28. Pilot Program

*Comment:* One comment stated a pilot program should be utilized before making the NDR mandatory in all districts.

*Response:* The virtual entry NDR eliminates the need for a pilot program.

#### 29. Funding

*Comment:* One comment stated that Congress should provide funding to enable EOUST to collect the information in the NDR rather than requiring trustees to do so.

*Response:* This issue is now moot with the development of the virtual entry NDR.

#### 30. Data Transmission

*Comment:* One comment questioned whether EOUST has considered whether the information from the NDR could be transmitted directly from the courts to EOUST.

*Response:* The BAPCPA requires trustees to file final reports in every bankruptcy case; EOUST and AOUSC have worked together to simplify the transmission of information.

#### 31. Require Uniform Forms in No-asset Cases Only

*Comment:* One comment stated that the proposed NDR report fails to balance economy with the burden on the trustee. The comment pointed out that the current practice was simply to file a "report of no distribution," containing no data, in place of a "formal final report," and asks that this practice be continued.

*Response:* The comment correctly identifies the current practice. However, the Bankruptcy Code requires a "final report" in all chapter 7 cases. Section 589b now sets forth the specific data required in a chapter 7 final report and does not distinguish between "asset" and "no asset" cases. EOUST cannot balance economy and burden by simply ignoring the statutory requirement to provide specific data in *all* chapter 7 final reports.

### C. UST Form 101-7-TFR

#### 32. Certification of Tax Returns

*Comment:* Many comments stated that the requirement that a certification that all tax returns have been filed is impractical and unnecessary.

*Response:* EOUST concurs and has removed this certification from the TFR.

#### 33. Simplify TFR

*Comment:* One comment stated that the TFR form should be simplified.

*Response:* The TFR has already been simplified as much as it can be and still maintain the necessary information for one to understand the trustee's administration of the case and proposed distribution of assets.

#### 34. Exhibit C

*Comment:* One comment stated that Exhibit C was not provided as an example of what information is required.

*Response:* The required information is clearly identified in the rule. Exhibit C was designed to allow trustees the greatest flexibility possible to file their own version of claims analysis.

#### 35. Rewording of TFR

*Comment:* One comment suggested that in section 58.7, replacing the phrase "before the case may be closed" with the phrase "in preparation for closing an asset case." This comment also suggested replacing "bar date" with "deadline" in paragraph 6 of the TFR, along with other various stylistic changes.

*Response:* EOUST has adopted some of the comment's suggestions and modified the rule and the TFR accordingly. Specifically, section 58.7(a) has been revised to read, "[a] chapter 7 trustee must complete UST Form 101-7-TFR final report (TFR) in preparation for closing an asset case \* \* \*." Paragraph six of the TFR now reads, "[t]he deadline for filing claims in this case \* \* \*."

### D. UST Form 101-7-NFR

#### 36. Rewording NFR

*Comment:* One comment suggested amending section 58.7(b) by substituting "the amounts specified in Fed. R. Bankr. P. 2002(f)(8)" for "\$1,500" to avoid the need to update this rule if the bankruptcy rule is changed.

*Response:* EOUST concurs and has modified the rule accordingly.

#### 37. Authority To Mandate Uniform NFR

*Comment:* One comment questioned whether EOUST had authority to promulgate a rule requiring a uniform notice of a report. Additionally, this

comment stated the form of the notice may not meet with all courts' requirements.

*Response:* The NFR is integrally connected with the TFR and TDR. One of the primary purposes for a trustee to file a final report is to allow parties in interest to review and comment on the trustee's administration of the case. However, parties in interest do not receive a copy of the final report; they only receive the notice of the final report. Therefore, it is very important that this notice be adequate to inform them of their rights and the trustee's proposed distribution of assets. EOUST notes that AOUSC and EOUST currently have a memorandum of understanding that delineates the format of the NFR. EOUST will work with the courts to accommodate any procedural changes needed to meet a local court's requirements.

#### 38. Court Notice

*Comment:* One comment questioned whether courts will notice the TFR and application for compensation to interested parties.

*Response:* Local court practice governs who has the responsibility to send the notice.

### E. UST Form 101-7-TDR

#### 39. Redundant Information

*Comment:* One comment stated that the information required on the TDR is redundant with the information required on the TFR.

*Response:* The TFR concerns the trustee's proposed distribution, which can change. The TDR is the report that details the trustee's final and actual distribution. Therefore, it is necessary to have the data, while similar, on both reports.

#### 40. Form 1

*Comment:* One comment questioned the requirement to file same individual property record that was submitted with the TFR.

*Response:* EOUST recognizes that the Form 1 filed with the TDR is essentially the same Form 1 filed with the TFR. However, it is useful to have the trustee's final account—the TDR—contain a complete record of the administration of the case, including the disposition of property, as well as the flow of funds, in one document. Since the Form 1 is readily available in the trustee's own electronic records, it is a minimal burden to include it with the TDR.

#### 41. Form 2

*Comment:* One comment questioned the requirement to file receipts and

disbursements on the TDR when it would just show the debits to the account of the checks issued per the TFR; the bank statements submitted with the TDR support this process.

*Response:* The Form 2 filed with the TDR is different from the Form 2 filed with the TFR in one important respect: the Form 2 filed with the TDR shows the actual distribution of funds. The Form 2 filed with the TFR does not contain that information, which is a critical element of the final account. Although the bank statements contain the same information, they are not always available in electronic form or simple to summarize or categorize.

### F. Chapters 12 and 13 Uniform Forms

#### 42. Statistics—Value of Assets Abandoned

*Comment:* One comment stated that in many districts standing trustees do not abandon assets; they merely consent to the stay being lifted. Due to this practice, the "value of assets abandoned by court order" will yield invalid statistics if it includes the value of assets when the trustee consents to the stay being lifted.

*Response:* Trustees in chapter 12 and chapter 13 generally do not abandon assets. However, a court may occasionally direct a trustee to do so, and then the trustee should enter the value of the asset under this data element. In the interests of setting a uniform standard that is reasonable, EOUST defined "assets abandoned," for purposes of reporting on the final report, as those assets abandoned by a court order pursuant to 11 U.S.C. 554(b). This definition does not include instances where a trustee consents to the stay being lifted. Answers to questions such as this about how to complete the Uniform Forms and the meaning of terms or phrases are contained in the instructions that accompany the forms. The instructions are available on EOUST's Web site at [www.usdoj.gov/ust](http://www.usdoj.gov/ust).

#### 43. Statistics—Value of Assets Exempted

*Comment:* One comment stated that the "value of assets exempted" will be skewed since some debtors claim the value of their exemptions as 100% without stating a value.

*Response:* As required under the BAPCPA, EOUST is attempting to balance the reasonable needs of the public for information with the need not to unduly burden the standing trustees who must file the final reports. In the interests of setting a uniform standard that is reasonable and would not require

the standing trustee expending significant additional resources, EOUST defined assets exempted as the total value of assets listed as exempt on the debtor's Schedule C, unless revised pursuant to a court order.

#### 44. Statistics—Claims Discharged Without Payment

*Comment:* One comment stated that the unsecured claims discharged without payment will be skewed since it is unclear whether the amount of general unsecured claims discharged without payment refers to amount of claims filed and not paid or to amount of claims scheduled and not paid.

*Response:* EOUST will post Instructions on how to complete the final report form on its Web site. Those Instructions clarify that this element is generally the total scheduled unsecured claims plus non-scheduled unsecured claims where a proof of claim was filed, minus payments on unsecured claims, with specified adjustments to that amount.

#### 45. Statistics—Debt Secured by Vehicle

*Comment:* One comment stated that the debt secured by vehicles will be unreliable since some debtors have vehicles and other collateral securing the loan.

*Response:* This comment raises a valid point. EOUST will provide further guidance on issues such as this in the Instructions that will be posted on EOUST's Web site.

#### 46. Checks Clearing Bank

*Comment:* One comment stated that the chapter 13 standing trustee's final report form needs to be modified to allow for the possibility that when a debtor converts from chapter 13 to chapter 7, not all checks have cleared the bank when the standing trustee files the final report.

*Response:* EOUST will post Instructions on how to complete the final report form on its Web site. Those Instructions clarify that this paragraph may be altered to indicate that not all checks have cleared the bank if the case is converted to another chapter.

#### 47. Questions

*Comment:* One comment had several questions about how to complete the final report.

*Response:* EOUST will post Instructions on how to complete the final report on its Web site. Also, individuals may contact EOUST with specific questions about the final report.

#### 48. Cost of Report

*Comment:* One comment stated that it will cost more than \$7.00 to complete

the report and that more staff may be necessary.

*Response:* The estimated increase in costs to the standing trustee of approximately \$7.00 per final report is a blended rate based on discussions with standing trustees. Some standing trustees were already entering scheduled claims information and others were not. If the standing trustee had not been entering scheduled claims information, his or her additional costs will be greater than the \$7.00.

#### 49. Differences Between Chapter 12 and Chapter 13 Uniform Forms

*Comment:* One comment questioned whether there were substantive differences between the chapters 12 and 13 final reports. If not, then the comment suggested combining the forms.

*Response:* There are substantive differences between the four proposed final report forms. Separate forms are required for case trustees and standing trustees because the statutory authority for appointing one or the other differs and the difference is reflected in the language of the final report forms. Further, since chapter 12 and chapter 13 cases are governed by different chapters of the Bankruptcy Code, the final report forms must be separate in order to reflect the correct statutory authority for the information provided.

#### Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), The Principles of Regulation. This rule is a not a "significant regulatory action" as defined by Executive Order 12866 and, accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB.)

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the time incurred by private trustees to complete the Uniform Forms. Since most of the information in the chapter 7 Uniform Forms is already collected in most districts, the additional time required to collect the requisite information and to complete the Uniform Forms should be minimal.<sup>4</sup>

<sup>4</sup> It is estimated that completion of the chapter 7 Uniform Forms will take approximately the same amount of time as the current chapter 7 final reports. Therefore, there should not be an appreciable difference in costs to complete the chapter 7 Uniform Forms as compared to current chapter 7 final report forms.

In addition, the Uniform Forms will be added to the trustee case management software utilized by chapter 7 trustees. This software is provided to chapter 7 trustees by various banks free of charge in exchange for trustees depositing estate funds in these banks. For chapter 12 and chapter 13 trustees, it is anticipated that an increase in costs will be incurred due to the usage of these chapters 12 and 13 Uniform Forms. However, any associated cost will be an approved administrative expense of a standing trustee's trust operation.<sup>5</sup> It is estimated that the cost to the government for developing these Uniform Forms is approximately \$20,000. The estimated cost to develop a system to store information extracted from these forms, and to analyze the data, is approximately \$650,000. Over the next several years, the EOUST anticipates utilizing base resources available for information technology to meet the costs associated with developing the Uniform Forms and a system to store the information extracted from the forms. There will be no additional cost to the government. In fact, this rule will reduce the costs to the government of compiling the information submitted by private trustees. Since the Uniform Forms will be data enabled, the current system of manually compiling case closing information will be replaced by a less time intensive automated system.

The benefits of this rule include establishing national uniformity in the final reports submitted by trustees, which will enable Congress, and the general public, to obtain more detailed information regarding bankruptcy cases nationally. This rule will enable Congress and the public to identify, among other things, the amount of debt scheduled in bankruptcy cases, the percentage of claims paid to creditors, the amount of debt discharged, and the value of assets abandoned by trustees.

#### Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

<sup>5</sup> Please see the Regulatory Flexibility Act section for an explanation of the chapters 12 and 13 Uniform Forms costs.

### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and certifies that none of the Uniform Forms will have a significant economic impact on a substantial number of small entities. This rule imposes requirements only upon approximately 1,400 trustees. In addition, trustees already submit to the court essentially the same information as that required by this rule though formats vary in judicial districts. This rule simply creates uniform forms for all trustees to use throughout the country rather than local court forms.

For chapter 12 and chapter 13 trustees, it is estimated that there will be an increase in costs in the amount of approximately \$7.00 per final report. However, this is less than 1% of chapters 12 and 13 trustees' total operating expenses. Chapters 12 and 13 standing trustees allocate this cost toward an annual budget, which means trustees deduct this cost from funds disbursed from debtors' estates to creditors. Thus, the chapters 12 and 13 Uniform Forms will not have a significant economic impact upon standing trustees.<sup>6</sup>

### Paperwork Reduction Act

These forms are associated with an open bankruptcy case. Therefore, the exemption under 5 CFR 1320.4(a)(2) applies.

### Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act (\$123 million in 2005, adjusted annually for inflation). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in

costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### Privacy Act Statement

28 U.S.C. 589b authorizes the collection of the information in the final reports. As part of the trustee's reporting to the court, the United States Trustee, and creditors concerning the trustee's administration of the bankruptcy estate, the United States Trustee will review the information contained in these reports. The United States Trustee will not share the information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. See 71 FR 59818, 59822 (Oct. 11, 2006), JUSTICE/UST-002, "Bankruptcy Trustee Oversight Records." Providing this information is mandatory under 11 U.S.C. 704.

### List of Subjects in 28 CFR Part 58

Bankruptcy; Trusts and Trustees.

■ For the reasons set forth in the preamble, 28 CFR Part 58 is amended as set forth below:

### PART 58—[AMENDED]

■ 1. The authority citation for Part 58 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

■ 2. Add section 58.7 to read as follows:

#### § 58.7 Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of the Bankruptcy Code.

(a) *UST Form 101-7-TFR, Chapter 7 Trustee's Final Report.* A chapter 7 trustee must complete UST Form 101-7-TFR final report (TFR) in preparation for closing an asset case. This report must be submitted to the United States Trustee after liquidating the estate's assets, but before making distribution to creditors, and before filing it with the United States Bankruptcy Court. The TFR must contain the trustee's certification, under penalty of perjury, that all assets have been liquidated or properly accounted for and that funds of the estate are available for distribution. Pursuant to 28 U.S.C. 589b(d), the TFR must also contain the following:

- (1) Summary of the trustee's case administration;
- (2) Copies of the estate's financial records;
- (3) List of allowed claims;
- (4) Fees and administrative expenses; and
- (5) Proposed dividend distribution to creditors.

(b) *UST Form 101-7-NFR Chapter 7 Trustee's Notice of Trustee's Final Report.* After the TFR has been reviewed by the United States Trustee and filed with the United States Bankruptcy Court, if the net proceeds realized in an estate exceed the amounts specified in Fed. R. Bankr. P. 2002(f)(8), UST Form 101-7-NFR (NFR) must be sent to all creditors as the notice required under Fed. R. Bankr. P. 2002(f). The NFR must show the receipts, approved disbursements, and any balance identified on the TFR, as well as the information required in the TFR's Exhibit D. In addition, the NFR must identify the procedures for objecting to any fee application or to the TFR.

(c) *UST Form 101-7-TDR Chapter 7 Trustee's Final Account, Certification The Estate Has Been Fully Administered and Application of Trustee To Be Discharged.* After distributing all estate funds, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court the trustee's final account, UST Form 101-7-TDR (TDR). The TDR must contain the trustee's certification, under penalty of perjury, that the estate has been fully administered and the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the TDR must also include the following:

- (1) The length of time the case was pending;
- (2) Assets abandoned;
- (3) Assets exempted;
- (4) Receipts and disbursements of the estate;
- (5) Claims asserted;
- (6) Claims allowed; and,
- (7) Distributions to claimants and claims discharged without payment, in each case by appropriate category.

(d) *UST Form 101-7-NDR Chapter 7 Trustee's Report of No Distribution.* In cases where there is no distribution of funds the case trustee must submit to the United States Trustee and file with the United States Bankruptcy Court UST Form 101-7-NDR (NDR). The NDR must contain the trustee's certification that the estate has been fully administered, that the trustee has neither received nor disbursed any property or money on account of the estate, and that there is no property available for distribution over and above that exempted by law. In addition, the NDR must set forth the

<sup>6</sup> Chapters 12 and 13 case trustees closed less than .001% of chapters 12 and 13 cases in fiscal year 2007.



trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the NDR must also include the following information:

- (1) The length of time the case was pending;
- (2) Assets abandoned;
- (3) Assets exempted;
- (4) Claims asserted;
- (5) Claims scheduled; and,
- (6) claims scheduled to be discharged without payment.

(e) *UST Form 101-12-FR-S, Chapter 12 Standing Trustee's Final Report and Account* and *UST Form 101-13-FR-S, Chapter 13 Standing Trustee's Final Report and Account*. After the final distribution to creditors in a chapter 12 or 13 case in which a standing trustee has been appointed, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101-12-FR-S for chapter 12 cases or UST Form 101-13-FR-S for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification that the estate has been fully administered if not converted to another chapter and a request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

- (1) The length of time the case was pending;
- (2) Assets abandoned;
- (3) Assets exempted;
- (4) Receipts and disbursements of the estate;
- (5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;
- (6) Claims asserted;
- (7) Claims allowed;
- (8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;
- (9) Date of confirmation of the plan;
- (10) Date of each modification thereto; and,
- (11) Defaults by the debtor in performance under the plan.

(f) *UST Form 101-12-FR-C, Chapter 12 Case Trustee's Final Report and Account*, and *UST Form 101-13-FR-C, Chapter 13 Case Trustee's Final Report and Account*. After the final distribution to creditors in a chapter 12 or 13 case in which a case trustee has been appointed, the trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101-12-FR-C for chapter 12 cases, or UST Form 101-13-FR-C for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a

certification, submitted under penalty of perjury, that the estate has been fully administered if not converted to another chapter and the trustee's request to be discharged from further duties as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

- (1) The length of time the case was pending;
- (2) Assets abandoned;
- (3) Assets exempted;
- (4) Receipts and disbursements of the estate;
- (5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;
- (6) Claims asserted;
- (7) Claims allowed;
- (8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;
- (9) Date of confirmation of the plan;
- (10) Date of each modification thereto; and,
- (11) defaults by the debtor in performance under the plan.

(g) *Mandatory Usage of Uniform Forms*. The Uniform Forms associated with this rule must be utilized by trustees when completing their final reports and final accounts. All trustees serving in districts where a United States Trustee is serving must use the Uniform Forms in the administration of their cases, in the same manner, and with the same content, as set forth in this rule:

- (1) All Uniform Forms may be electronically or mechanically reproduced so long as all the content and the form remain consistent with the Uniform Forms as they are posted on EOUST's Web site;

(2) The Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a "smart form" meaning the forms are data enabled, unless the court offers an automated process that has been approved by EOUST, such as the virtual NDR event through CM/ECF.

Dated: September 30, 2008.

**Clifford J. White, III,**

*Director, Executive Office for United States Trustees.*

[FR Doc. E8-23700 Filed 10-6-08; 8:45 am]

**BILLING CODE 4410-40-P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2509

#### RIN 1210-AB22

#### Amendment to Interpretive Bulletin 95-1

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This document contains a final rule that amends Interpretive Bulletin 95-1 to limit the application of the Bulletin to the selection of annuity providers for defined benefit plans. Also appearing in today's **Federal Register** is a final regulation, entitled "Selection of Annuity Providers—Safe Harbor for Individual Account Plans", which establishes a safe harbor for the selection of annuity providers for the purpose of benefit distributions from individual account plans covered by title I of the Employee Retirement Income Security Act (ERISA). The amendment to Interpretive Bulletin 95-1, as well as the safe harbor for annuity selections, will affect plan sponsors and fiduciaries of individual account plans, and the participants and beneficiaries covered by such plans.

**DATES:** This final rule is effective on December 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Janet A. Walters or Allison E. Wielobob, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693-8510. This is not a toll-free number.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

In 1995, the Department issued Interpretive Bulletin 95-1 (29 CFR 2509.95-1) (the IB), providing guidance concerning the fiduciary standards under Part 4 of Title I of ERISA applicable to the selection of annuity providers for purposes of pension plan benefit distributions. In general, the IB makes clear that the selection of an annuity provider in connection with benefit distributions is a fiduciary act governed by the fiduciary standards of section 404(a)(1), including the duty to act prudently and solely in the interest of the plan's participants and beneficiaries. In this regard, the IB provides that plan fiduciaries must take steps calculated to obtain the safest annuity available, unless under the