

Proposed Uniform Forms One Step Closer to Implementation

by

Doreen Solomon, Assistant Director,
Office of Review and Oversight,
Executive Office for U.S. Trustees

Uniform Reports Required

For some time, you have been hearing about the new uniform forms for trustee final reports. Section 602 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) requires the Attorney General to issue uniform forms for final reports by trustees in chapters 7, 12, and 13. BAPCPA requires certain specified information to be included, “in addition to such other matters as are required by law or as the Attorney General ... shall propose[.]”

The Attorney General delegated the responsibility for promulgating the rules governing the uniform final reports and creating the uniform forms to the Director of the Executive Office for U.S. Trustees. On February 4, 2008, a Notice of Proposed Rulemaking was published in Volume 73, No. 23, of the Federal Register. Trustees and other members of the public filed nearly 70 comments on or before the April 4, 2008, deadline for submitting comments.

In drafting the proposed rule and the three uniform final report forms that affect chapter 7 trustees, the U.S. Trustee Program (Program) adhered to BAPCPA’s requirement that forms “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 reports; and (3) appropriate privacy concerns and safeguards.” *See* 28 U.S.C. § 589b. The Program has worked closely with NABT representatives in its attempt to achieve a balance between the needs of the public for bankruptcy information and the burden on the trustees in completing the forms. Some examples of our work with the NABT and our continuing efforts to reduce the burden on trustees are set forth below.

Outreach to Trustees and Vendors

The Program has conferred with the NABT leadership for nearly three years as we developed the proposed forms. NABT leadership and the chapter 7 software vendors made us aware of trustees’ concerns, particularly with the form for the Trustee’s Report of No Distribution (NDR), and helped us estimate the burden on trustees to provide the new information required by BAPCPA in uniform final reports. We carefully considered this input as we developed the forms and prepared the proposed rule for publication and comment.

Between now and the effective date of the final rule, we will continue our outreach efforts to ensure that trustees and case administration software vendors fully understand the data requirements of the new forms. We plan to publish instructions to accompany the forms, as well

as other guidance such as “Frequently Asked Questions” based on various scenarios trustees have presented. We will continue to discuss the forms at regional training programs, and will include a discussion of the uniform rules in our presentation at the NABT’s annual seminar this summer in Anchorage.

Outreach Efforts with the Courts

Since BAPCPA’s implementation, the Program has worked with the Administrative Office of the U.S. Courts (AOUSC) and the bankruptcy courts in an effort to have the courts adopt data enabled forms as the standard for filing petitions and schedules. The NABT leadership also participated in these efforts by writing letters to the Committee on the Administration of the Bankruptcy System of the Judicial Conference of the United States (Bankruptcy Administration Committee), outlining the additional burden that the failure to mandate data enabled forms would place upon the courts and the trustees. Recently, the Bankruptcy Administration Committee agreed to expand the number of data elements the courts provide to the Program to include data elements required by trustees to file the NDR. In addition, the Bankruptcy Administration Committee will seek authority from the Judicial Conference at its September 2008 session to allow the Program to share with chapter 7 case trustees certain data elements that it receives from the AOUSC. Because we are optimistic that the Judicial Conference will approve this exception to the Judicial Conference’s data dissemination policy, the Program is devoting the necessary resources to have a system in place to deliver the data to trustees once it is made available.

In addition to these efforts, the Program is working with the AOUSC to address the concern raised by the Program and the trustees that the NDR may no longer be filed through virtual text entry. While these discussions are still preliminary, the AOUSC recognizes the burden placed on the courts and trustees if every NDR must be filed as an individual PDF document.

Comments to the Notice of Proposed Rulemaking

As previously noted, we received approximately 70 comments in response to the Notice of Proposed Rulemaking. Many comments were from chapter 7 trustees who expressed concerns about the NDR form. The comments focused on the time and cost to the trustees of providing the required information and the burden to trustees in filing the forms.

We will review each comment carefully and include reasoned responses to the comments as part of the final rule publication process.

Conclusion

While the development process has been a long one, we believe the ultimate result will be a uniform report that will provide the public with useful information on how the bankruptcy system operates without placing an undue burden upon trustees. The substantial vetting process

and outreach efforts have resulted in documents that are workable and efficient. We are pleased that the new forms will soon be available for distribution and use.

Doreen Solomon is the Assistant Director for Review and Oversight in the Executive Office for U.S. Trustees in Washington, D.C. She joined the U.S. Trustee Program in August 2006 after serving as a standing Chapter 13 in Boston since January 1999. Prior to her appointment as a Chapter 13 trustee, she was a partner in the Boston law firm Riley and Solomon.