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October 13, 2021

Committee on Rules of Practice and Procedure
c/o Rules Committee Staff
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Re: Unclaimed Funds Expert Panel Referral

Dear Rules Committee Secretary:

I write as Chair of the Unclaimed Funds (UCF) Expert Panel, a sub-group of the Financial Managers Working Group. Our Expert Panel recently published a report titled *Rethinking Unclaimed Funds*, which concludes that the status quo in dealing with unclaimed funds cannot continue without increasing risk to the Judicial Branch. An abridged copy of that report is attached to this letter.

As part of our effort, we surveyed the Bankruptcy Courts in 2020 to determine pain points involving UCF. Many pain points were identified by the court family, with numerous suggestions offered relating to the Federal Rules of Bankruptcy Procedure and Official Forms. While the report provides supporting details, I highlight the suggestions offered by the court family for the Committee's consideration, notating the PDF report pages where more detail can be found.

A. Rules Related

1. Create new federal rule or amend existing Federal Rule 3011 to require trustees to take additional steps to locate creditors before turning funds over to Courts. (p. 7-8)
2. Consider amendment to the Federal Rules of Bankruptcy Procedure 3011 to not permit deposit of UCF under designated threshold dollar amounts and allow for those funds to be redistributed to creditors, or if all claims are satisfied, returned to the debtor. (p. 9-11)
3. Require trustee compliance with Fed. R. Bank. 3011 before accepting deposits of UCF. (p. 10-11)
4. Consider adopting a Rule requiring trustees to file a motion/application to deposit, with subsequent ruling, before the trustee can turn over funds to the Court. (p. 7-8)

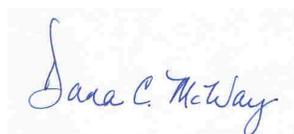
B. Forms Related

1. Include a statement or disclaimer on the Notice of Case (341 meeting notice) and the Proof of Claim that states address changes must be communicated to the Court. (p. 10-11)
2. Create sample change-of-address forms for local court adoption. (p. 10-17)

The Report includes an appendix (A) showing four sample Change of Address forms developed by the Expert Panel in support of the second forms-related suggestion.

Our Expert Panel is available to assist in addressing these issues with you. We look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink that reads "Dana C. McWay". The signature is written in a cursive style and is positioned above the printed name and title.

Dana C. McWay
Clerk of Court

Encl: *Rethinking Unclaimed Funds* Abridged Report

Cc: UCF Expert Panel Members:

Michelle Cuzzo (NYEB)
Debby Eckl (AREB)
Dean Lugge (ILSB)
Nan Noecker (INNB)

Wendy Pena (GASB)
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Rethinking Unclaimed Funds

Solutions to reduce deposits from case trustees.

Summary Report of
Bankruptcy Court
Survey Responses



Unclaimed Funds Expert Panel
A sub-group of the Financial Managers Working Group

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EXECUTIVE SUMMARY

CONCLUSION:

UNCLAIMED FUNDS BELONGING TO THOUSANDS OF INDIVIDUALS AND ENTITIES ARE HELD BY THE FEDERAL JUDICIARY, WAITING TO BE CLAIMED. MAINTAINING THE STATUS QUO POSES REPUTATIONAL RISKS TO THE JUDICIAL BRANCH. WITHOUT NEW EFFORTS, THESE FUNDS WILL REMAIN UNCLAIMED AND THE BALANCE WILL CONTINUE TO GROW. ACTING ON SUGGESTED RECOMMENDATIONS CAN RESULT IN REDUCING THE DEPOSIT OF FUNDS TO THE JUDICIARY.

SUMMARY:

The federal Judiciary holds **\$399,847,722.65** in unclaimed funds (UCF) with the U.S. Treasury as of 03/31/21.¹

Most of the funds held in the U.S. Treasury are attributable to deposits by bankruptcy case trustees at the end of the case who either cannot locate the proper recipient of the funds or whose check to the proper recipient goes uncashed. Bankruptcy case trustees must make these deposits with the courts pursuant to federal statute and rule. The courts serve as the equivalent of ‘passive bankers’, waiting for the proper recipient to make a claim against these funds.

Historically, UCF deposits grow annually by approximately \$20 million. Such growth can be mitigated through new measures to control the inflow of UCF.

The UCF Expert Panel conducted a survey of court unit executives and financial staff in bankruptcy courts in April-May 2020 to determine pain points involving UCF. Many pain points were identified by the court family, with numerous suggestions offered relating to the Federal Rules of Bankruptcy Procedure and Official Forms.

This report summarizes the findings of the survey and includes a set of findings and recommendations developed by the UCF Expert Panel.

¹ Source: U.S. Treasury, <https://www.treasurydirect.gov/govt/reports/tma/unclaimed.htm>

RECOMMENDATIONS:

Efforts on Reducing Funds Coming from Case Trustees

- a. Address court concerns over the variability in how trustees locate proper parties before depositing funds with the courts and consider the need for standardization of practices.
- b. Develop new strategies to reduce deposits, to be used by both case trustees and the courts, while cases are open.
- c. Collaborate as a partner with the Department of Justice, Bankruptcy Administrators, case trustees, and professional trustee associations to achieve the goal of reducing the deposit of UCF by case trustees in the future.

KEY TAKEAWAY:

Working in partnership with the trustee community, the Judiciary can employ strategies to reduce the deposit of unclaimed funds from case trustees.

ACTIONS NEEDED:

Some recommendations require action by various Judicial Conference Committees, divisions of the Administrative Office, and outside entities.

An infographic summarizing the survey report recommendations immediately follows the Executive Summary.

REDUCE FUNDS COMING IN

STRATEGIES/TOOLS FOR COURTS & TRUSTEES

Courts widely support new strategies and tools to slow the deposit of funds, to be used by both case trustees and by courts while cases are open and after case closing.

- Place defined steps into local or national rules
- Stop disbursements to invalid creditor addresses
- Modify 341 Notice & POC re: notifying of change of address
- Adopt local rules permitting distribution of small dividends
- Create a sample change of address form
- Collaborate with NABT/NACTT, UST, & BA for solutions

SURVEY RESULTS

EFFORTS ON REDUCING FUNDS COMING FROM CASE TRUSTEES

The survey questions focused on strategies currently used by courts to reduce deposits by case trustees; possible new strategies to reduce deposits; and ideas to aid the trustee while the case is open to get funds to the proper parties instead of later depositing funds with the court.

Findings

Diligence: Respondents expressed widespread concerns over the variability in how trustees locate proper parties before depositing funds with the courts. A review and analysis of current efforts by case trustees is recommended, with the goal of standardizing practices.

Strategies/Tools: Respondents expressed widespread support for new strategies to further reduce deposits, to be used both by case trustees and by the courts while cases are open.

Collaboration: Respondents expressed interest in the federal Judiciary serving as a partner with DOJ, BAs, case trustees, and professional trustee associations to achieve the goal of reducing the deposit of UCF by case trustees in the future.

Trustee Diligence

Finding:

Courts varied in their responses concerning trustee diligence. While some courts expressed the view that trustees acted in a diligent manner, other courts expressed concern over perceived variations in how trustees locate proper parties before depositing funds with the courts. The varied responses across the court family leads to a conclusion that attention is needed to this issue.

Discussion:

For those courts who expressed confidence in trustee diligence, they pointed to the efforts employed by the local U.S. Trustee (UST) Office or specific case trustees that helped to provide this confidence. For example, one court indicated the local UST office requires the case trustees to sign an affidavit that there was an honest attempt to give payment to the rightful owner before UCF could be deposited with the court. Other courts spoke to efforts by selected case trustees to implement procedures to locate the parties to decrease the funds they turnover to the Court. Courts spoke to requirements such as the case trustee memorializing what due diligence actions had been taken before delivering funds to the court, which acts as a layer of written accountability.

Some courts expressed skepticism whether diligent efforts are being made by case trustees before depositing funds with their courts. Courts expressed repeatedly that correct creditor addresses were readily found by court staff at the time funds were deposited by the trustee, although the trustee indicated he or she could not locate a correct creditor address. This was particularly expressed for creditors who are utilities, city and state governmental entities, and federal entities such as the IRS. Courts provided instances where the case trustee knew a creditor's address was invalid long before depositing the same funds with the court. Courts expressed concern that some Chapter 13 Trustees are unable to find the correct address to refund any overages at the end of a Chapter 13 proceeding when the funds are due and owing to the debtor.

Some courts have addressed the question of due diligence by implementing local rules requiring the case trustee to file a motion/application to deposit UCF before

funds could be deposited or to provide a report to the court if the amount to be deposited exceeded \$500.00. Two examples of local rules read:

L.R.3011 – Unclaimed Funds and Registry Funds.

Funds for creditors that could not be located by the Trustee or funds that otherwise may be unclaimed or in dispute may be paid into the Court’s registry only on motion.

Rule 3011-1. Unclaimed Dividends

(a) [ABROGATED]

(b) UNCLAIMED DIVIDENDS IN EXCESS OF \$500. A trustee shall not pay a dividend which exceeds \$500 into the court unless such payment is accompanied by a report from the trustee stating that the trustee has been unable to locate the creditor who filed the claim despite having made reasonable efforts to do so.

Recommendations:

Additional attention to case trustee activity is recommended. Develop policy at a national level to guide courts in how to address this concern and convey that policy to courts. Examples include:

1. Consider adopting a Local Rule 3011 requiring trustees to file a motion/application to deposit, with subsequent ruling, before the trustee can turn over funds to the court.
2. Create new federal rule or amend existing Federal Rule 3011 to require trustees to take additional steps to locate creditors before turning funds over to Courts.
3. Require trustees to stop disbursing funds to creditors once the trustee becomes aware the creditor’s address is invalid and ask for more effort by the case trustee to identify the correct creditor address.

Strategies/Tools/Collaboration

Finding:

Courts expressed widespread support for new strategies to reduce the deposit of funds with the courts, to be used by both case trustees and by the courts while cases are open and after case closing.

Discussion:

Some courts have acted locally to employ strategies to reduce the deposit of funds while other courts identified potential strategies to employ.

- A. Federal Rule of Bankruptcy Procedure 3010 addresses small dividends and payments, indicating the case trustee should not distribute a dividend of less than \$5.00 in a chapter 7 case or less than \$15.00 in chapters 12 & 13 cases, absent a local rule authorizing distribution. This instruction results in case trustees depositing small dividends with the courts instead of issuing them to their rightful owners. Two examples of local rules allowing for distribution in these cases read:

Local Rule 3010-1. Small Dividends and Payments.

(a) Chapter 7 Cases. In a chapter 7 case, the trustee is authorized to distribute dividends to any creditor in amounts less than five dollars (\$5.00).

(b) Chapter 12 and Chapter 13 Cases. In a chapter 12 or 13 case, the trustee is authorized to distribute payments to any creditor in amounts less than fifteen dollars (\$15.00).

Rule 3010-1. Small Dividends - (Chapter 13 Cases)

Pursuant to [Federal Rule of Bankruptcy Procedure 3010\(b\) \(link is external\)](#), the trustee in a chapter 13 case may make payments of less than \$15.

- B. Even with implementation of a local rule 3010 to allow for distribution of small dividends, case trustees may still deposit these same dividends as UCF if creditors either cannot be located or do not cash checks issued to them by case trustees. Or case trustees may elect not to distribute small

dividends, even if permitted by local rule, reasoning such small dollar checks may not be cashed and would cause extra work for the case trustee in reconciling bank statements with checks over 90 days old, requiring the need to cancel those checks. Courts suggested that trustees be permitted to redistribute these small dividends to other creditors pro rata or if all claims are satisfied, return these funds to the debtor and, in addition, that Federal Rule of Bankruptcy Procedure 3010 be amended to permit this.

- C. Courts report that both currently and in the past not all deposits of UCF have included the names and last known addresses of entities, as required by Federal Rule of Bankruptcy Procedure 3011. This lack of detail has resulted in the creation of black hole records, meaning funds that cannot be claimed properly because of the lack of pertinent records held by the court. Current deficiencies in providing this level of detail have been reported on the deposit of small dividends.
- D. A court reported instances where a single creditor may have filed more than one claim in a case and the case trustee distributed to that creditor a check for one of the claims, but not for remaining claims if the threshold amount of the additional claims would be considered a small dividend. In those instances, the small dividend amounts were deposited with the court as UCF. The court wondered if trustees possessed the authority to combine the amounts to be distributed on both claims into a single check, listing the amount to be applied to each claim. Doing so may help somewhat to reduce the amount of unclaimed funds.
- E. Courts report that the address of the debtor(s) may change after case opening and/or the address of the claimant may change after the proof of claim has been filed and that these changed addresses are not reported to the court for addition to the public record. The lack of a current, accurate address for either the debtor or claimant impairs the ability of the case trustee to issue funds to the proper entities and increases the likelihood of a UCF deposit with the court at the end of the case. Courts suggested case

trustees could remind debtor(s) at 341 meetings to submit change-of-address information to the court and that local courts make available change-of-address forms for this purpose.

- F. One court suggested imposing a time delay before the case trustee could deposit funds with the court. This suggestion would require the trustee to issue a Notice to Deposit Unclaimed Funds to the claimant with a 21-day deadline for the claimant to notify the trustee of a changed address.

Recommendations:

1. Consider amendment to the Federal Rules of Bankruptcy Procedure 3011 to not permit deposit of UCF under designated threshold dollar amounts and allow for those funds to be redistributed to creditors, or if all claims are satisfied, returned to the debtor.
2. While awaiting action at the BK Rules Committee level, suggest adoption of local rules to permit distribution of small dividends pursuant to Federal Rule of Bankruptcy Procedure 3010 as a way to reduce deposit of UCF at case closing.
3. Courts should not accept deposit of UCF without trustee compliance with Rule 3011. Require case trustees to comply with Federal Rule of Bankruptcy Procedure 3011 re: providing names and last known addresses before deposit as a way to avoid creating black hole records.
4. Include a statement or disclaimer on the Notice of Case (341 meeting notice) and the Proof of Claim that states address changes must be communicated to the court.
5. Create sample change-of-address forms for local court adoption. Examples are located in Appendix B.

NEXT STEPS

1. Engage the Advisory Committee on Bankruptcy Rules to address suggested changes to Federal Rules of Bankruptcy Procedure and Official/Director's Forms.
2. Work collaboratively with the EOUST, Bankruptcy Administrator Program, National Association of Chapter 13 Trustees (NACTT), and National Association of Bankruptcy Trustees (NABT) to develop and implement solutions to reduce the deposit of UCF.

APPENDIX

A. Change of Address Forms (4)

Appendix A

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____
-----X

In re:

Case No.:

Chapter:

Debtor(s)
-----X

DEBTOR CHANGE OF ADDRESS FORM

1. **Name of Debtor:** _____

2. **Debtor's Tax ID Number: (last 4 digits only):** _____

3. **Old Address:**

Names(s): _____

Mailing Address: _____

City, State, Zip Code: _____

4. **New Address:**

Mailing Address: _____

City, State, Zip Code: _____

Check all that apply (you must check one):

___ I am listed as a Debtor in the above referenced case.

___ I am the Debtor's authorized agent (Attach copy of power of attorney or statement of authority, if any).

___ I am the Attorney representing in this case.

I _____, hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Signature: _____

Print Name: _____

Telephone Number: _____

Email Address: _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____
-----X

In re:

Case No.:

Chapter:

Debtor(s)
-----X

NOTICE OF DEBTOR'S CHANGE OF ADDRESS PURSUANT TO F.R.B.P 4002(a)(5)

1. **Name of Debtor:** _____

2. **Tax ID Number of Debtor (last 4 digits only):** _____

3. **Old Address:**

Name(s): _____

Mailing Address: _____

City, State, Zip Code: _____

4. **New Address:**

Street 1: _____
Street 2: _____
City: _____
State: _____
Zip Code: _____

Check all that apply (you must check one):

___ I am listed as a Debtor in the above referenced case.

___ I am the Debtor's authorized agent (Attach copy of power of attorney or statement of authority, if any).

___ I am the attorney representing the Debtor in this case.

I _____, hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Signature: _____

Print Name: _____

Title: _____

Telephone Number: _____

Email Address: _____

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____
-----X

In re:

Case No.:

Chapter:

Debtor(s)
-----X

DEBTOR CHANGE OF ADDRESS FORM

1. **Name of Debtor:** _____

2. **Debtor's Tax ID Number: (last 4 digits only):** _____

3. **Old Address:**

Names(s): _____

Mailing Address: _____

City, State, Zip Code: _____

4. **New Noticing Address (if no change, check box below):**

Mailing Address: _____

City, State, Zip Code: _____

No Address Change

5. **New Payment Address (if no change, check box below):**

Mailing Address: _____

City, State, Zip Code: _____

No Address Change

Check all that apply (you must check one):

I am listed as a Debtor in the above referenced case.

I am the Debtor's authorized agent (Attach copy of power of attorney or statement of authority, if any).

I am the Attorney representing in this case.

I _____, hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Signature: _____

Print Name: _____

Telephone Number: _____

Email Address: _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF _____

-----X

In re:

Case No.:

Chapter:

Debtor(s)

-----X

DEBTOR CHANGE OF ADDRESS FORM

1. Name of Debtor: _____

2. Tax ID Number of Debtor (last 4 digits only): _____

3. Old Address:

Name(s): _____

Mailing Address: _____

City, State, Zip Code: _____

4. New Address(es):

New Noticing Address:

Street 1: _____

Street 2: _____

Attn: _____

City: _____

State: _____

Zip Code: _____

No Address Change

New Payment Address:

Street 1: _____

Street 2: _____

Attn: _____

City: _____

State: _____

Zip Code: _____

No Address Change

Check all that apply (you must check one):

I am listed as a Debtor in the above referenced case.

I am the Debtor's authorized agent (Attach copy of power of attorney or statement of authority, if any).

I am the Attorney representing in this case.

I _____, hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: _____

Signature: _____

Print Name: _____

Title: _____

Telephone Number: _____

Email Address: _____