



COMMERCIAL LAW LEAGUE OF AMERICA®

April 3, 2008

**VIA TELECOPIER (202-307-2397) AND MAIL**

Clifford White III, Executive Director  
Executive Office of the United States Trustee  
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Larry Wahlquist, Esq.  
Office of the General Counsel  
Executive Office of the United States Trustee  
20 Massachusetts Ave NW, Suite 8100  
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Re **Docket Reference No. EOUST 101**

Dear Messrs. White and Wahlquist:

The Commercial Law League of America (“CLLA”), founded in 1895, is the nation’s oldest organization of attorneys and other experts in credit and finance actively engaged in the field of commercial law, bankruptcy and reorganization. Its membership consists of nearly 4,000 individuals. The Bankruptcy Section of the CLLA is made up of approximately 1,450 bankruptcy lawyers, trustees and bankruptcy judges from virtually every state in the United States. Its members include practitioners with both small and large practices, who represent divergent interests in bankruptcy cases.

The CLLA has long been associated with the representation of creditor interests, while at the same time seeking fair, equitable and efficient administration of state-law collection and bankruptcy cases for all parties-in-interest. Members of the CLLA have testified on numerous occasions before Congress as experts in the collection, bankruptcy and reorganization fields. We write to comment on the Executive Office of the United States Trustees' ("EOUST") proposed rule (Federal Register (73 Fed. Reg. 6447 – 6451; Feb. 4, 2008) concerning UST Form 102-7-NDR entitled “Trustee's Report of No Distribution (NDR)” (the “Proposed NDR Report”). We believe that the Proposed NDR is materially deficient and should not be adopted.

As currently drafted, the Proposed NDR Report fails to satisfy the requirements of 28 U.S.C. § 589b in at least two important ways. First, the Proposed NDR Report fails to satisfy the requirements of section 589b(c), requiring information be “reasonable and adequate ... to evaluate the efficiency and practicality of the Federal bankruptcy system.” For example, the Proposed NDR Report requires that a Trustee value the assets abandoned in chapter 7 bankruptcy cases. This would be calculated by the current value of real and personal property listed on a debtor’s Schedules A (Official Form B6A) and B (Official Form B6B), minus the value of claimed exemptions as listed by the debtor on Schedule C (Official Form B6C). However, the calculation relies on property valuations provided by the Debtor, which may or may not be correct, and also

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fails to take into account the value of any secured liens on the abandoned property. This would lead to serious misleading valuations.

In addition, the Proposed NDR Report requires the Trustee to provide information regarding "claims discharged without payment." However, a trustee may not always know what claims ultimately will or will not be discharged in a bankruptcy case at the time the trustee files the Proposed NDR Report. Creditors or the US Trustee may still be in the process of seeking a denial of the debtor's discharge, either with respect to a creditor's specific claim or the debtor's discharge in general, at the time the trustee files the Proposed NDR Report. In those cases, the trustee will be making what amounts to an "educated guess" at best as to discharged claims.

Second, the Proposed NDR Report fails to satisfy the requirement of Section 589b(c) in that any rule is required to take into account and balance the "economy, simplicity, and lack of undue burden on persons with a duty to file reports". The Proposed NDR Report fails to achieve that objective. For example, it is contrary to the way in which trustees satisfy their accounting duties under the Bankruptcy Code in actual everyday practice. Although Section 704(9) of the Bankruptcy Code requires a trustee to make a "final report and a final account," the procedure has developed where a trustee in a no-asset chapter 7 bankruptcy case satisfies his or her reporting duty by simply filing a "report of no distribution," instead of filing a formal final report. This approach avoids unnecessary work and expense, including that on the part of the Bankruptcy Court, in cases where resources are extremely limited (or nonexistent) and no claims will ever receive a distribution. Accordingly, the Proposed NDR Report, requiring substantial time of the trustees to complete, should not be required in light of the current and efficient practice of allowing a report of no distribution to be filed in chapter 7 no-asset cases. Thus, the EOUST should continue to acknowledge the difference between chapter 7 asset cases and chapter 7 no-asset cases and limit any rules for formal final reports to chapter 7 asset cases only.

In the alternative, the Proposed NDR Report requires further revisions to help insure efficiency and usefulness of the collected data. Once revised, we recommend that the EOUST delay the effective date of the rules governing these reports so that software developers can update or develop new programs that would be able to bypass the need for trustees to manually gather and develop the required information. We believe that this would provide the best long-term solution, while addressing the goals of Section 589b.

Respectfully submitted,

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