

CHAPTER 7 TRUSTEE PERFORMANCE REVIEW (TPR) INSTRUCTIONS

Summary of Changes

- “Yes” and “No” responses to questions replace “adequate”, “adequate, except for,” and “inadequate” determinations.
- The original fifteen performance review factors have been condensed and re-ordered into thirteen performance review criteria.
- Comments must be recorded in the space provided for each “No” response (as well as for each “Yes” response to two questions under Performance Review Criteria #13). Space is also provided for overall comments and recommendations.
- Every office should have in place a procedure to collect information about a trustee’s performance. This information can be stored in databases, spreadsheets, and/or the trustee oversight file. The data needed to evaluate Performance Review Criteria #6 will be provided by the Office of Oversight and the Office of Planning and Evaluation.
- The Assistant United States Trustee signs the form on behalf of the trustee oversight team or staff members who provided input regarding the trustee’s performance.
- The United States Trustee determines whether the trustee is eligible for continued appointment based on the performance review prepared by the trustee oversight team. If the United States Trustee determines that the trustee’s continued appointment is not warranted, the United States Trustee shall issue a Notice of Suspension or a Notice of Termination pursuant to 28 C.F.R. § 58.6.

Frequently Asked Questions

Q1. Are comments required for each performance review criterion?

No. Reviewers should not routinely provide comments for each performance review criterion. Comments are only required to explain a negative response to a performance review question. In some situations, reviewers should elaborate on their answers when “Yes” is not sufficient to adequately represent a trustee’s performance.

Q2. What is the equivalent of an overall “inadequate” rating?

The new performance review form eliminates the “adequate”, “adequate, except for,” and “inadequate” ratings. The equivalent of an “inadequate” overall rating is the United States Trustee’s decision to suspend or terminate the trustee’s appoint to the panel. As before, reviewers should use their best judgment.

Q3. Is there a set number of “No” answers that would automatically translate to the suspension or termination of the trustee’s appointment to the panel?

No. Because the form allows the reviewer to qualify the “No” answer with comments, the number of “No” answers is not necessarily representative of the trustee’s performance, although they would be a good starting point.

Q4. Is “No” the equivalent of “adequate, except for” under the old rating scheme?

No. A “No” answer is not necessarily negative and must be considered in context with the comments provided.

Q5. Should an answer be left blank when it does not apply?

Each question should be answered either “Yes” or “No” and explained in the Comments section, if necessary, unless otherwise provided on the form or in these instructions.

Specific Instructions for Overall Comments and Recommendations, and the Performance Review Criteria

Overall Comments and Recommendations

Completion of this section is optional. It can be used to summarize the “Yes/No” answers, set forth the United States Trustee’s expectations for improvement in the trustee’s performance, or document notable information about the trustee’s performance that is not covered in Elements 1 to 13, such as mentoring other trustees, positions of leadership within the National Association of Bankruptcy Trustees or other organizations, serving as a presenter at United States Trustee or other training, and service on a United States Trustee Program project or initiative.

Elements 1 & 2 Civil Enforcement and Criminal Referrals

Every office should have tracking mechanisms in place to accurately portray the number of civil enforcement cases or criminal referrals submitted to the office by its panel trustees during the performance review period. These tracking mechanisms can include lists or spreadsheets, but should be sufficient to support the conclusions in the performance review.

Enter the number of civil enforcement actions referred and the number of criminal referrals during the performance review period. Civil enforcement actions include § 707(a), § 707(b), § 727, abusive creditor actions, and actions regarding debtor identification, including incorrect Social Security number.

Element 1 assesses whether the trustee is thoroughly and diligently reviewing cases for abuse and understands what to look for. It would be extremely unusual for a trustee not to have made a single civil enforcement referral during a reporting period.

If the reviewer wishes to note the number of § 727 actions the trustee files him/herself, include this information in the comments section.

Finally, under the “cooperates with the United States Trustee and law enforcement” section of the Criminal Referral element, the preferred answer is “Yes” even if there may have been no interaction between the trustee and law enforcement during this specific review period. “No” should be used when the reviewer has specific knowledge that the trustee did not cooperate with law enforcement.

Element 3 Meetings of Creditors

Staff should periodically monitor a trustee’s meetings of creditors, in person or by listening to recordings, and document their observations in the trustee oversight file.

Element 4 Court Appearances and Pleadings

Staff should periodically review a trustee’s pleadings and observe the trustee in court. Their findings and observations should be documented in the trustee oversight file.

Note that, if the chapter 7 trustee is not an attorney, most of the performance review criteria still apply. Non-attorney trustees often appear in court while represented by counsel. Regardless of whether a trustee is an attorney, he/she should be prepared for court hearings and should be familiar with the case. The trustee’s demeanor should be appropriate to the significance or seriousness of a court appearance. Finally, the trustee is ultimately responsible for the pleadings prepared by his/her counsel, therefore, the questions regarding the effectiveness of the pleadings also apply to non-attorney trustees, even though this element is more fully canvassed in Element 5.

Element 5 Retention and Supervision of Professionals

See the *Handbook for Chapter 7 Trustees* for the Program’s expectations of trustees regarding this element. Trustees are expected to exercise good judgment in hiring professionals, supervising their work, requiring prompt turnover of assets they collect, and reviewing their professional fee applications and objecting when necessary.

Element 6 Case Progress

Enter the number of old open asset cases per the Chapter 7 Caseload Comparison report published quarterly by the Office of Oversight (or similar regional ACMS report), as of the most recent calendar quarter end, and as of same quarter for the past two years (i.e., 6/30/12, 6/30/11, and 6/30/10).

Enter the percentage of asset cases (asset case ratio) for the trustee, office, and nation for the currently available twelve-month period ending on 3/31 or 9/30. The Percentage of Assigned Cases Closed as Asset Cases will be provided by the Office of Oversight and/or the Office of Planning and Evaluation.

Enter the amount distributed to prior chapter, priority and general unsecured creditors per assigned case for the trustee, office, and nation. These statistics will be provided by the Office of Oversight and/or the Office of Planning and Evaluation. The TPR form uses the amount “per assigned case” instead of “per asset case” because the total amount a trustee distributes to unsecured creditors, adjusted for the size of the trustee operation, is more meaningful than the amount a trustee distributes to unsecured creditors in a trustee’s typical asset case. (This is especially true of trustees with very few asset cases).

Enter the percentage of asset cases with no distributions to prior chapter, priority and general unsecured creditors for the trustee, office, and nation. These statistics will be provided by the Office of Oversight and/or the Office of Planning and Evaluation.

The first criterion states that the trustee timely closes cases. The Program does not have a definition for the term “timely” because there are no set guidelines or time frames for closing cases since each case is unique. Although the Program defines an “old” case as one which has been open more than three years, reviewers should exercise good judgment in determining whether a trustee is timely closing cases and should have sufficient supporting examples if the answer is “No”. The examples should be included in the Comments section.

Similarly, reviewers should exercise good judgment regarding the appropriate internal controls for monitoring case progress. Although some of this information would be unobtainable absent an audit, field examination, or office visit, the reviewer should consider whether the trustee routinely has old cases on the data call reports to determine whether the trustee maintains appropriate internal controls.

Element 7 NDRs

Every office should have internal controls in place to monitor the filing of NDRs. A timely filed NDR will be filed within 120 days after the initial examination of the debtor at the meeting of creditors. ACMS data call reports will show which trustees regularly file tardy NDRs. Also, if a trustee routinely withdraws NDRs, an inference can be made that the trustee is not filing the NDRs appropriately. Most of this information can be obtained by generating a Business Objects report or from ACMS.

Element 8 TFRs and TDRs

Every office should have in place a tracking mechanism to measure the number of TFRs and TDRs approved for each trustee and the number requiring correction. Enter these statistics in the appropriate boxes.

As a rule of thumb, a trustee should receive a “Yes” for “TFRs are generally correct” and “TDRs are generally correct” when 10 percent or less of them require correction. If more than 10 percent require correction, an explanation should be included in the Comments section.

Element 9 TIRs and Operating Chapter 7 Reports

Every office should have in place a tracking mechanism to record the timely receipt of trustee interim reports (e.g., Forms 1, 2, and 3) and monthly operating reports.

Trustee interim reports must be reviewed within 60 days of receipt using the automated TIR-RP. Since this review provides valuable information for the performance review, it is recommended that the deadline set for submitting TIRs be coordinated with the performance review period.

If a trustee does not have any operating chapter 7 cases during the review period, answer “N/A” for each applicable criterion.

Element 10 Accountability for Estate Property

Information for these performance review criteria can be gathered from the following routine trustee oversight tools: audits performed by independent accountants, UST field examinations, case administration reviews, TIR reviews, and TFR reviews.

The criterion “maintains appropriate internal controls to protect against loss of estate assets” includes bank reconciliations, cash receipts logs, receivable tracking systems, inventories, casualty insurance, supervision of professionals, information systems security, and other controls mentioned in the *Handbook*. The answer to this element generally will be “Yes” unless the reviewer has specific knowledge of a loss of estate assets or absence of appropriate internal controls.

Element 11 Banking and Bonding

Information for these performance review criteria can be gathered from the following routine trustee oversight tools: collateral monitoring, audits performed by independent accountants, UST field examinations, case administration reviews, TIR reviews, and TFR reviews.

Element 12 Audits, Examinations and Reviews

Enter the dates of the most recent audit and field examination. If the most recent audit or field examination was closed prior to the current performance review period and was discussed in the prior performance review, do not answer “Yes” or “No” but include an explanation in the Comments section.

Element 13 Conduct of Trustee

Answer “Yes” for the first criterion only if formal, written complaints about the trustee were received. If complaints were verbal, but not reduced to writing, answer “No”. However, the reviewer may include information about informal complaints in the Comments section even if the answer is “No”.

Any written complaint should be explained in the Comments section regardless of merits or outcome.