



U.S. Department of Justice

*United States Trustee, Region 10
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MEMORANDUM

TO: Region 10 chapter 7 Trustees

FROM: Nancy J. Gargula *njg*
United States Trustee

CC: Region 10 Staff

DATE: February 27, 2018

RE: Clarification on Calculation of Trustee Compensation In Surplus Cases

The purpose of this memorandum is to address and clarify issues related to the proper calculation of trustee compensation in surplus cases that have resulted from creditor refunds. Specifically, in a case where the TFR has been filed and disbursements have been made, how should the trustee address their fees upon receipt of a refund from the creditor that causes surplus funds for the debtor's benefit? Should the trustee fees stand as initially calculated, or should the trustee fees be re-calculated to adjust for the funds paid to the debtor? This is an issue in which it appears trustees in Region 10 have not been uniform in handling this scenario and for which we want to provide guidance.

The short answer to the question is: Trustee fees need to be re-calculated to adjust for all funds being paid to the debtor when creditor refunds create a surplus funds case.

Section 326 of the Bankruptcy Code provides that the trustee be compensated on "all moneys disbursed or turned over in the case by the trustee to parties in interest, **excluding the debtor**, (*emphasis added*) but including holders of secured claims."

To assure our guidance to Region 10 trustees is consistent with how trustees in other Regions address this issue, we consulted with the Office of Oversight where it was confirmed that section 326 does require that trustee fees in a chapter 7 case be recalculated on funds actually paid to

creditors only, thus excluding from trustee compensation any surplus funds paid to the debtor. So a recalculation is needed in most, if not all, surplus cases.

To the extent you have not been recalculating your trustee fees in surplus funds cases, please take appropriate steps to adjust your procedures accordingly. And for those of you already in compliance with this guidance, thank you. If you have questions, please reach out to your AUSTs.