

Bankruptcy Administration Improvement Act (BAIA) Frequently Asked Questions

Legal and Policy Background

1. What is the new provision addressing chapter 7 trustee compensation created by the BAIA?

The BAIA amends section 330 of Title 11, U.S. Code to include a new subsection (e) to establish a new payment for eligible chapter 7 trustees in applicable chapter 7 cases, to be paid in addition to the existing payment prescribed by subsection (b).

2. How is the payment under 11 U.S.C. § 330(b) different from the 11 U.S.C. § 330(e) payment?

The section 330(b) payment is funded by the filing fees collected in a chapter 7 case (and is thus dependent on a filing fee being collected in order to pay the trustee in that case), while the section 330(e) payment has a separate funding source not related to the collection of any filing fees.

The Interim Regulations note that the 330(e) payments “are funded from quarterly fees collected by the Department of Justice (DOJ) and deposited in the U.S. Trustee System Fund in cases filed under chapter 11.” See the Interim Regulations, Section 2(c) and also 28 U.S.C. §§ 589a(f), 1930(a)(6).

The Interim Regulations also note that amounts available for payment to chapter 7 trustees are determined annually based on:

- the available balance in the U.S. Trustee System Fund under 28 U.S.C. § 589a(f) (see Section 3 (Determining Available Balance and Number of Applicable Cases)), and
- the case count of new filings and cases converted to chapter 7 during a fiscal year (see Interim Regulations, Section 2(d); 28 U.S.C. § 589a(f)(1)(C); and 11 U.S.C. § 330(e)(3)).

The timing of the 330(b) and 330(e) payments is also different. The 330(b) payment is typically made during the pendency of a case or at closing, while the 330(e) payment will not be made until after the end of each fiscal year. *For example: a chapter 7 case is filed in March 2021 and filing fees are paid. Chapter 7 trustee has rendered services; the final report is filed, and case closed June 2021. The 330(b) payment will be made at some point (depending on local court practice) between March and June 2021. The 330(e) payment cannot be made until after the end of the fiscal year (September 30, 2021) and after certain other events have occurred.*

3. What are considered applicable cases for the new 330(e) payment?

For fiscal year 2021: any chapter 7 case filed on or after January 12, 2021, and through September 30, 2021, AND any case filed under chapter 11, 12, or 13 on or after January 12, 2021, and later converted to chapter 7 on or before September 30, 2021. Pub. L. 116-325, Section 3(e).

For fiscal years 2022 through 2026: any chapter 7 case filed during the applicable fiscal year, and any case filed under chapter 11, 12, or 13 on or after January 12, 2021, and later converted to chapter 7 during the applicable fiscal year. See the Interim Regulations, Section 3(c)(1).

Trustee Certification

1. How is a chapter 7 trustee deemed eligible for this new payment under section 330(e)?

Section 330(e) of title 11 provides that this new payment applies to chapter 7 cases in which the “trustee has rendered services” 11 U.S.C. § 330(e). The Interim Regulations provide that a chapter 7 trustee must have “rendered services” to be eligible to receive the new payment.

2. How does the chapter 7 trustee prove that he/she has rendered services in a case?

“Rendered services” is evidenced when the trustee “has performed one of the following duties outlined in 11 U.S.C. § 704 and the Federal Rules of Bankruptcy Procedure in an applicable case:

- (A) Conducting or filing any document required by rule or statute related to a meeting of creditors required by 11 U.S.C. § 341;
- (B) Filing a report of no distribution.
- (C) Filing a notice of assets.
- (D) Filing a motion or notice to dismiss or convert the case or reviewing such a motion filed by another party in the case; or
- (E) Filing the chapter 7 trustee’s final report.”

See the Interim Regulations, Section 5(a)(3).

3. How will chapter 7 trustees notify the courts that they have rendered services and are making a claim for payment under 11 U.S.C. § 330(e)?

A trustee who has rendered services in an applicable case must make a claim for the 330(e) payment by filing a certification with the court that the trustee has performed one of the duties set forth in the Interim Regulations, Section 5(a)(3).

4. How is that certification filed with the court?

The courts will have a new dictionary event (Trustee Services Rendered Under § 330(e) Event) that is specifically designed so that the trustee can choose that event and file the certification. This event requires that the trustee select which duty/service the trustee has completed to evidence rendered services. This is the **only** event that the trustee may use to properly file this certification.

5. Can the chapter 7 trustee use a miscellaneous event to certify services rendered?

No, the courts will be using a very specific report to identify the trustees eligible for payment and filing **any event other than the one that has been specifically created for this function** could mean that the trustee is not properly identified as eligible, and thus payment may not be made or could be unnecessarily delayed. Using the proper event is a requirement to making the claim for payment.

6. Does being appointed as the trustee in an applicable case mean that the trustee has rendered services?

No, Section 5(a)(2) of the Interim Regulations provides that the act of being appointed does not by itself qualify a trustee for the payment.

7. Can a trustee file multiple certifications in a single case?

No, the dictionary event will not permit more than one certification to be filed in each case. The Interim Regulations only permit one certification per case. See the Interim Regulations, Section 5(a)(4).

8. Should a trustee file a separate certification as he/she completes each of the duties listed in the Interim Regulations, Section 5(a)(3) to evidence that service has been rendered?

No, the trustee must file only one certification in each case, and the trustee does not need to affirmatively perform all the duties listed to evidence that service has been rendered. Performing any one of the duties listed in the Interim Regulations is enough to prove that the trustee has rendered services. See the Interim Regulations, Section 5(a)(4).

9. What is the earliest date the trustee can file the certification?

The certification may not be filed sooner than seven days after the trustee has been notified of selection in a case. See Fed. R. Bankr. P. 2008 and the Interim Regulations, Section 5(a)(5).

10. When should the trustee file the certification?

The certification may not be filed sooner than seven days after the chapter 7 trustee has been notified of selection in a case. See Fed. R. Bankr. P. 2008. Courts should encourage trustees to file certifications as soon as practicable after they have rendered services in each case and, except for the initial years during implementation, no later than the end of the applicable fiscal year for which payment will be due.

Section 5(a)(6) of the Interim Regulations provides a 90-day timeframe for when a trustee should file a certification that he/she has rendered services in a case and is eligible for compensation under section 330. Based on the recommendation of several bankruptcy CUEs, this 90-day timeframe is proposed to be removed from the final version of the regulations and Guide policy at Volume 13, Chapter 11. A claim, however, must be received by the Judiciary within six years after the claim accrues. See 31 U.S.C. § 3702(b).

11. To be eligible for payment in a designated fiscal year; does the Trustee have to have also rendered services in the same fiscal year? For example, case filed (or converted) on September 28, 2021, but the Trustee doesn't actually render services until November 15, 2021 – is the Trustee eligible for payment?

In the example, the trustee is eligible for payment and would be paid based on the year in which the case was filed or converted to chapter 7 case. The original Public Law stated “for the chapter 7 case in which the trustee has rendered services in that fiscal year.” However, that language was amended to say “for the chapter 7 case in which the trustee has rendered services.”

12. Can the certification and payment events be filed in a closed case?

Yes. The certification that the trustee has rendered services and the court's notice that the payment has been certified can be filed in a closed case, and the case does not need to be reopened to file the certification or the payment event.

13. Must a trustee file a motion to reopen a case to file the certification in a closed case?

No. See the Interim Regulations, Section 5(a)(7).

14. What should a trustee do if he or she realizes that the certification was filed in error (i.e., certification filed in the incorrect case, the wrong trustee is selected, etc.)?

If a trustee incorrectly files a certification, the trustee must use the new dictionary event specifically created to withdraw the incorrect certification (Withdrawal of Trustee Services Rendered Pursuant to 330(e)). A trustee should not attempt to amend the existing certification, nor should the trustee ask court staff to correct the certification. A trustee should not attempt to use a miscellaneous event to withdraw the certification. As noted above, the courts will be using a very specific report to identify the trustees eligible for payment, and this report will also identify and filter out certifications that are withdrawn. Using a miscellaneous event or attempting to amend a certification that has been filed could create delays.

15. What should a court do if a chapter 7 trustee does not file certifications in all the cases for which the trustee is eligible?

Each court should consider what action, if any, it will take in this circumstance. A court could reason that the burden is on the chapter 7 trustee alone to follow up on any instances where the trustee misses certifying services rendered in cases and therefore, not take any action. Alternatively, a court could decide it should monitor this situation and follow up with the chapter 7 trustee, reasoning that any discrepancies will result in extra work on the court's part in the form of additional rounds of payments to the chapter 7 trustee and that extra work is mitigated by addressing the matter directly with the chapter 7 trustee when the discrepancy is identified.

Payment Amount and Process

1. When will the bankruptcy courts commence making the 330(e) payments?

The 330(e) payments for fiscal year 2021 are not expected to commence until second quarter 2022 because several conditions must be met:

- Fiscal year 2021 payments cannot be made until after September 30, 2021;
 - The Department of Justice (DOJ) must determine, based on complete fiscal year data, the funding available for these payments;
 - The AO Director must determine, based on complete fiscal year data, the amount to request from DOJ for the payments;
 - The AO Director must request from the DOJ the necessary funds; and
 - The AO must receive the funds transferred from DOJ, via Treasury, and allot the funds to the courts.
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2. How often will the courts be issuing 330(e) payments?

After the AO has received the funds transferred from DOJ and posted the annual notice that payments can commence for eligible cases for the prior fiscal year, Courts will use the CM/ECF Trustee Services Rendered Under § 330(e) report to identify eligible cases to be paid for the appropriate fiscal year. It is anticipated that following the announcement that funds are available for the prior fiscal year, courts will initially issue payments for a vast majority of cases from the prior fiscal year. Policy requires the court to review the CM/ECF Trustee Services Rendered Under § 330(e) report on a quarterly basis to determine eligible cases and proceed with payment.

3. How much is the new payment per trustee per case?

The amount of the payment will be determined annually and will be limited by the availability of excess chapter 11 quarterly fee revenue and the number of cases filed under or converted to chapter 7 during each fiscal year. The amount of the payment will be the lesser of \$60 or a pro rata share of the excess quarterly fee revenue. See the Interim Regulations, Section 4.

4. Why is this new payment a variable and not a set amount?

The amount of the 330(e) payment is capped at \$60 but may be less if there are not adequate funds available in the U.S. Trustee System Fund account to cover all required costs. See the Interim Regulations, Section 3(b).

5. Where will the Judiciary post the annual notice that payments can commence for the prior fiscal year?

The notice will be posted on USCourts.gov. The Administrative Office will also notify the Executive Office for U.S. Trustees (and the U.S. Trustee Program), the Bankruptcy Administrators, and the courts that the notice has been posted so that they can all make sure that their chapter 7 trustees are aware.

6. Does the AO recommend the local courts post a notice on their public website as well (as the AO's posting on USCourts.gov)?

To ensure local trustees are aware and on notice of the annual posting to USCourts.gov, courts should consider posting the notice on their website or providing some other form of notice to the U.S. Trustee office or individual chapter 7 trustees in their district.

7. Is the trustee still eligible for payment under section 330(e) if the court has granted a waiver of the filing fees, or in the event no filing fees are collected or less than the full amount of the filing fee is collected?

Yes, the trustee is still eligible for payments under section 330(e). The 330(e) payment is not funded by filing fees and thus will still be paid, to the extent there are funds available from the DOJ to make the 330(e) payments. See the Interim Regulations, Section 5(a)(9).

8. Are there instances in which the trustee would not be paid the section 330(e) payment?

Yes, the Interim Regulations include a short, non-exclusive list of scenarios where the trustee would not receive the 330(e) payment. Examples of cases in which no trustee will be eligible for payment under these Interim Regulations may include:

- (A) A case filed under or converted to chapter 7 in the applicable fiscal year that is dismissed before a trustee is appointed;
- (B) A case filed under or converted to chapter 7 in the applicable fiscal year in which the trustee did not “render services” under Section 5(a)(3); or
- (C) A rejection of appointment filed by a trustee. See: Fed. R. Bankr. P. 2008. See the Interim Regulations, Section 5(a)(10).

9. Can more than one payment be made under 11 U.S.C. §330(e)?

No, under 28 U.S.C. § 589a(f) and 11 U.S.C. § 330(e)(4), only one 330(e) payment will be issued in each applicable case. See the Interim Regulations, section (5)(b). There is an exception, however, if a case divides and a new case is created.

10. What happens if more than one trustee is assigned during the pendency of a case?

Only one payment under section 330(e) can be made in a case. Therefore, in a chapter 7 case in which more than one trustee has been assigned during the case, the chapter 7 trustee who filed the certification in the case will receive the disbursement. If another trustee believes he/she is entitled to the 330(e) payment in a particular case, the trustee should contact the trustee who filed the certification or their U.S. Trustee to discuss a solution. See the Interim Regulations, Section 5(c).

11. What happens with a 330(e) payment in a case that is transferred to another district?

The Interim Regulations permit both the trustee appointed in a case in one district and the trustee appointed after the case is transferred to be paid so long as certain requirements are met. The Interim Regulations provide:

In an applicable case that is filed in one district and later transferred to another district, both chapter 7 trustees who rendered services in the transferring and receiving districts and filed the required certification in the case may be paid, provided that:

- (1) The other requirements in these regulations are also satisfied (see: Section 5(a) (Eligibility to Claim Payment Under 11 U.S.C. § 330(e))); and
- (2) Both cases are applicable cases for 330(e) payments under Section 3(c) (Calculating the Number of Applicable Chapter 7 Cases). Interim Regulations, Section 5(d).

12. Can a chapter 7 trustee be paid the section 330(e) payment in a case that is later converted to a case under another chapter?

Yes, as long as the case is an applicable case, the chapter 7 trustee may be eligible for payment if services were rendered pursuant to Section 5(a) of the Interim Regulations and if the trustee has filed the necessary certification.

13. How are the trustee(s) paid under 11 U.S.C. §330(e) in an applicable joint case that is later divided into two cases?

When a joint case is divided into two cases, there are two distinct cases and thus the 330(e) payment can be made in both cases, as long as the case meets the requirements for an applicable case and the trustee files the necessary certification in each case. See the Interim Regulations, Section 5(f). Compensation for the newly established case is funded from the same fiscal year the original case was filed because the second case maintains the original filing date.

14. Can a trustee receive the 330(e) payment in a joint case filed prior to Jan. 12, 2021, that is divided after that date and a new case is created?

No, a case that is filed prior to January 12, 2021, and is divided into two cases after January 12, 2021, is not considered an applicable case as it does not meet the statutory requirement that the case must be filed after January 12, 2021. Pub. L. 116-325, Section 3(e). The second case maintains the original filing date, and thus neither case would meet the standard for an applicable case.

15. Can a trustee receive the 330(e) payment in a reopened case?

A trustee appointed in a reopened case may be eligible for payment only if the case is an applicable case and if no payment or certification has been filed in the original or reopened case. See the Interim Regulations, Section 5(g).

16. What should a trustee do if he/she has not received payment in an applicable case in which the trustee has filed the certification that he/she has rendered services?

If an eligible chapter 7 trustee has certified that he or she has rendered services under the Interim Regulations, Section 5(a) (Trustee Eligibility for Payment) and the Judiciary has posted payment information on its public website, but the trustee has not received the 330(e) payment, the trustee should contact the applicable bankruptcy court after payments have been disbursed for the applicable fiscal year. See the Interim Regulations, Section 7(a).

17. How will a trustee know when payments have been disbursed for the most recent fiscal year?

The court will docket the 330(e) payment event specifically created for this purpose (Trustee Payment Under 11 U.S.C. 330(e) Processed). In addition to providing the status for the issuance of the 330(e) payment for each case, the event will be used to eliminate cases from subsequent reports used to identify cases eligible for payment.

18. What mechanism will be used to avoid duplicate payments?

The CM/ECF Trustee Services Rendered Under § 330(e) report, which displays eligible cases to be paid, relies on three docket events: Trustee Services Rendered Pursuant to 330(e), Withdrawal of Trustee Services Rendered Pursuant to 330(e), and Trustee Payment Under 11 U.S.C. 330(e) Processed. Cases are automatically removed from the report when either the Withdrawal of Trustee Services Rendered Pursuant to 330(e) OR Trustee Payment Under 11 U.S.C. 330(e) Processed is docketed. Courts should immediately docket the Trustee Payment Under 11 U.S.C. 330(e) Processed event after payment has been issued. This docket event is the mechanism to remove an eligible case from the Trustee Services Rendered Pursuant to 330(e) which would avoid duplicate payment.

19. What should a court do if a chapter 7 trustee retires, resigns, passes away, or is terminated from service? For example, in 2021 a trustee was assigned to applicable chapter 7 cases filed (after January 12, 2021) and the trustee rendered services in those cases. The trustee retires, resigns, or was terminated from service in 2021 and thus has not had a chance to file the necessary certifications.

Upon a trustee's death, retirement, resignation, or termination, many courts delete the trustee's login credentials.

If a retired, resigned, or terminated trustee rendered services in 2021 that would entitle him/her to file a certification to claim payment, the trustee may not be able to do so because his/her login credentials were deleted. A court may wish to consider temporarily reinstating the retired, resigned, or terminated trustee's login credentials so that the trustee can file his/her certifications. The retired, resigned, or terminated trustee would then be able to file the certifications necessary for fiscal year 2021.

If a successor trustee is appointed and that successor trustee files the certification first, the trustees will need to resolve amongst themselves as discussed previously.

If a trustee has passed away, retired, resigned, been terminated, or otherwise unable to file the certifications, courts may consider contacting their U.S. Trustee office to discuss how they recommend handling the situation. It may be that the U.S. Trustee could file the certifications on behalf of the trustee in these situations.

20. If a trustee fails to timely certify rendered services, can the trustee still claim payment of these funds?

Section 5(a)(6) of the Interim Regulations provides a 90-day timeframe for when a trustee should file a certification that he/she has rendered services in a case and is eligible for compensation under section 330. Based on the recommendation of several bankruptcy CUEs, this 90-day timeframe is proposed to be removed from the final version of the regulations and Guide policy at Volume 13, Chapter 11. A claim, however, must be received by the Judiciary within six years after the claim accrues. See 31 U.S.C. § 3702(b).