

V: SYSTEMS ISSUES

§ 5.01 Chapter 7 Trustee Compensation

(a) Compensation should be increased for trustees to \$120, with the increase in the fee coming from bankruptcy filing and other court fees already paid to the general treasury. These bankruptcy filing and other court fees should be placed into a special fund earmarked for trustee compensation.

(b) The “breakpoints” for trustee compensation in asset cases should be changed to allow for more trustee compensation. The first two breakpoints should be increased from 25% of the first \$5,000 and 10% of the next \$45,000, to 25% of the first \$10,000, and 10% of the next \$90,000. The 3% per million dollars in excess of \$1 million should be increased to 4% per million. The 5% applicable on distributions between \$100,000 and \$1 million would not change.

Background. Chapter 7 trustees are an integral part of the consumer bankruptcy system. Section 704 lists the formal duties of a chapter 7 trustee with respect to a bankruptcy case. In addition, chapter 7 trustees have duties to provide information as part of the oversight function of the U.S. Trustee Program (USTP) (or by the bankruptcy administrator) given the level of the trustee’s fiduciary duties and the need for trustees to provide a proper accounting and expeditious administration of estates.¹ In all cases, chapter 7 trustees must:

- review the petition, statements, schedules, and tax returns;
- conduct the section 341 meeting;
- investigate the debtor’s financial affairs;
- submit reports to the court and the U.S. Trustee;
- investigate and refer cases of abuse, criminal misconduct, and discharge issues;
- review bank statements and other records as needed;
- send letters notifying claimants of domestic support obligations and relevant state child support enforcement agencies of the bankruptcy filing and of the later discharge; and
- respond to public inquiries (e.g., creditors, debtor’s counsel, pro se debtors).

In asset cases, chapter 7 trustees have additional responsibilities:

- review claims;
- account for all property received;
- review bank statements, insurance, tax, stock, and business records;

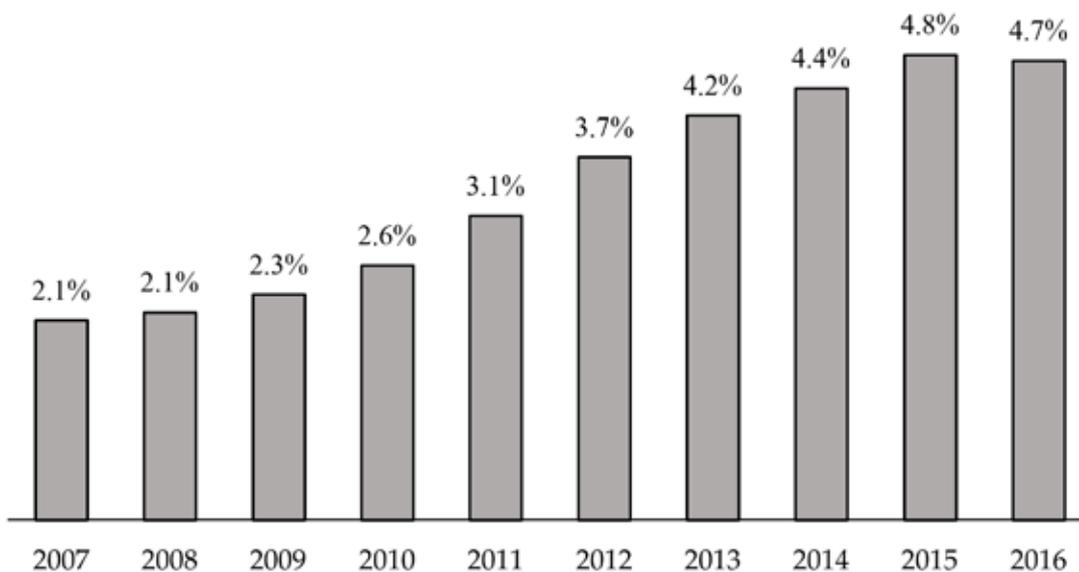
¹ See 28 U.S.C. § 586(a)(1) (giving the U.S. Trustee the power to establish, maintain, and supervise a panel of private trustees for chapter 7 cases).

- perform the obligations of an ERISA plan administrator if necessary;
- maintain the records and transfer patients of a health-care business; and
- monitor and manage all professionals employed.

Chapter 7 trustees also must undergo audits of their business records with follow-up inquiries from the auditors.

As compensation, a chapter 7 trustee earns a base fee of \$60 per case plus a percentage of the estate assets that the trustee distributes to creditors.² In cases without assets that can be administered for payment to creditors — “no-asset” cases — the \$60 base fee is the only compensation that the trustee receives. And because this compensation comes from the filing fee, a chapter 7 trustee earns no compensation when the court waives the filing fee for debtors who are granted a filing fee waiver.³ According to the Commission’s calculations from the Federal Judicial Center’s (FJC) Integrated Database,⁴ the courts waived the filing fee in 4.7% of consumer chapter 7 cases in the 2016 calendar year, which was the most recent complete year for which data were available. As Figure 1 shows, the current waiver rate is more than double what it was in 2007.

Figure 1: IFP Waivers in Consumer Chapter 7 Cases by Year



2 Section 330(b)(1) authorizes the payment of a \$45 fee to chapter 7 trustees, and section 330(b)(2) authorizes the Judicial Conference to assess an additional \$15 court fee to pay to the chapter 7 trustee, which the Judicial Conference has done. *See* U.S. Courts, Bankruptcy Court Miscellaneous Fee Schedule, <https://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule> (last visited Jan. 9, 2019). Section 330(a)(7) provides for additional compensation for trustees in the form of a commission on funds distributed to creditors, in the amounts specified in Section 326(a).

3 *See* 28 U.S.C. § 1930(f)(1) (authorizing a court to waive the filing fee if the debtor’s income is less than 150% of the poverty line). The court also may authorize the debtor to pay the filing fee in installments, in which case the chapter 7 trustee will receive little or no compensation unless the debtor completes the installments.

4 Federal Judicial Center, Integrated Database, <https://www.fjc.gov/research/idb>, (last visited Nov. 18, 2018).

The current base fee has departed from historical norms. When the Bankruptcy Code was first enacted, the trustee received \$20 out of a \$60 filing fee.⁵ Congress raised the base fee in 1984 to \$45 and raised it again in 1994 to \$60. The base fee has not changed since 1994 and remains \$60. If the base fee had kept pace with inflation, it would be approximately \$101 as of the end of 2018. The chapter 7 filing fee has increased several times since 1994, either through congressional action or through increases in the miscellaneous fees implemented by the judiciary. Table 1 shows the relationship between the base fee in a no-asset case and the overall chapter 7 filing fee at selected points in time.

Table 1⁶: Relationship Between Chapter 7 Trustee Base Fee and Chapter 7 Filing Fee, Selected Years

	<u>Filing Fee</u>	<u>Base Trustee Fee</u>	<u>Base Fee as % of Filing Fee</u>
1979	\$60	\$20	33.0%
1986	\$90	\$45	50.0%
1994	\$145	\$60	41.4%
2003	\$209	\$60	28.7%
2005	\$274	\$60	21.9%
2006	\$299	\$60	20.1%
2018	\$335	\$60	17.9%

As the table shows, the base fee as a percentage of the filing fee is at a historical low. The filing fee has been raised to recoup the costs of administering the bankruptcy system, but trustee compensation has not kept pace.

5 See Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §§ 101, 246, 92 Stat. 2549, 2564, 2671 (adding section 330(b) with a \$20 trustee fee and 28 U.S.C. § 1930 with a \$60 filing fee for a chapter 7 case).

6 The authority for the 1979 fees is listed in the preceding footnote. Beginning in 1994, the Judicial Conference was authorized to add a miscellaneous fee to the chapter 7 filing fee. Historical tables for miscellaneous fees are not readily available, and the figures for historical miscellaneous fees come from the commissioners' personal records).

The 1986 fee structure comes from the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 434, 98 Stat. 333 (amending section 330(b) to provide for a \$45 trustee fee) and the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, § 117, 100 Stat. 3088, 3095 (raising the chapter 7 filing fee to \$90).

The 1994 fee structure comes from the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 117, 108 Stat. 4106, 4119 (allowing the Judicial Conference to add a \$15 filing fee to go to the chapter 7 trustee), and Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1994, Pub. L. No. 103-121, § 111, 107 Stat. 1153, 1164 (raising statutory chapter 7 filing fee to \$130).

The 2003 filing fee was the result of the Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, § 113, 113 Stat. 1501, 1501A-20, which raised the statutory chapter 7 fee to \$155 to which was added a \$54 miscellaneous fee.

The 2005 filing fee combines the \$54 miscellaneous fee with a \$220 statutory chapter 7 fee enacted in the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, § 6058(a), 119 Stat. 231, 297. (Congress had raised the chapter 7 filing fee to \$200 in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 325(a), 119 Stat. 23, 98, but this rate never took effect).

Congress increased the statutory chapter 7 filing fee again in 2006 to \$245. See Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 10101(a), 120 Stat. 4, 184. The statutory fee has not been changed since 2006, but the total miscellaneous fees now total \$90. See U.S. Courts, Bankruptcy Court Miscellaneous Fee Schedule, <https://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule> (last visited Jan. 9, 2019).