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## VOLUME 7

### BANKING, BONDING AND PROTECTION OF ESTATE ASSETS BY FIDUCIARIES

#### CHAPTER 7.1.0: KEY TERMS

“Bank holding company” means any company that has control over any bank or over any company that is or becomes a bank holding company. [12 U.S.C. § 1841\(a\)](#).

“Depository institution” means any bank or savings association.

“Insured depository institution” means any bank or savings association that is insured by the Federal Deposit Insurance Corporation (FDIC). [12 U.S.C. § 1813\(c\)](#).

“Savings and loan holding company” means any company that directly or indirectly controls a savings association or that controls any other company that is a savings and loan holding company, but not a bank holding company. [12 U.S.C. § 1467\(a\)\(1\)\(D\)](#).

“TT&L Plus” means the Federal Reserve’s Treasury, Tax and Loan system.

“UDA” means Uniform Depository Agreement.

#### CHAPTER 7-1: BANKING

##### 7-1.1 General

All bankruptcy funds for chapters 7, 11, 12, and 13 must generally be maintained at a depository institution that has agreed to abide by the requirements established by the United States Trustee.<sup>1</sup> Section 345(a) of the Bankruptcy Code requires the trustee or a debtor in possession to deposit or invest money of the estate so that it will result in the “maximum reasonable net return. . . while taking into account the safety of such deposit or investment.”

Section 345(b) requires that estate funds be deposited or invested so as to ensure that the funds are protected for the benefit of creditors. Generally, unless the funds are insured, guaranteed, or backed by the full faith and credit of the United States Government or its agencies, the institution holding the estate funds must post a bond in favor of the United States or, in the alternative, deposit securities pursuant to [31 U.S.C. § 9303](#) as security. To ensure that trustees and debtors in possession meet their responsibilities to safeguard funds in accordance with section 345, the United States Trustee must monitor fiduciaries and depositories in the manner specified in this volume of the Manual.

##### 7-1.2 Authorized Depositories

The United States Trustee must establish within each district a list of authorized depository institutions that have signed the Uniform Depository Agreement. Depositories approved in one district are not automatically approved in another district.

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<sup>1</sup> Credit unions are not FDIC-insured institutions and, generally, may not hold estate except under certain circumstances. Contact the Office of Oversight for more information.

### **7-1.2.1 Uniform Depository Agreements**

A depository authorized to hold bankruptcy funds must execute the Uniform Depository Agreement (UDA) regarding, among other things, the collateralization of bankruptcy funds on deposit at the depository. There are two versions of the UDA. The [shorter version](#) applies when the only account holders at the depository are chapter 11 debtors in possession. The [longer version](#) applies in all other situations. The UDA requires the depository to maintain collateral, unless an order of the bankruptcy court provides otherwise, in an amount of no less than 115 percent of the aggregate bankruptcy funds on deposit in each bankruptcy estate that exceeds the FDIC insurance limit.

### **7-1.2.2 Chapters 7, 11, 12, and 13 Trustees**

The United States Trustee should ensure that chapters 7, 11, 12, and 13 trustees use depository institutions that are on the list of depositories authorized by the United States Trustee. Chapters 7, 11, 12, and 13 trustees must also sign a [release](#) in favor of the United States Trustee that authorizes the United States Trustee to obtain documents and other information directly from the depository. Signing the release is a condition of all trustee appointments, and the release is included in the standard trustee appointment package for all trustees.

Trustees must deposit and invest funds of the estate in accordance with section 345 in order to provide a maximum, reasonable net return. Generally, this means that trustees should invest funds in interest bearing accounts. However, in appropriate circumstances trustees may invest estate funds in non-interest bearing accounts. Except as otherwise authorized by the bankruptcy court, the trustee may not use investment vehicles such as repurchase agreements, reverse repurchase agreements, non-bank money market accounts, mutual funds, stocks, corporate bonds, and commercial paper.

### **7-1.2.3 Debtors in Possession**

Unless the bankruptcy court orders otherwise, the United States Trustee shall ensure that a debtor in possession:

1. immediately closes all of the pre-petition bank accounts and establishes new debtor in possession accounts; and
2. deposits all estate funds into the debtor in possession accounts.

Likewise, the United States Trustee shall ensure that all debtors inform the United States Trustee of each financial institution in which estate funds are maintained and execute an authorization for the release of information pertaining to estate accounts. These reports and authorizations are due within 15 calendar days after the date of the petition in a voluntary case, the order for relief in an involuntary case, or the appointment of a trustee.

**Bank Accounts:** Generally, the United States Trustee shall ensure that a debtor establishes three accounts:

1. a general expense account,
2. a payroll account, and
3. a tax escrow account.

A determination regarding the number and type of authorized accounts will depend on the nature of the debtor's financial activity. Unless otherwise authorized by the United States Trustee or the bankruptcy court, the categories of debtors and their authorized accounts are as follows:

1. Individuals/non-business debtors are authorized to establish:
  - a. a general account for ordinary disbursements/expenses,
  - b. in the event estate property is sold, an escrow account to deposit proceeds resulting from the sale of estate property.
2. Individuals/business debtors who receive income from sources other than employment and interest (e.g., from rental property) are authorized to establish:
  - a. a general account;
  - b. a cash collateral account, if applicable;
  - c. other accounts, if applicable.
3. Single asset/non-operating debtors are authorized to establish:
  - a. a general account for ordinary disbursements/expenses;
  - b. a tax escrow account for real property taxes;
  - c. in the event estate property is sold, an escrow account to deposit proceeds resulting from the sale of estate property.
4. Corporations/operating partnerships/proprietorships are authorized to establish:
  - a. an operating account;
  - b. a tax escrow account;
  - c. an escrow account;
  - d. a cash collateral account, if applicable;
  - e. a credit card account, if applicable.

All tax-related funds required to be escrowed under state or federal law should be deposited in the tax escrow account. Trust funds may be disbursed only for the purpose for which they are set aside.

**Designation of Accounts:** The United States Trustee should ensure that all debtor in possession accounts have been imprinted with the phrase "Debtor in Possession" unless otherwise ordered by the court. The abbreviation "DIP" is not sufficient. Rubber stamping "Debtor in Possession" on the check is also not sufficient. For example, the checks could be captioned as follows:

Green Acres Apple Orchard  
Debtor in Possession  
Tax Escrow Account  
1319 Manitou Road  
Rochester, NY 14612

**Selection of Financial Institutions/Depositories:** The United States Trustee should seek to ensure that debtors in possession deposit or invest money of the estate in compliance with section 345 and with a depository that has executed the UDA. The debtor in possession is

responsible for verifying that its depository meets the requirements of section 345 and the United States Trustee. The debtor in possession may not deposit estate funds in depositories that do not agree to execute the UDA, except to the extent otherwise authorized by the United States Trustee or the bankruptcy court. In most circumstances, if the aggregate funds in any one depository exceed the FDIC | insurance limits, the debtor in possession must notify the United States Trustee so that the United States Trustee may take appropriate action to ensure that estate funds are properly collateralized. Under no circumstances should a chapter 11 debtor, trustee, or examiner establish accounts in financial institutions or depositories outside the United States without prior approval of the United States Trustee or the bankruptcy court.

**Investments:** The United States Trustee must seek to ensure that a debtor in possession, or trustee, or examiner, invests funds of the estate only in accordance with section 345. The debtor may purchase U.S. Treasury bills, bonds or notes provided that the treasuries are titled as debtor in possession. Unless the court orders otherwise, investments in repurchase agreements and secondary financial markets are not authorized.

### **7-1.3 Collateralization**

All depositories are required to maintain collateral, unless an order of the bankruptcy court provides otherwise, in an amount no less than 115 percent of the aggregate bankruptcy funds on deposit in each bankruptcy estate that exceeds the FDIC insurance limit by:

1. surety bond, in a form acceptable to and from a company approved by the United States Trustee in accordance with section 345(b)(1); or
2. deposit of securities in accordance with section 345(b)(2).

If a bond in favor of the United States is filed to protect the deposit of estate funds, section 345 requires the United States Trustee to approve the corporate surety securing the bond. The United States Trustee must select a surety listed in [Treasury Circular 570](#).

Securities used as collateral must be the kind specified in [31 U.S.C. § 9303](#). The acceptable securities are defined in [31 U.S.C. § 9301\(2\)](#) as a public debt obligation of the United States government and an obligation whose principal and interest is guaranteed unconditionally by the government. Public debt obligations consist of United States Treasury bills, bonds, or notes. A complete list of acceptable collateral is set forth in 31 C.F.R. Part 225 and on the U.S. Department of Treasury [website](#).

As noted above, it is the responsibility of the trustee or debtor in possession to ensure that the banking institution is in compliance with section 345 to the extent of the trustee's or debtor's deposits. The United States Trustee must monitor the bonding and collateralization of estate funds as specified in this volume. If an institution fails to comply with its obligations to provide bonding or collateral, the United States Trustee shall direct bankruptcy fiduciaries to remove all estate funds from the institution and consider removing the institution from the list of authorized depositories.

#### **7-1.3.1 Determining the Amount to be Collateralized (ATBC)**

In general, the ATBC for a chapter 7 or chapter 11 bankruptcy estate is the balance of funds in all accounts at a single depository in excess of the FDIC insurance multiplied by 115 percent.

For a chapter 12 or 13 standing trustee, expense, payroll, and operating accounts are aggregated to determine if the combined balance exceeds the FDIC insurance limit. The amount in excess

of the FDIC insurance limit is multiplied by 115% to determine the ATBC. For standing trustee bank accounts in which commingled estate funds are deposited (commonly called “trust accounts”), each debtor’s estate is covered by the FDIC insurance limit pursuant to 12 C.F.R. § 330.13(c). The total of individual debtor estates in excess of the FDIC insurance limit is multiplied by 115% to determine the ATBC.

#### **7.1.3.2 Reports from Depositories**

Pursuant to the UDA, each authorized depository is required to provide quarterly reports for all bankruptcy estate accounts on deposit at all branches of the depository within the district.<sup>2</sup> These reports are generally sorted by case, trustee, district, and region. If the depository is under-bonded or has not pledged a sufficient amount of securities, it must be advised to remedy the deficiency immediately and to provide evidence to that effect to the United States Trustee.

The depository must obtain prior written consent from the United States Trustee to reduce the amount of collateral pledged below the ATBC. The depository, however, may make increases and substitute like-kind securities without prior approval.

#### **7-1.3.3 Collateral Accounts at the Federal Reserve**

When a depository pledges securities as collateral for bankruptcy deposits in excess of the FDIC insurance limit, the securities must be deposited at the Federal Reserve Bank in St. Louis (Fed). Each United States Trustee region has established one or more security accounts at the Fed into which these securities are deposited. To add a new authorized depository to a security account, contact the collateral area of the Fed at 888-568-7343, option 2, for instructions.

The collateral area may ask for the request to be put in writing and will ask for a contact person at the new bank. The collateral area will contact the bank and begin the process of adding the bank to the security account.

On a quarterly basis, the Fed provides the United States Trustee with a hard copy report of the collateral posted by each authorized depository. In addition, the United States Trustee has online access to the Federal Reserve’s Treasury, Tax and Loan (TT& L Plus) system. This allows the United States Trustee daily access to its district’s collateral. A United States Trustee’s request to increase or release collateral must be processed through this site. Contact the Office of Oversight for more information.

#### **7-1.3.4 Monitoring Collateral Pledged at the Fed**

The United States Trustee must monitor the adequacy and sufficiency of collateral pledged to protect estate funds on deposit at authorized depositories. Monitoring is done by using both the authorized depository bank reports and the TT&L Plus Website. Any discrepancies related to the type or amount of collateral must be immediately resolved.

In addition, each United States Trustee Program office is required periodically to certify to the Office of Oversight that it has complied with the collateralization monitoring process. The Office of Oversight notifies the Assistant United States Trustee when his or her office has been selected to certify that its quarterly collateral review process has been completed.

The following guidelines provide guidance and uniformity for the quarterly collateral review process:

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<sup>2</sup> Depositories holding only debtor in possession accounts may be required by the United States Trustee to report monthly ([Short Form UDA](#)).

1. **Verify the banks on the approved depository list:** Before beginning, the regional or field office reviewer should verify that the list of approved depositories is accurate. In a multi-office district, the reviewer may need to coordinate with a colleague in another office to do this. This is important because banks on the approved depository list may change.
2. **Review chapter 7 cases with funds on deposit:** Review the quarterly bank reports and note any cases that exceed the FDIC insurance limit and the amount by which the limit is exceeded.
3. **Review chapter 11 cases without a confirmed plan:** Once confirmed, a case is no longer under section 345 unless otherwise ordered by the court.

Using information from sources such as the United States Trustee Program's case management system, notes from the original debtor interview, and the bank statements contained in the Monthly Operating Reports, verify the monthly or quarterly bank report contains all of the accounts and all the cases that should be listed. Determine if the total of all accounts in a single depository for a case exceeds the FDIC insurance limit, noting any accounts that exceed the limit and the amount by which the limit is exceeded.

4. **Review chapter 12 and 13 cases:** Use the quarterly bank reports to determine if any of the pertinent accounts exceed the FDIC insurance limit.
5. **Total uninsured deposits and verify the adequacy of collateral:** From the list developed of cases with funds that exceed the FDIC limit, for each authorized depository multiply the total of funds that exceed the FDIC insurance limit by 115 percent and compare this amount with the market value of the pledged securities according to the Fed. If the value of the securities exceeds the amount required to be collateralized, no further action is needed. If the accounts are under-collateralized, increase the ATBC via the TT&L Plus Website. Pursuant to the UDA, the depository has two days to pledge the additional collateral.

If any funds are on deposit at a financial institution not on the list of approved depositories, take immediate steps to have the depository execute the UDA or have the trustee or debtor in possession move the funds to an authorized depository.

#### **7-1.3.5 Monitoring Collateral when a Surety Bond has been Pledged**

As noted above, an approved depository may choose to obtain a [surety bond](#) in favor of the United States in lieu of pledging securities as collateral for any excess funds not covered by the FDIC insurance limit.

Determine the ATBC for the surety bond following the guidelines set forth under Manual 7-1.3.4. If the amount of the surety bond exceeds the ATBC, no further action is needed. If the accounts are under-bonded, immediately request the depository to increase the amount of the surety bond.

#### **7-1.3.6 Depository Requests to Release Collateral Held by the Fed**

When the amount required to collateralize the bankruptcy funds held by a depository is less than the ATBC, the United States Trustee shall reduce the ATBC accordingly within two business days of receiving a written request from the depository.

## CHAPTER 7-2: BONDING

### 7-2.1 Requirement

Pursuant to [11 U.S.C. § 322\(a\)](#), a trustee does not qualify for appointment until the trustee has filed with the court a bond in favor of the United States of America conditioned on the trustee's faithful performance of the trustee's official duties. The United States Trustee determines the amount and terms of the bond and the sufficiency of the surety on each bond. [11 U.S.C. § 322\(b\)\(2\)](#). The United States Trustee must monitor the trustee's compliance with section 322 to ensure that each trustee is adequately bonded.

Each trustee must be a principal on a bond, and all bonds must be written in favor of the United States of America. Although it is the trustee's responsibility to procure a bond, the United States Trustee is often in a better position than an individual trustee to negotiate favorable terms on bonds that are written to cover multiple trustees (e.g., a blanket bond). The United States Trustee should do so when such a bond will be more economical to bankruptcy estates and easier for the United States Trustee to monitor.

#### 7-2.1.1 Types of Bonds

The following are the most common types of bonds available for bankruptcy trustees:

1. Individual case bond -A single trustee is bonded for a single case for a scheduled amount. The face amount of the bond should include a cushion based upon a percentage of funds on deposit. The deposits should be monitored and the bond adjusted as the deposits significantly increase or decrease. This type of bond is often used for trustees in operating chapter 7 cases, trustees who are not on the active panel for receiving cases, and trustees who have a case in which the funds on hand exceed the per case limit under a schedule bond.
2. [Blanket bond](#) - This bond may cover multiple cases for one or more trustees.
3. Schedule bond - This bond covers all trustees of a particular group, district, region, or other unit, based upon the discretion of the United States Trustee. Each trustee within the group is bonded for an individually scheduled amount and the premium paid by the trustee is based upon the scheduled amount. The scheduled amount should include a cushion based upon a percent of funds on deposit by trustee at the time the bond is renewed. Because of the cushion, there should be no need to adjust a scheduled amount during the term of the bond absent a dramatic fluctuation in the funds on deposit with a particular trustee. These bonds generally have a per-case cap, which means an individual case bond is required for cases with funds over a designated amount.
4. Aggregate bond - An aggregate bond covers all trustees named as principals under the bond in an amount equal to the face amount of the bond. There is no per-trustee limitation as under a schedule bond.

The foregoing types of bonds are illustrative only. Ultimately, section 322 and the language of the bond will determine what is covered. Therefore, the language of every bond, including riders and amendments, should be reviewed carefully. Any new or questionable term, such as a limitation on liability or a requirement to give notice, should be brought to the attention of the United States Trustee immediately.

### **7-2.1.2 Sufficiency of the Surety**

The surety on any bond written in favor of the United States of America must be authorized by the Secretary of the Treasury. [31 U.S.C. § 9304](#) and [9308](#). The Treasury Department publishes Treasury Circular 570, a list of authorized sureties, every July 1 in the Federal Register. The Circular is also posted on the [Internet](#) and updated frequently. The Circular must be consulted before approving a bond to identify potential problems, such as problems with state licensing, and to ensure coverage falls within authorized underwriting limits. Underwriting limitations are on a per-bond basis. If a bond exceeds authorized underwriting limitations, it cannot be approved absent proper coinsurance or reinsurance.

### **7-2.1.3 Selection of the Broker/Agent**

When the United States Trustee is negotiating for a bond covering multiple trustees in a region, the selection of a broker/agent involves considerations of convenience, timeliness in responding to requests, and services such as billing, pricing, allocation of premiums, and so forth. The agent signing the bond must have a valid power of attorney that authorizes the agent to write the applicable bond, including a bond of the appropriate type and amount. The sample [blanket bond](#) form includes a sample power of attorney.

The United States Trustee must ensure that the bond premiums are competitive by periodically seeking bids or making other price comparisons. The United States Trustee should also consider changing bonds and sureties periodically. Most bonds contain a clause stating that, regardless of the number of years the bond is in effect, the surety's liability is limited to the face amount of the bond. Some refer to it as a non-aggregation clause. Thus, if a \$10 million bond is renewed every year for five years, the surety is only liable for \$10 million – not for \$10 million each year for a total of \$50 million. See *In re Endeco*, 718 F.2d 879 (8th Cir. 1983).

### **7-2.1.4 Bond Clauses**

At a minimum, each covered trustee must be a principal on the bond, the bond must be written in favor of the United States of America, and the bond must be conditioned on the faithful performance of the trustee's official duties. Most bonds contain additional language depending on what has been negotiated. The following identify the types of clauses most commonly found in bonds:

1. a clause that there is no joint and several liability among trustees.
2. a reference to cases in which the trustee was appointed by the United States Trustee.
3. a clause that the trustee shall obey lawful orders of the bankruptcy judges and requirements of the United States Trustee.
4. a time frame for serving notice of cancellation on the United States Trustee. A 60-day notice is common. A longer time limit may be preferable if the United States Trustee is dependent on a single bonding company.
5. a clause that states the bonding company will seek indemnification from the trustees for any payments the bonding company is required to make to third parties.

#### **7-2.1.4.1 Per-Case Limitations**

The surety company will often include a provision that limits liability in a regional or district blanket bond to a specific dollar amount per case. The per-case limit should be high enough to minimize the number of

individual bonds that may be necessary. At the same time, the per-case limit must be carefully monitored and considered in the context of overall coverage because it may convey a false sense of security. For example, a \$500,000 limit per case may be viewed as adequate, but when the overall coverage of the trustee is only \$1.5 million, three large cases could consume the entire coverage. The dollar limits will vary depending upon the size of the asset cases in a given locality and the range of the trustees' caseloads; they also impact the type of monitoring that must be done.

The per-case limitation clause should be stated as a maximum amount of coverage instead of indicating that once the dollar amount is reached the case is removed from coverage.

#### 7-2.1.4.2 Per-Trustee Limitations

The surety also may include a provision that limits liability in a regional or district blanket bond to a specific dollar amount per trustee. In negotiating this limit, the United States Trustee should generally use existing or projected bank balances as a baseline and add a cushion. The general practice has been to use a 50 percent cushion factor. Thus, if a trustee has \$100,000 on deposit as of the effective date of the bond, the per-trustee limitation on the bond can be fixed at \$150,000. The cushion is designed to protect against fluctuations in account balances and the existence of unreported funds and unliquidated assets. It also avoids the need for the United States Trustee to adjust bond limits constantly throughout the year, absent a dramatic change.

A cushion may not be necessary in regions utilizing a regional or district blanket bond in which the per-trustee limit is equal to the total amount of the bond.

### **7-2.2 Fixing The Face Amount Of The Bond**

#### **7-2.2.1 Chapter 7 Trustees**

When a single chapter 7 trustee is covered by a bond, or a schedule bond covers a number of trustees but limits per-trustee coverage, the face amount of the coverage for each trustee should be based on the amount of bankruptcy funds on hand plus a cushion, which is often 50 percent. The cushion is a rough estimate of the fluctuation in the amount of funds on hand, plus any non-cash assets held by the trustee. If funds on hand as of the date of calculation are not representative of the trustee's holdings, a more representative number should be used.

When a regional or district non-schedule blanket bond (i.e., one that covers more than one trustee to the face amount of the bond) is contemplated, the United States Trustee must establish a method to fix the face amount of the bond and to prorate the premium among the trustees.

The simplest method of fixing the face amount of a bond covering more than one trustee is to calculate the minimum bond coverage required for each individual trustee and to add those amounts together. For example, a bond covering five trustees, each of whom requires a minimum bond of \$200,000, might have a face amount of \$1,000,000. In a district or region with

a large number of trustees covered by a bond, the United States Trustee may consider reducing the face amount of the bond below the sum of the individual trustee amounts.

#### **7-2.2.2 Chapter 13 Trustees**

Unless a group of standing trustees is included in a single bond, the minimum amount of the blanket bond for the standing trustee is 150 percent of the average monthly bank balances for the prior three months for all bank accounts, certificates of deposit, or other permissible investments maintained by the trustee operation. The balances are to be determined from the bank records and reviewed monthly by the standing trustee and the United States Trustee. The standing trustee should discuss with the United States Trustee any significant increases in bank balances or any anticipated increase in funds. If the average monthly bank balances are such that the trustee's bond is less than 150 percent of those amounts, the standing trustee must confer with the United States Trustee. Adjustments to the bond should be made only as approved by the United States Trustee based upon significant increases or decreases in actual and projected bank balances.

The amount of a blanket bond covering multiple trustees shall be set by the United States Trustee after consultation with the standing trustees in the region. After approval of the amount of the bond and the sufficiency of the surety, the original bond and any riders will be filed by the United States Trustee with the court.

As soon as the standing trustee becomes aware of an incident that may give rise to a bond claim, the standing trustee must notify in writing the United States Trustee and the bonding company. The United States Trustee will assist the standing trustee with procedures to identify the extent of the potential loss and any parties responsible. The standing trustee will provide to the United States Trustee such information as the United States Trustee requires to perform this duty.

#### **7-2.2.3 Chapter 12 Trustees**

When a group of standing trustees is included in a single bond, the minimum amount of the blanket bond for a chapter 12 trustee is 110 percent of the highest daily total bank balance estimated by the trustee in the budget submitted for approval of percentage fee and maximum compensation for the upcoming fiscal year. At a minimum, a quarterly review of the bond amount must be performed and adjustments should be made at that time, based on significant increases or decreases in projected receipts. The bond amount may not be increased or decreased from the original amount set at the time of submission of the annual budget without the approval of the United States Trustee.

#### **7-2.2.4 Chapter 11 Trustees and Examiners**

To qualify as a chapter 11 trustee, the trustee must post a bond in favor of the United States of America within five days after selection. 11 U.S.C. § 322(a). The initial amount and sufficiency of the bond is determined by the United States Trustee, 11 U.S.C. § 322(b)(2); it is the trustee's duty, however, to monitor the bond and ensure that it is maintained in an appropriate amount throughout the case. The United States Trustee can assist the trustee in obtaining a bond by providing contact information for bonding companies used by other trustees. If the trustee wishes to obtain a bond from a different company, the trustee must ensure that the company appears on [Treasury Circular 570](#), which lists those companies holding certificates of authority as acceptable sureties on federal bonds. Only companies appearing on this list are approved by the United States Trustee as sureties on trustee bonds.

The United States should evaluate the assets of the estate when initially fixing the amount of the bond and should review those assets periodically to determine whether the amount of the bond continues to be appropriate. The bond should be set at a level sufficient to ensure the confidence of the parties, taking into account the fact that the estate will bear the cost of the bond premium.

If the cost of the bond appears prohibitive, the United States Trustee should explore the possibility of establishing joint signature accounts with the trustee. This can provide additional security for the estate while resulting in a smaller bond requirement and lower premiums. In rare circumstances, the United States Trustee may conclude that a personal recognizance bond is sufficient.

An examiner ordinarily need not obtain a bond. However, if the examiner is given expanded powers and has access to liquid assets of the estate, the United States Trustee should request that a bond be posted.

#### **7-2.2.5 Elected Trustees**

If an elected trustee is not covered sufficiently under an existing bond in favor of the United States, the trustee must obtain a separate bond in an amount fixed as above and provide it to the United States Trustee.

#### **7-2.3 Prorating The Premium For Blanket Bonds**

For schedule bonds, the premium can be prorated on the same basis that the face amount of the regional or district blanket bond was calculated. Assume, for example, three trustees are covered. Two trustees require \$300,000 bond coverage and one requires \$400,000 coverage. The premium for the \$1,000,000 bond would be prorated at 30 percent for the first two trustees and 40 percent for the third trustee.

For aggregate bonds, the trustee's share of the premium is based upon the amount of the trustee's deposits used to determine the amount of the bond. The amount of the bond and the trustee's premium share are recalculated each time the bond is renewed, usually annually. There is usually no need to adjust the covered amount during the term of the bond, unless the United States Trustee finds that the total funds on deposit have changed dramatically.

The United States Trustee should recalculate the face amount of the bond and prorate the premium no less than annually. The broker/agent should be able to assist the United States Trustee by making the proration based on information supplied by the trustee. The broker/agent also may agree to bill the premium directly to the trustee. The United States Trustee should ensure that the trustee properly prorates the bond premium among the trustee's asset cases.

A chapter 7 trustee may use a bond recovery account to expedite the payment of bond premiums allocated to multiple estates. In essence, the trustee initiates an intra-bank account transfer from each estate account to the bond recovery account for its share of the bond premium and writes one check from the bond recovery account to pay the bond premium.

#### **7-2.4 Monitoring Trustee Bonds**

The United States Trustee must develop a system to monitor bonds of chapters 7, 12, and 13 trustees that corresponds to the various types of cases and bonds in effect. Although specific individuals within an office should be designated with the primary responsibility to monitor

bonds, bonds should be reviewed on an ongoing, office-wide basis similar to the quarterly fee collection program. The trustee has a concurrent obligation to review the adequacy of bond coverage continually.

The United States Trustee should review the adequacy of most types of trustee bonds as frequently as the United States Trustee determines appropriate, but no less than quarterly. Factors that influence this decision include the historical volatility of account balances, a trustee's bonding history, the size of estates, and the type of bond.

The United States Trustee should review a trustee's cash balances as the starting point for the bonding review. These cash balances should be verified from sources independent of the trustee's reports. An example of an independent source is the quarterly bank report provided by authorized depositories directly to the United States Trustee.

The United States Trustee should ensure that depository banks report on all investments of bankruptcy estate funds. Bank reports frequently omit investments such as certificates of deposit, which can often involve the largest amount of cash on hand in the estates.

The United States Trustee should check the adequacy of the trustee's bond where it is evident that the trustee will receive large sums. The trustee must inform the United States Trustee of any situation, such as an upcoming asset sale or the operation of a business, that may necessitate a separate trustee case bond or an increase in bond coverage. The trustee's regional or district blanket bond may not cover the trustee's operation of a business in a chapter 7 case. The trustee should discuss with the United States Trustee whether it is necessary for the trustee to acquire a separate bond.

When the United States Trustee determines that the amount of a bond should be increased, the trustee should be so advised. The trustee's failure to bond estate funds adequately may constitute grounds to take appropriate remedial action.

### **7-2.5 Auctioneer Bonding**

The United States Trustee should seek to ensure that trustees' auctioneers are adequately bonded, prior to taking possession of estate property, in an amount sufficient to cover all receipts from the sale. The bond should be in favor of the United States of America and distinct from any other auctioneer's bond required under state law. The amount of the bond will be established by local bankruptcy rule or the United States Trustee. The trustee should confirm that the auctioneer has been employed and the United States Trustee should monitor the adequacy of the bond. All original bonds should be forwarded to the United States Trustee.

The United States Trustee may consider negotiating and facilitating auctioneer bonds that cover multiple auctioneers in the region, when such an arrangement is beneficial to auctioneers, trustees, bankruptcy estates, and the United States Trustee. Regional auctioneer bonds may be negotiated, facilitated, and monitored using considerations similar to those applicable when negotiating, facilitating, and monitoring aggregate trustee bonds.

## **CHAPTER 7-3: INSURANCE**

The United States Trustee should ensure that bankruptcy fiduciaries have taken reasonable steps to insure and otherwise safeguard property with value to the bankruptcy estate.

### **7-3.1 Chapter 7 Trustees**

The United States Trustee should ensure that the trustee has implemented a system to review the schedules for assets that may cause liability to the estate and either:

1. abandon an asset as expeditiously as possible if the asset will not be liquidated for the benefit of creditors; or
2. insure or otherwise safeguard the asset if it will be administered. See the [Handbook for Chapter 7 Trustees](#). Ensuring that the trustee has complied with the duty to safeguard estate assets can be done as part of a selected case review in a field examination, audit, or office review, or by other means. The case review should ensure that the trustee is in compliance with *Handbook* provisions regarding insurance, including auctioneer insurance.

### **7-3.2 Chapter 13 Standing Trustees**

Chapter 13 trustees are required to obtain a variety of insurances pursuant to the [Handbook for Chapter 13 Standing Trustees](#). The United States Trustee must ensure that trustees are in full compliance with the *Handbook*.

### **7-3.3 Chapter 12 Standing Trustees**

Chapter 12 trustees are required to obtain a variety of insurances pursuant to the [Handbook for Chapter 12 Standing Trustees](#). The United States Trustee must ensure that trustees are in full compliance with the *Handbook*.

### **7-3.4 Chapter 11 Trustees**

The United States Trustee should ensure that a chapter 11 trustee has ascertained the existence and sufficiency of insurance and maintains appropriate insurance for the estate. The insurance coverage must be adequate given the circumstances of the case but, at a minimum, the dollar amount of the insurance coverage must be sufficient to cover the fair market value of the estate property. Additionally, to the extent necessary, and if the insurance is reasonably available, the United States Trustee shall verify that a chapter 11 trustee maintains the following types of insurance adequate to protect the estate:

1. general comprehensive liability;
2. property (fire and theft);
3. casualty and theft;
4. workers' compensation;
5. disability, if required by that state;
6. vehicle;
7. product liability;
8. flood, earthquake and/or wind storm insurance;
9. directors' and officers' liability;

10. professional malpractice; and

11. other insurance as customary or prudent in the debtor's business or as required by law.

The United States Trustee should obtain from the chapter 11 trustee proof of the required insurance coverage and any renewal information. The United States Trustee should also ensure that the insurance companies are instructed to provide the United States Trustee with notification of any change, cancellation, or expiration of insurance. If the trustee is unable to obtain any necessary coverages, the trustee should confer with the United States Trustee, the debtor's officers, and any creditors' committee concerning the feasibility of going forward in chapter 11.

### **7-3.5 Debtors In Possession**

The United States Trustee shall ensure that the debtor in possession provides a report of insurance within 15 calendar days of the filing of the petition or entry of an order for relief. A copy of the insurance policy binder or a certificate of insurance is to be provided with each report. A copy of this report with attachments must be filed with the court. Additional reports are required each time coverage is renewed, is changed, or lapses.

Each insurance policy binder or certificate must indicate "Debtor in Possession" on its face, following the debtor's names. The policy, binder, or certificate is to be signed by the insurers' authorized representative and state the insurance company name, type and amount of insurance, property insured, effective date, policy period, and that the debtor in possession is an insured party.

Further, the policy, binder, or certificate submitted to the United States Trustee must indicate that the United States Trustee is to be notified in the event of any change, cancellation, or expiration of the policy. For example, the policy, binder, or certificate should provide:

For Notice Purposes Only:  
U.S. Department of Justice United States Trustee  
District of \_\_\_\_\_ Street Address  
City, State, Zip Code