

VOLUME 4

CHAPTERS 12 AND 13 CASE ADMINISTRATION

CHAPTER 4-1: OVERVIEW AND KEY TERMS

The United States Trustee is responsible for appointing chapters 12 and 13 trustees and supervising their administration of cases, under the general guidance of the EOUST's Office of Oversight. Where possible, the United States Trustee should consider the appointment of a standing trustee pursuant to 28 U.S.C. § 586(b). Only if the number of cases is insufficient to support the appointment of a standing trustee, or if other extraordinary circumstances exist, should the United States Trustee consider the appointment of a case-by-case chapter 12 or 13 trustee under 11 U.S.C. § 1202(a) or § 1302(a).

“Director” means the Director of the Executive Office for United States Trustees.

“EOUST” means Executive Office for United States Trustees.

CHAPTER 4-2: APPOINTMENT OF STANDING TRUSTEES

4-2.1 STATUTORY AUTHORITY, 28 U.S.C. § 586(b)

The United States Trustee is authorized by law, after approval by the Director, acting on behalf of the Attorney General, to appoint one or more individuals to serve as a standing trustee in chapters 12 or 13 cases. 28 U.S.C. § 586(b). Decisions on increasing or decreasing the number of trustees in any district, or replacing or not replacing a departing trustee, should be made only after consultation with the Office of Oversight.

4-2.2 QUALIFICATION FOR APPOINTMENT AS STANDING TRUSTEE

To be eligible for appointment as a standing trustee, an individual must have the qualifications for membership as set forth at 11 U.S.C. § 321 and at [28 C.F.R. §§ 58.3 and 58.4](#). An individual need not be an attorney to be eligible for appointment as a standing trustee. A corporation may be appointed as a standing trustee only with the approval of the Director. 28 C.F.R. § 58.4. A trustee applicant must qualify to be bonded.

4-2.3

RECRUITMENT AND SELECTION

Whenever a standing trustee is to be appointed, the United States Trustee is to conduct an open solicitation of persons interested in serving as a standing trustee. The United States Trustee must comply with applicable diversity policies and initiatives in the recruitment process. A notice and solicitation package should be forwarded to the Assistant Director for Oversight. The solicitation package should include the standard vacancy advertisement language and public notice; a listing of all recruitment sources in the community to be used, including free advertising; and a description of all steps the United States Trustee plans to take to ensure that the selection process is open. The Office of Oversight maintains and distributes the [standard vacancy advertisement and public notice](#). All advertisements must conform to this notice.

After review of the recruitment package to ensure that diversity initiatives have been satisfied and that the standard vacancy notices have been used, the Assistant Director for Oversight will notify the United States Trustee whether the vacancy notices are approved. The United States Trustee will complete a UST-6, Procurement or Services Request, for approval of the expense. Once the United States Trustee receives approval from the Office of Oversight and the Budget Execution and Travel Division, the Administrative Officer will place the advertisement in the publications identified and, as appropriate, send a copy of the vacancy announcement to various national organizations. The Office of Oversight will place the advertisement on the USTP public Website. Absent extraordinary circumstances, the notice shall remain open for a minimum of two weeks from the last date of publication. Gathering information about submission deadlines and publication schedules will help ensure that this standard is met.

The United States Trustee is responsible for receiving and reviewing applications, and interviewing qualified candidates as appropriate. During the selection process, the United States Trustee should screen applicants for potential conflicts of interest.

When the United States Trustee has narrowed the selection to two or three candidates, the names should be forwarded to the Assistant Director for Oversight, along with the United States Trustee's recommendation, for approval by the Director. No candidate should be advised of appointment prior to the Director's approval.

4-2.4

BACKGROUND INVESTIGATION

The appointment of a standing trustee is subject to completion of a satisfactory background investigation. A proposed appointee must submit to the United States Trustee an employment application, SF-85P (Questionnaire for Public Trust Positions) using the U.S. Office of Personnel Management's Federal Investigative Services Division E-QIP system, DOJ-488 (Tax Check Waiver), FD-258 (Fingerprint Cards), I-9 (Employment Eligibility Verification), and Form DOJ-555(a) (Disclosure and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681).

After the United States Trustee has reviewed the documents for completeness and accuracy, they are to be transmitted to the Office of Oversight for final review and processing. Several of these forms are time-sensitive and require immediate review. Upon acceptance of the completed forms, an applicant may be appointed, conditioned on the completion and closing of a satisfactory background investigation.

The Assistant Director for Oversight will notify the United States Trustee of any background information that requires additional information or clarification by a trustee. The resolution of questionable information will require an affidavit and/or other documentation from the appointed trustee. The Assistant Director for Oversight will notify the United States Trustee when a trustee's background investigation has been completed. The United States Trustee should then notify the appointed standing trustee.

CHAPTER 4-3:TRUSTEE SUPERVISION

4-3.1

GENERALLY

The primary responsibilities of the United States Trustee in chapters 12 and 13 cases are the appointment of one or more individuals to serve as standing trustees, the supervision of such individuals in the performance of their duties, and the supervision of the administration of cases under chapters 12 and 13. A [timeline](#) for submitting various trustee oversight documents necessary for supervising standing trustees is available.

Trustee supervision requires the monitoring of a standing trustee's budget, annual report, monthly reports, and such other reports as may be required by the United States Trustee. It entails monitoring a standing trustee's performance of statutory duties, including compliance with the policies and initiatives of the United States Trustee Program, and adherence to fiduciary standards. This information is used to evaluate a standing trustee's competence, commitment to administering cases

properly, compliance with applicable laws, and integrity in the discharge of a standing trustee's duties.

Trustee supervision also includes monitoring standing trustee compliance with Program policy requiring the trustee to report to the United States Trustee any loss or potential loss of personal identifiable information (PII) immediately upon discovery of the loss or potential loss. The United States Trustee must, in turn, notify the Assistant Director of Oversight immediately upon learning of any loss or potential loss of PII.

4-3.2 STANDING TRUSTEE COORDINATOR

To focus responsibility and ensure the proper quality of standing trustee supervision, the United States Trustee shall designate one employee in the region to coordinate all standing trustee matters. A standing trustee coordinator is expected to have the knowledge and ability to assess and expeditiously resolve most standing trustee issues. The coordinator should be a bankruptcy analyst. The designation as standing trustee coordinator does not preclude efforts by other employees in the standing trustee area. The United States Trustee and the coordinator will serve as the primary points of contact for the Office of Oversight with regard to standing trustee matters. In addition, the United States Trustee may designate an attorney or attorneys to work with the standing trustee coordinator to conduct substantive reviews of standing trustees. An element delineating these responsibilities is to be included in a standing trustee coordinator's performance work plan.

4-3.3 WRITTEN EVALUATION OF STANDING TRUSTEES

The United States Trustee shall prepare a formal biennial [written evaluation](#) of each standing trustee's performance. See evaluation forms for [chapter 12 trustees](#) and [chapter 13 trustees](#). The evaluation covers the trustee's performance for the two most recent performance periods. The performance period for a chapter 12 standing trustee is March 1 through February 28 (or February 29, if applicable); the performance period for a chapter 13 standing trustee is June 1 through May 31. The evaluation shall reflect the United States Trustee's determination of the standing trustee's performance as a fiduciary, in the administration of cases, and in completing the responsibilities of the office. The evaluation shall reflect the efforts of the United States Trustee to meet regularly to discuss, analyze, and document the standing trustee's performance. Based upon the evaluation, as well as other documents and observations, the United States Trustee shall determine whether remedial or enforcement actions are required.

Upon completion of the evaluation, the United States Trustee shall confer with the standing trustee to discuss the evaluation. At the meeting, the United States Trustee shall identify any deficiencies and discuss the proposed resolution of any deficiencies. The standing trustee shall be afforded an opportunity to raise matters with the United States Trustee. The United States Trustee is to provide a copy of the completed evaluation to the standing trustee.

The biennial evaluation must be sent to the Assistant Director for Oversight by June 1 for a chapter 12 standing trustee and by September 1 for a chapter 13 standing trustee, so that it may be reviewed in conjunction with the standing trustee's budget and recommendation for percentage fee and compensation that are submitted to the Director. No percentage fee or compensation notice may be issued prior to the completion of the evaluation.

The evaluation, at a minimum, shall cover the following subject areas:

1. civil enforcement;
2. criminal referrals;
3. section 341 meetings and confirmation issues;
4. court appearances and pleadings;
5. annual budgets and amended budgets;
6. monthly reports;
7. banking;
8. annual reports;
9. independent audits;
10. professional conduct of trustee; and
11. cooperation with the United States Trustee.

4-3.4 OVERSIGHT ELEMENTS

4-3.4.1 Civil and Criminal Enforcement. The standing trustee has a duty to report to the United States Trustee instances of fraud and abuse by debtors, creditors, and other parties to chapter 12 and 13 cases, and instances where criminal activity is suspected. The United States Trustee should monitor the trustee's compliance in this area, ensuring the trustee has adequate systems in place to identify these situations.

4-3.4.2 Conduct of Section 341 Meetings of Creditors. At least annually, the United States Trustee shall review the cases assigned to a particular standing trustee's docket or calendar by attending a meeting of creditors, and/or by reviewing recordings of the meeting, and verifying that: the trustee or other qualified individual approved in writing by the United States Trustee conducted the

meeting; meetings were scheduled within the statutory time limits; debtor's identity and Social Security number were confirmed; mandatory questions were asked; irregularities and deficiencies in the petitions, plans, or budgets were identified; and deadlines were imposed upon debtors for the submission of additional information.

For the purposes of the section 341 meeting of creditors, the United States Trustee shall provide free telephone interpreter services to individuals with limited English proficiency.

The United States Trustee should develop a protocol for ensuring appropriate chain of custody for recordings of section 341 meetings. The United States Trustee should verify that a standing trustee records all section 341 meetings using equipment provided by, or purchased with the approval of, the United States Trustee, and that the recordings are audible. The recordings shall be delivered to the United States Trustee as soon as practicable after the conclusion of the day's meetings. Depending upon the requirements of the United States Trustee, the trustee may be required to complete a record of the proceeding, such as a minute sheet, for each case. If required, a copy must be filed promptly with the United States Trustee and with the clerk of the bankruptcy court, if the clerk so requests. The trustee must retain a copy.

If the above instructions are not practicable, the United States Trustee should consult with the Office of the General Counsel and the Office of Oversight regarding an approved alternative. This includes remote locations where it may be appropriate for the standing trustee to make a copy of the original recording prior to forwarding it to the United States Trustee. Where this occurs, the standing trustee shall complete a signed affidavit to ensure the integrity of the recording is maintained and fully admissible in a court of law, if required.

The United States Trustee shall provide a written report of the review for the trustee's file.

4-3.4.3 Review of Pleadings and Court Performance. At least annually, the United States Trustee shall observe a standing trustee's court appearances. A summary of performance is to be documented in the trustee's file. The United States Trustee shall review pleadings to determine whether a standing trustee files pleadings consistent with professional standards in the following areas: motions to dismiss; objections to confirmation; review of and, if appropriate, objections to claims; and objections to attorney fees.

4-3.4.4 Substantive Case Administration. The United States Trustee shall ensure that the standing trustee exhibits adequate knowledge of and compliance with the law and

United States Trustee policies. Issues to be examined include plan feasibility, claims review, plan modification, and mis-disbursements. The Office of Oversight maintains a library of information requests that may assist in assessing a standing trustee's case administration. Findings should be documented in the trustee's file. When appropriate, deficiencies should be discussed with the standing trustee and noted in the evaluation or other document conveyed to the standing trustee.

4-3.4.5 Review of Annual Budget. An annual budget must be submitted to the United States Trustee by May 1 of each year in the case of a [chapter 12 standing trustee](#) and by July 1 of each year in the case of a [chapter 13 standing trustee](#).

The standing trustee coordinator must conduct a detailed review of the trustee's budget. After the United States Trustee determines that the budget contains only actual and necessary expenses, the budget should be forwarded to the Assistant Director for Oversight, with the United States Trustee's recommendation as to the appropriate annual compensation and percentage fee. The United States Trustee's recommendation must be submitted by June 1 of each year in the case of a chapter 12 standing trustee and by August 15 of each year in the case of a chapter 13 standing trustee. No percentage fee or annual compensation will be authorized in the absence of sufficient supporting data.

During the budget review each year, the United States Trustee should note in the trustee's file the revisions that were made to the trustee's budget submissions. If the errors in budget submissions are numerous or significant, the errors should be brought to the trustee's attention and included in the trustee's performance evaluation.

If the United States Trustee determines that any expense in the trustee's budget is not actual or necessary, the United States Trustee should discuss the matter informally with the trustee. If the dispute cannot be resolved informally, the United States Trustee, after consultation with the Assistant Director for Oversight, must give the trustee formal notice of disallowance of the expense in accordance with the applicable federal regulations for resolving budget disputes. The timing of the notice and responses, as well as the material necessary to support the disallowance and the nature of the review of the United States Trustee's decision are covered in the regulation.

4-3.4.6 Review of Annual Report. A standing trustee must submit an annual report in the format prescribed by the EOUST for the period covering July 1 to June 30 for a [chapter 12 standing trustee](#) and October 1 to September 30 for a [chapter 13 standing trustee](#). If a standing trustee did not serve a full fiscal year, an annual report must be submitted for the period of service. Annual reports are to be submitted to the United States Trustee by August 15 in the case of a chapter 12

standing trustee and by November 15 in the case of a chapter 13 standing trustee. If a standing trustee does not serve through the end of a reporting year, the annual report must be filed within 45 days of the date the standing trustee's service ends. Often, the annual report is prepared by the successor trustee.

The United States Trustee is responsible for reviewing the annual report and for documenting any deficiencies in timeliness or accuracy. An electronic PDF copy of the signed chapter 12 annual report should be forwarded to the Office of Oversight by September 30; an electronic Excel copy of the chapter 13 annual report should be forwarded to the Office of Oversight by December 1. The timely review and submission of an accurate report is imperative because it serves as the basis for a standing trustee's audit. A standing trustee's failure to submit a timely or accurate report may result in remedial action. If the annual report indicates expenditures that are not actual and necessary for fulfilling the standing trustee's duties, the standing trustee shall be instructed to reimburse the expense account. Continued violations shall be considered a breach of the standing trustee's fiduciary duty.

- 4-3.4.7** Review of Monthly Report. A chapter 13 standing trustee is required to file a [monthly report](#) in the format prescribed by the EOUST. A chapter 12 standing trustee is required to submit a monthly report but there is no required format. A standing trustee is to submit the monthly report within 30 days following the prior month. The monthly report, along with copies of reconciled bank statements submitted by a standing trustee, are to be reviewed within 30 days of receipt by the United States Trustee. The report allows the United States Trustee to determine that payments are being made by debtors and that the standing trustee is disbursing monies to creditors. The United States Trustee shall monitor the expense fund to determine if expenses are consistent with the approved budget, if operating reserve remains appropriate, and whether an adjustment to a standing trustee's percentage fee and level of compensation is needed. Instances where reports are inaccurate, incomplete, consistently late, or not filed should be documented in the trustee's file.
- 4-3.4.8** Audit or Office Visit. Deficiencies noted in a third-party audit or office visit can uncover serious weaknesses in a trust operation. The degree of responsiveness by a standing trustee shall be documented in the trustee's file. See also Chapter 4-4.
- 4-3.4.9** Bank Account Information. Bank account information is to be reviewed monthly by the United States Trustee to verify that: estate funds are held in proper accounts pursuant to the *Handbook* for chapter 12 or chapter 13 standing trustees; the financial information contained in the monthly report is accurate; the standing trustee's bond coverage is adequate; bank collateralization is sufficient; estate funds have been timely deposited; the standing trustee is making disbursements on a timely basis; and no unauthorized fund transfers have occurred.

There are several methods of review of bank account information: monthly review of bank statements attached to a monthly report, quarterly review of account summaries of estate funds from the standing trustee's bank(s), and periodic on-site reviews. To the degree the United States Trustee finds noncompliance with Program policy, the standing trustee is to be notified and the matter documented. As a condition of appointment, a standing trustee must authorize the bank(s) and case management software provider to release all estate account information to the United States Trustee.

4-3.4.10 Public Complaints. The United States Trustee should request that any complaint concerning a standing trustee be made in writing. If appropriate, the written complaint is to be sent to the standing trustee and the trustee shall send a written response to the United States Trustee by a date set by the United States Trustee. Each complaint is to be investigated independently and not evaluated solely on the standing trustee's response. Immediate and appropriate remedial action is to be taken on all valid complaints.

All complaints and full reports of investigations are to be maintained in the trustee's file. The United States Trustee should respond in writing to each complainant within 30 days of receipt of the complaint. A lawsuit against a trustee, or a pleading requesting that a standing trustee close a case, distribute funds under a confirmed plan, or be removed, is to be investigated to determine whether it should be considered to be a public complaint to be investigated by the United States Trustee.

4-3.4.11 Lawsuits or Claims Filed Against a Standing Trustee. Any other lawsuit or claim against a standing trustee, including litigation not related to the standing trustee's duties and performance, shall be investigated, consistent with the procedures applicable to investigating public complaints (see the preceding paragraph).

4-3.4.12 Declination of Cases/Conflicts. The United States Trustee should take appropriate action upon becoming aware that the trustee serves in any case in which the trustee lacks disinterestedness or is an insider as those terms are defined in the Bankruptcy Code. Conflicts of interest include, without limitation, the representation by a standing trustee's firm of a debtor or any party in interest during the administration of the chapter 12 or 13 case. Further, a conflict exists if the representation of a client by a standing trustee or the standing trustee's firm requires the standing trustee to take a position contrary to the fiduciary responsibilities of a standing trustee. If a trustee discovers a conflict of interest or a lack of disinterestedness after accepting an appointment, the trustee should immediately file a notice of resignation in the case and notify the United States Trustee, who must reassign the case to another trustee. Conflicts may not be waived by either the debtor or a creditor. If a conflict exists, or if the trustee is not disinterested or is an insider, the standing trustee shall resign from the particular

case. The number of and reason for resignations for conflicts shall be documented. To the degree that a trustee has a large number of resignations for conflicts, the United States Trustee, with the approval of the Director, may institute an enforcement action against the standing trustee.

A standing trustee may not advertise in newspapers or other public information media or take any other action that could reasonably be interpreted as encouraging debtors to file petitions under chapters 12 or 13 of the Bankruptcy Code. A standing trustee may disseminate information to interested persons about chapters 12 or 13 and may participate in meetings, educational seminars, or institutes concerning chapters 12 or 13.

4-3.4.13 Final Reports. At the time of evaluation, the United States Trustee shall determine whether a standing trustee has filed timely final reports on cases administered.

4-3.4.14 Maintenance of Statistics. The Office of Oversight shall keep statistics on all chapters 12 and 13 costs and expenses from standing trustees' budgets and annual reports. These statistics shall be provided to the United States Trustee to assist in monitoring the costs and expenses of the standing trustees.

4-3.5 **UPDATED BACKGROUND QUESTIONNAIRE**

At the time a standing trustee submits the proposed budget for the upcoming year, the standing trustee shall include a statement indicating whether the information contained in the most recent Questionnaire for Public Trust Positions, SF-85P, remains accurate, and provide supplemental or updated information if necessary. The United States Trustee should review any revisions and then forward to the Office of Oversight with the budget submission.

CHAPTER 4-4: INDEPENDENT AUDITS, OFFICE VISITS AND MANAGEMENT REVIEWS

4-4.1 **GENERALLY**

Audits are the starting point for determining the adequacy of a standing trustee's financial management, internal control procedures, and organizational support, and are part of the evaluation process. A chapter 13 standing trustee shall receive an independent audit and report on prescribed procedures annually. A chapter 12 standing trustee shall receive either an independent audit and report on prescribed procedures, or a review performed by Program staff, every three years.

Independent audits are contracted for and scheduled by the EOUST after consultation with the United States Trustee.

4-4.2 **CHAPTER 13 STANDING TRUSTEES**

A chapter 13 standing trustee shall receive an independent audit and report on prescribed procedures annually by an independent accounting firm. The audit is designed to determine the adequacy of internal controls over trust funds, the accuracy of amounts and disclosure in the annual report, and compliance with Program policies and guidelines.

4-4.2.1 **Exit Conferences and Follow-Up**

At the completion of the audit, the United States Trustee shall participate in the exit conference where the auditor will explain the results of the examination and may make recommendations . The United States Trustee should ask the trustee to respond to all findings. Within 45 days of the date of the written audit report, the standing trustee must submit a written statement to the United State Trustee identifying what corrective actions have been taken on noted deficiencies, confirming the changes implemented, and raising any dispute with any finding or recommendation. Whenever an audit report contains, in the judgment of the United States Trustee, serious findings including a series of repeat findings from the prior year, the United States Trustee may, within three months of the standing trustee’s response, make an on-site visit to the standing trustee’s office to verify compliance. A visit also may result from the auditor’s disclosure of material weaknesses in internal controls or from issuance of a qualified opinion, adverse opinion, or disclaimer of opinion. Failure to implement necessary changes shall result in appropriate remedial action by the United States Trustee. A copy of the standing trustee’s response to the audit shall be sent to the Assistant Director for Oversight, accompanied by a written verification by the United States Trustee that deficiencies noted in the audit have been resolved and changes implemented. The resolution of audit findings shall be completed within six months of the audit, but no later than August 1.

4-4.2.2 **Office Visits**

Office visits for a chapter 13 standing trustee are to be used when deemed appropriate. The scope of the office visit is limited and shall be directed to any area that a trustee’s file or performance indicates may be appropriate.

4-4.2.3 **Management Reviews**

The United States Trustee may perform a management review of a standing trustee at the United States Trustee’s discretion. The objective of a management

review is to assess the standing trustee's performance in specific areas, such as case administration, case closing, claims review, and financial and personnel management. The trustee must be advised of the review two weeks in advance and must be given a letter discussing the review findings and requesting a written response. If the United States Trustee determines that the review would be better conducted by Program staff from outside the region, the Assistant Director for Oversight will coordinate the project.

4-4.3 **CHAPTER 12 STANDING TRUSTEES**

A chapter 12 standing trustee shall receive an independent audit and report on prescribed procedures, every three years, unless there is a compelling justification to omit the audit or schedule an audit more frequently. In lieu of an independent audit, Program staff may review the annual report of the trustee and test compliance with Program policy. Generally, in those years in which a chapter 12 standing trustee does not receive an independent audit, the United States Trustee shall conduct an office visit or other form of evaluation.

4-4.3.1 **Independent Audits**

4-4.3.1.1 Purpose

The independent audit is designed to determine the adequacy of internal controls over trust funds, the accuracy of amounts and disclosure in the annual report, and compliance with Program policies and guidelines. In selecting chapter 12 trustees to be audited, consideration is to be given to the adequacy of reports, caseload, amount of trust funds under a standing trustee's control, previous unsatisfactory audit findings, any recent deficiencies, and length of time since the last audit.

4-4.3.1.2 Exit Conference and Follow-Up

At the completion of the audit, the United States Trustee shall participate in the exit conference where the auditor will explain the results of the examination and may make recommendations. The United States Trustee should ask the trustee to respond to all findings. Within 45 days of the date of the written audit report, the standing trustee must submit a written statement to the United States Trustee identifying what corrective actions have been taken on noted deficiencies, confirming the changes implemented, and raising any dispute with any finding or recommendation. Whenever an audit report contains, in the judgment of the United States Trustee, serious findings, the United States Trustee may, within three months of the standing trustee's response, make an on-site visit to the standing trustee's office to verify compliance. A visit also may result from the

auditor's disclosure of material weaknesses, in internal controls or from issuance of a qualified opinion, adverse opinion or disclaimer of opinion. Failure to implement necessary changes shall result in appropriate remedial action by the United States Trustee. A copy of the standing trustee's response to the audit shall be sent to the Assistant Director for Oversight, accompanied by a written verification by the United States Trustee that deficiencies noted in the audit have been resolved and changes implemented. The resolution of audit findings shall be completed within six months of the audit.

4-4.3.2 Office Visits or Other Forms of Review

The United States Trustee must make an office visit to, or otherwise review the operation of, each chapter 12 standing trustee who is not receiving an independent audit. The scope of the office visit or other review is limited and shall be directed to any area that a trustee's file or performance indicates may be appropriate. Any deficiencies or inadequacies are to be documented and the standing trustee is required to make a written response within a specific time confirming that corrective actions have been implemented. A copy of the standing trustee's response shall be sent to the Assistant Director for Oversight, accompanied by a written verification by the United States Trustee that the deficiencies noted in the review have been resolved and changes implemented. Failure to make the necessary changes shall result in appropriate remedial action by the United States Trustee. The report of the office visit or review is to be maintained in the trustee's file.

4-4.3.3 Management Reviews

The United States Trustee may perform a management review of a standing trustee at the United States Trustee's discretion. The objective of a management review is to assess the standing trustee's performance in specific areas, such as case administration, case closing, claims review, and financial and personnel management. The trustee must be advised of the review two weeks in advance and must be given a letter discussing the review findings and requesting a written response. If the United States Trustee determines that the review would be better conducted by Program staff from outside the region, the Assistant Director for Oversight will coordinate the project.

CHAPTER 4-5: ENFORCEMENT ACTIONS AGAINST STANDING TRUSTEES

4-5.1 OVERVIEW

The United States Trustee's supervision of a standing trustee carries with it the responsibility to take appropriate action when problems arise.

Any decision to take an enforcement action must consider the available evidence, including documentation of efforts and communications between the United States Trustee and the standing trustee, and must be made only after consultation with the Office of Oversight.

Enforcement actions with regard to a standing trustee may involve circumstances unique to the standing trustee. The large number of cases typically assigned to a standing trustee heightens the need to pursue appropriate remedies as expeditiously as possible due to the substantial monies at stake, as well as the number of parties affected. Any enforcement action that precludes the assignment of future cases, even for a short period of time, however, presupposes that a capable individual to administer those cases must first be appointed.

Whenever the United States Trustee seeks to remove a standing trustee from existing cases under 11 U.S.C. § 324 or to terminate a trustee's receipt of future case assignments, the United States Trustee must be prepared to have a successor trustee appointed who can respond to the exigencies of the circumstances. The alternative of having an Assistant United States Trustee serve must be considered in the context of the resources available to adequately administer cases. The United States Trustee may designate one or more Assistant United States Trustees to serve in cases under chapters 12 and 13.

This chapter describes the range of enforcement actions to be taken to ensure prompt, honest, and effective case administration by chapters 12 and 13 standing trustees. These enforcement actions include administrative, civil, and criminal proceedings. It is critical that enforcement actions be exercised in a manner that is justified by the facts and the law and that is in keeping with the standards of the Department of Justice.

4-5.2

GENERAL FACTORS AFFECTING CHOICE OF ENFORCEMENT ACTIONS

In selecting the appropriate enforcement action to address a standing trustee's deficiencies, the United States Trustee must consider the type of remedy, the timing of the remedy, the resources to be committed, and the impact the enforcement action will have on case administration. Enforcement actions must be related to the nature and extent of a standing trustee's misconduct. If the nature of a standing trustee's misconduct reflects dishonesty, deceitfulness, fraud, or serious mishandling of estate funds, a single substantiated incident justifies immediate action by the United States Trustee. Remedies include termination of case

assignments, motions to remove the standing trustee from all cases, temporary restraining orders, orders to turn over books and records, and referral to the United States Attorney and state licensing authorities.

Misconduct that does not constitute dishonesty, fraud, or immediate asset risk includes substandard reporting or asset investigation efforts, repeated instances of inadequate bonding, inadequate internal controls, or weak case administration. Such conduct may call for the use of progressive or cumulative remedies that range from meeting with the standing trustee to filing motions to compel an action, seeking reimbursement, temporarily suspending the case assignments of the standing trustee, or seeking to remove the standing trustee permanently from all cases. Identifying and documenting deficiencies is an important element in supervision. Information developed must envision further enforcement remedies. Well-documented information emanating from credible witnesses, including employees of the United States Trustee, where appropriate, will provide the testimonial and documentary evidence to be used in court. Beyond establishing a record, this process provides for a continuing review of a standing trustee's administration.

4-5.3 POSSIBLE CRIMINAL CONDUCT

A criminal referral against the standing trustee or an employee or professional retained by a trustee may be appropriate depending upon the facts of each situation. Program employees must coordinate with the United States Trustee and the EOUST before making a criminal referral to the United States Attorney.

4-5.4 ENFORCEMENT ACTIONS

4-5.4.1 Suspension or Termination of Case Assignments

Where cause exists, a trustee may be suspended or terminated from the assignment of future cases. The suspension or termination of a trustee must be effected pursuant to [28 C.F.R. § 58.6](#). See link for the form of notice to the trustee.

4-5.4.2 Removal

A standing trustee's inability to administer cases may result in the United States Trustee filing a motion under section 324 to remove the trustee from all existing cases. The decision to seek removal must be based on evidence that demonstrates that the standing trustee has failed to carry out the responsibilities of the office or has failed to comply with applicable law or policy. The clearest case for removal is the discovery of fraud or embezzlement; however, other kinds of

mismanagement, misconduct, or unsatisfactory performance may form the basis for removal. The United States Trustee must consult with the Deputy Director/General Counsel and the Assistant Director for Oversight prior to taking any formal action, and the Director must approve the final decision to make a motion for removal.

Absent extraordinary circumstances, the United States Trustee shall also terminate the assignment of future cases to the standing trustee prior to, or simultaneous with, the filing of a motion to remove.

4-5.4.3 Recovery of Unauthorized Expenses or Excess Compensation

If a standing trustee takes excess compensation in violation of a compensation notice, improperly receives compensation by some other means, or makes unauthorized expenditures, the United States Trustee shall demand that the funds be returned. If the standing trustee fails to promptly repay the sums demanded, the United States Trustee shall inform the Director and make a recommendation for further action, including reduction of compensation, termination of future case assignments, or the bringing of a removal action or a suit against the trustee and the trustee's surety.

4-5.4.4 Reduced Compensation Notice

With respect to budget disputes, and subject to the regulations governing such disputes, reduced compensation notices may be issued when a standing trustee expends trust funds without prior approval of the United States Trustee or prior to the final resolution of any disputed budget amount. Pending final resolution of the dispute, the standing trustee may not expend trust funds for any disputed portion of a line item. In the event trust funds are expended without final approval, the expense fund may be reimbursed by deduction from the standing trustee's future compensation.

In rare instances, the United States Trustee may request that the compensation level be reduced if a standing trustee fails to undertake satisfactory efforts to correct deficiencies, other than budget disputes, that have been noted by the United States Trustee, or where other alternatives do not sufficiently address the deficiency. The request must be forwarded to the Assistant Director for Oversight for final decision by the Director. A reduced compensation notice may be used until the deficiencies are corrected. Once corrected, a new notice may be issued that permits the standing trustee to receive compensation retroactively.

CHAPTER 4-6: PROCEDURES FOLLOWING THE RESIGNATION, REMOVAL, OR DEATH OF A STANDING TRUSTEE

4-6.1 **FINAL AUDIT**

Upon the resignation, removal, or death of a standing trustee, all accounts are to be closed and an annual report prepared. An audit of the trustee's operation must then be performed by an independent auditor or a review performed by the United States Trustee, covering the period from the close of the last annual report to the date of resignation, removal, or death. The United States Trustee should contact the Assistant Director for Oversight to coordinate the conduct and scope of the audit. If the trustee resigns, is removed, or dies amidst allegations that trust funds are missing or cannot be accounted for, the procedures set forth in Manual 4-8 must also be followed.

4-6.2 **SUCCESSOR TRUSTEE**

Upon the resignation, removal, or death of a standing trustee, a successor trustee must be appointed who is willing and able to respond to the exigencies of the circumstances. The alternative of having an Assistant United States Trustee serve as the successor standing trustee should be considered in the context of available resources.

CHAPTER 4-7:CASE-BY-CASE TRUSTEES

4-7.1 **OVERVIEW**

If there is an insufficient number of cases to warrant the appointment of a standing trustee under 28 U.S.C. § 586(b), the United States Trustee should appoint a disinterested person to serve as a trustee in each chapter 12 or chapter 13 case pursuant to 11 U.S.C. §§ 1202(a) and 1302(a). A case-specific appointment may also be necessary in situations where a standing trustee has a conflict of interest. If the caseload increases, the United States Trustee should consider the appointment of another standing trustee. An individual appointed on a case-by-case basis needs court approval to receive compensation and reimbursement of actual and necessary expenses from each case pursuant to 11 U.S.C. §§ 326(b) and 330. Supervision of the trustee by the United States Trustee requires the same level of scrutiny as applies to all trustees generally.

4-7.2 **RECRUITMENT AND SELECTION**

4-7.2.1 **Selection**

The United States Trustee selects and appoints an individual as a case-by-case trustee under chapter 12 or 13.

4-7.2.2 Qualifications and Eligibility

The same qualifications, procedures, and eligibility requirements that apply to individuals appointed to administer chapter 7 cases apply to those appointed to administer individual chapter 12 or 13 cases. A background investigation is required unless the individual has a current clearance as a panel or standing trustee. The individual must be disinterested and must reside or have an office in the judicial district or an adjacent judicial district to where the case was filed. The individual must also post a bond.

4-7.2.3 Required Paperwork

If a background investigation is required, the case-by-case trustee is required to complete the same background investigation forms as a chapter 7 trustee. A copy of the background investigation forms must be forwarded to the Assistant Director for Oversight within five days of the appointment of a case-by-case trustee.

4-7.3 OVERSIGHT OF CASE-BY-CASE TRUSTEES

4-7.3.1 Bank Accounts, Bonding, and Collateralization

A case-by-case trustee is to maintain a separate bank account for each estate administered. The United States Trustee is to receive a statement of account activity on a quarterly basis from the financial institution where estate monies are maintained. The United States Trustee shall ensure that the financial institution has posted adequate securities with the Federal Reserve Bank or has provided an appropriate bond so that the monies on deposit are collateralized in accordance with 11 U.S.C. § 345. The United States Trustee shall also ensure that the trustee is bonded. A case-specific bond may be appropriate.

4-7.3.2 Biennial Evaluation

A trustee administering individual cases under chapters 12 and 13 shall be evaluated on a biennial basis following the same general criteria that apply to standing trustees:

1. the timeliness and quality of the trustee's reports;
2. the trustee's conduct of the section 341 meeting;

3. the substantive administration of estates, including the quality of advocacy in court and legal pleadings;
4. a review of all complaints or lawsuits filed against the trustee;
5. the trustee's responsiveness to audits;
6. the adequacy of bonding;
7. the trustee's professional conduct; and
8. cooperation with the United States Trustee.

There is no required format for the evaluation but it must be documented and provided to the trustee.

4-7.3.3 Reporting

A case-by-case trustee shall provide the United States Trustee a quarterly report that details the receipts and disbursements of each case under his or her administration in the format prescribed by the United States Trustee. A [sample](#) is provided.

On an annual basis, the United States Trustee shall submit to the Assistant Director for Oversight a report containing the following information:

1. name of trustee assigned to a case;
2. case/debtor name;
3. case number;
4. date filed;
5. if confirmed, date of confirmation;
6. year the case is scheduled for completion;
7. fund balance at the beginning of report year;
8. receipts during the reporting year;
9. disbursements during the reporting year;
10. amount of funds on hand at the end of the reporting year;
11. if closed, date closed.

The report is due for case-by-case trustees administering chapter 12 estates on September 15, and for case-by-case trustees administering chapter 13 estates on November 15.

4-7.3.4 Audits

A trustee administering individual chapter 12 or 13 cases shall receive a biennial audit or financial review. The audit shall be conducted by an independent audit firm; the financial review shall be conducted by the United States Trustee.

CHAPTER 4-8: ALLEGATIONS INVOLVING LOSS OF ESTATE ASSETS BY PRIVATE TRUSTEE OR PRIVATE TRUSTEE'S EMPLOYEE OR AGENT

4-8.1 GENERALLY

The loss of estate assets or the inability to account for estate assets is a serious matter, and its expeditious resolution is a top priority. Allegations of the loss of estate assets by a trustee or anyone employed or retained by the trustee must be promptly investigated regardless of the source of the allegation. When the United States Trustee believes that a trustee or an employee of a trustee is unable to account for estate assets, the procedures detailed in the following paragraphs must be followed.

4-8.2 PRELIMINARY ASSESSMENT AND REPORT TO EXECUTIVE OFFICE

The United States Trustee must immediately notify the Assistant Director for Oversight. After consultation with the Assistant Director, the United States Trustee shall conduct a preliminary assessment of the likelihood of actual loss. The results of the assessment should be communicated to the Assistant Director.

4-8.2.1 Actions if No Loss has Occurred

If the preliminary assessment determines that no loss of estate assets has occurred, the United States Trustee should prepare a written recommendation to the Assistant Director for Oversight to terminate the inquiry. The United States Trustee should detail any action taken or to be taken to rectify any problems identified in the assessment. Upon concurrence of the Deputy Director for Field Operations, the inquiry shall be terminated.

4-8.2.2 Actions if Loss has Occurred or Upon Sufficient Evidence of Likelihood of Loss

If the preliminary assessment indicates a loss or likelihood of loss of estate assets (including funds taken, or borrowed and later repaid by the trustee), the United States Trustee shall immediately forward a written report to the Assistant Director for Oversight. The report should contain, at a minimum, the following information:

1. the name and location of the trustee;

2. whether the trustee is receiving filings;
3. the number of open cases currently being handled by the trustee;
4. the names of any persons suspected of improper conduct in the handling of estate funds;
5. the number and location of bank accounts involved and the amount of funds on hand;
6. the name of the trustee's software vendor and bonding company;
7. factual narrative of the circumstances that can be verified as a result of the preliminary assessment; and
8. United States Trustee's recommendation of proposed action concerning the trustee and the estates under the trustee's administration.

Immediate termination of future case assignments is warranted in certain situations, such as where there is evidence that the trustee mishandled estate assets or failed to take adequate precautions to safeguard estate assets against loss.

4-8.3 DISCUSSIONS OR NEGOTIATIONS REGARDING LOSSES

When there is a suspected loss of estate assets or an inability to account for those assets, the United States Trustee shall not enter into settlement negotiations, discussions, or agreements regarding the return of funds, compensation, or resolution of the matter, absent the written approval of the Deputy Director for Field Operations.

4-8.4 ADDITIONAL ACTIONS IF RESIGNATION OR REMOVAL MAY BE SOUGHT

If it appears likely that the United States Trustee will seek to remove the trustee from pending cases or initiate a criminal referral, or both, the United States Trustee should immediately notify the Deputy Director for Field Operations, to be followed by a written memorandum on the matter. Copies should simultaneously be provided to the Assistant Director for Oversight and the Deputy Director/General Counsel.

Prior to requesting the trustee's resignation or instituting removal action in pending cases, the United States Trustee shall consult on the matter with the Deputy Director for Field Operations. If removal or resignation is initiated, consideration must be given to the appointment of a successor trustee or to the Assistant United States Trustee serving as the trustee pending further review of the case files.

4-8.5 INVESTIGATION OF A TRUSTEE'S FINANCIAL RECORDS

When the preliminary assessment indicates that assets cannot be accounted for or that embezzlement likely has occurred, an investigation of the trustee's case and financial records will be initiated, with the approval of the Deputy Director for Field Operations. The Assistant Director for Oversight, in consultation with the United States Trustee, will coordinate and oversee the selection of an investigation team, the determination of the type and amount of work required, and the nature and extent of records that must be gathered to carry out the investigation.

Specific steps will depend on the circumstances, and the format and distribution of the investigative report ultimately produced will be prescribed by the Deputy Director for Field Operations. Because these reports may serve both civil and criminal purposes, no single format can be set.

Absent the approval of the Assistant Director for Oversight, no case files, financial records, or other estate documents may be furnished to a successor trustee, other than the United States Trustee, until the investigation is complete. Further, without approval of the Assistant Director for Oversight, no disbursements should be made in any estates until the investigation is complete.