

**Summary of Changes
Handbook for Chapter 13 Standing Trustees**

<u>1998 Handbook</u>	<u>2012 Handbook</u>
<p><u>General:</u></p> <p>12 Chapters.</p> <p>Included language from statutes and rules in body of Handbook.</p> <p>“Should” indicated both mandatory and non-mandatory trustee activities.</p> <p>No Practice Tips.</p> <p>Supplemental Materials are in <u>Appendices</u> to the Handbook</p> <p><u>Duties of a Standing Trustee:</u></p> <p>Standing trustee has a fiduciary responsibility to the <u>debtor and all classes of creditors in each case.</u> (page 3-1)</p> <p><u>Screen for Conflicts:</u></p> <p>If the standing trustee is otherwise engaged in another occupation or business, or is affiliated with an entity that conducts a business or practice <u>that provides services or products</u> to debtors or creditors, the standing trustee must promptly disclose in writing to the UST. (page 3-3)</p>	<p><u>General:</u></p> <p>7 Chapters – reorganized.</p> <p>Citations provided to statutes and rules.</p> <p>“Must” is used to indicate mandatory trustee duty.</p> <p>Practice Tips at end of section.</p> <p>Supplemental Materials will be on <u>USTP webpage.</u></p> <p><u>Statutory Duties of a Standing Trustee:</u></p> <p>Standing trustee has a fiduciary responsibility to the <u>bankruptcy estate.</u> (page 1-2)</p> <p><u>Conflicts of Interest:</u></p> <p>If the standing trustee <u>or employee</u> of a standing trustee is otherwise engaged in another occupation, business or practice <u>related to</u> bankruptcy debtors or creditors, or is affiliated with an entity that conducts such a business or practice, the standing trustee must promptly disclose in writing to the UST. (page 3-2)</p>

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<p><u>Section 341(a) Meeting:</u></p> <p>If the standing trustee must continue the meeting, the standing trustee <u>should, if at all possible,</u> announce the continued date to all parties present and advise the UST, if requested, <u>the clerk of the bankruptcy court, if necessary,</u> of the continued date. (page 5-7)</p> <p>In cases with incorrect SSN, standing trustee must instruct debtor to send “Notice of Correction” of SSN to UST. (page 5-5)</p> <p>The recording shall be maintained in accordance with FRBP 2003(c). (page 5-3)</p> <p>Depending on the situation and local rules and practices, when debtor fails to appear, standing trustee <u>may</u> take action. (page 5-7)</p> <p><u>If appropriate,</u> the standing trustee should include potential preferential or fraudulent transfer recoveries as part of the value of the estate. (page 6-4)</p>	<p><u>Meeting of Creditors:</u></p> <p>If the meeting docket regularly lasts longer than the scheduled time or routinely requires lengthy waits by debtors and creditors, the standing trustee should consult with UST. (page 3-9)</p> <p>If the standing trustee must continue a meeting, the standing trustee <u>must</u> announce the continued date to all parties present, advise the UST, if requested, and <u>file a statement</u> specifying the date and time to which the meeting is continued. (pages 3-9 and 3-10)</p> <p>If <u>debtor’s identity cannot be confirmed,</u> or SSN listed on bankruptcy documents <u>cannot be confirmed</u> or is incorrect, the <u>standing trustee must refer</u> the matter to UST. (page 3-11)</p> <p>The electronic recording shall be delivered UST as soon as practicable, <u>unless otherwise instructed by the UST.</u> (page 3-15)</p> <p>When debtor fails to appear under circumstances not excused by the UST, standing trustee <u>must</u> take appropriate action. (page 3-16)</p> <p>The standing trustee <u>must</u> include potential preferential or fraudulent transfer chapter 7 recovery as part of the value of the estate. (page 3-21)</p>

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<p><u>Review of Claims</u></p> <p>Some of the issues a standing trustee should consider when reviewing claims are:</p> <p>g. The standing trustee should object to duplicate claims. (page 6-11)</p> <p>e. The standing trustee <u>should</u> review schedules and compare judgments and liens listed in the schedules to claims that are filed. (page 6-11)</p> <p><u>It may be necessary</u> to review claims of creditors seeking adequate protection payments. (page 6-10)</p> <p>Unless the plan provides otherwise, a post-petition claim for a consumer <u>shall be disallowed</u> if the holder of the claim knew or should have known that prior approval by the standing trustee was practicable and was not obtained. (page 6-12)</p>	<p><u>Review, Posting, and Objection - Generally:</u></p> <p>Some of the issues a standing trustee must consider when reviewing claims are:</p> <p>a. The standing trustee must have a procedure in place to identify duplicate claims and to object <u>or take other appropriate action</u>. (page 3-23)</p> <p>c. The standing trustee <u>must</u> review schedules and compare liens and judgments listed in the schedules and plan to claims that are filed, <u>and take appropriate action</u> to reconcile any discrepancies. (page 3-23)</p> <p>d. The standing trustee <u>must</u> review the claims filed by creditors who have received pre-confirmation adequate protection payments to verify that the claim amount has been reduced by any amount paid by the debtor before confirmation. (page 3-23)</p> <p>Unless the plan provides otherwise, standing <u>trustee must object</u> to a post-petition consumer claim if the holder of the claim knew or should have known that prior approval by the standing trustee was practicable and was not obtained. (page 3-27)</p>

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<p><u>Chapter 13 Debtors Engaged in Business:</u></p> <p>It is <u>advisable</u> for the standing trustee to meet with the debtor and with debtor's counsel, if the debtor is represented, prior to the meeting of creditors or to request that specific documents be brought to the § 341(a) meeting. F (p. 8-3)</p> <p>If the investigation uncovers evidence of fraud, the standing trustee should take appropriate action. (p. 8-4)</p> <p><u>Disbursements:</u></p> <p>Several references to <u>timely</u> disbursements, nothing specific.</p> <p><u>Avoidance Powers:</u></p> <p>As an alternative to a formal recovery action, the standing trustee may reach an agreement with the debtor and debtor's counsel to "cash out" the transfer If the standing trustee "cashes out" such a transfer, <u>the standing trustee should</u> obtain a written agreement from the debtor and transferee/creditor to toll, if possible, the statute of limitations relating to any applicable transfer recovery or lien avoidance action. (page 6-6)</p>	<p><u>Chapter 13 Debtors Engaged in Business:</u></p> <p>The standing trustee <u>must</u> meet with the debtor and debtor's counsel prior to or at the meeting of creditors to examine and review the debtor's business documents and must direct the debtor to bring to the meeting certain documents.(page 3-32.)</p> <p>If the investigation uncovers evidence of fraud, the standing trustee <u>must notify the UST</u> and take appropriate action. (page 3-33)</p> <p><u>Disbursements:</u></p> <p><u>Monthly</u> disbursements to creditors. (page 3-35)</p> <p><u>Avoidance Powers:</u></p> <p>As an alternative to a formal recovery action, the standing trustee may reach an agreement with the debtor and debtor's counsel to "cash out" the transfer.... If the standing trustee "cashes out" such a transfer, <u>the standing trustee should determine whether it is appropriate</u> to obtain a written agreement from the debtor and transferee to toll the statute of limitations relating to any applicable action to recover transfers or avoid liens. (page 3-37)</p>

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<p><u>Discharge of Debtor:</u></p> <p>Debtor may receive a discharge upon completion of the debtor's obligations under the plan. (page 6-12)</p> <p>Standing trustee should object to the debtor's hardship discharge <u>if</u> advisable. (page 6-13)</p> <p><u>Final Reports:</u></p> <p><u>If possible</u>, review of case prior to filing final report should not be conducted by the same staff member who monitored the file during the course of the case. (page 6-12)</p> <p>No equivalent.</p> <p><u>Requirements Pertaining to Depositories:</u></p>	<p><u>Discharge of Debtor:</u></p> <p>Standing trustee <u>must</u> promptly certify to the court when debtor has successfully completed the plan. Certification can be made before or as a part of the final report. Trustee may rely on debtor certification as to DSO. Not responsible for certifying to the court that debtor has completed financial management course. (page 3-38)</p> <p>Standing trustee <u>must</u> object to the debtor's hardship discharge if the debtor does not qualify under the statutory standards. (page 3-39)</p> <p><u>Final Report:</u></p> <p>Review of case prior to filing final report <u>must not</u> be conducted by the same staff member who monitored the file during the course of the case. (page 3-40)</p> <p>If a closed case has to be re-opened, the standing trustee should contact the UST to discuss options. (page 3-40)</p> <p><u>Bank Accounts and Deposit, Investment and Disbursement of Funds:</u></p>

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<p><u>Collateralization Of the Standing Trustee's Deposits</u></p> <p>It is the responsibility of the standing trustee to ensure that the banking institution is in compliance with § 345. (page 9-3)</p> <p><u>Financial Reporting and Record Keeping:</u></p> <p>.</p> <p>Automating the record keeping process will provide greater internal control and efficiency. (page 9-6)</p> <p>No equivalent. (page 9-7)</p> <p><u>Internal Control Features:</u></p> <p>In most operations, standing trustee <u>should consider</u> opening and reviewing the bank statements and canceled checks prior to providing the information to the employee responsible for the bank account reconciliation. (page 9-12)</p>	<p><u>Collateral</u></p> <p>The standing trustee must notify the bank and the UST if a debtor's aggregate interest in the funds on deposit in a single bank exceeds the FDIC insurance limitation so that the bank can provide additional collateralization. The standing trustee also must notify the bank and the UST if the interest in the funds on deposit attributed to the suspense funds or to the expense account exceed the FDIC insurance limitation. (page 4-6)</p> <p><u>Financial Recordkeeping and Reporting:</u></p> <p>Financial records may be kept in either paper or an electronic format. (page 4-7.)</p> <p>A standing trustee's accounting records must be automated. (page 4-8)</p> <p>Periodic debtor report may be sent by electronic mail. (page 4-9)</p> <p><u>Internal Financial Controls:</u></p> <p>Standing trustee <u>must</u> open and review expense account bank statements and canceled checks prior to the bank account reconciliation by other staff. (page 4-11)</p>

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<p>No equivalent.</p> <p>No equivalent.</p> <p>Blank check stock should be consecutively numbered either by the bank or by the standing trustee's software system. (page 9-12)</p> <p>No equivalent.</p> <p>Funds are to be deposited <u>immediately</u> after receipt. (page 9-13)</p> <p>Payers should be instructed to makes checks payable to "Office of Standing Chapter 13 Trustee." (page 9-13)</p>	<p>The trustee must, within thirty days of receipt of the bank statement, notify the depository of any instances of error, forgeries, alterations, or unauthorized signatures. (page 4-12)</p> <p>If the standing trustee chooses to write non-computer generated checks, the standing trustee must review each cleared non-computer generated check. (page 4-12)</p> <p>If there is no pre-printed check number on the front of the check, the checks must contain a control number on the back assigned by the check stock vendor. <u>Log must be maintained.</u> If the check numbers are pre-printed, the standing trustee must <u>maintain a log</u> of those numbers and account for every check. (page 4-13)</p> <p>Returned checks or undeliverable checks written on the trust account which are returned to the standing trustee must, to the extent possible, be voided upon receipt. If not, checks must be logged in, the original secured in a locked place, and the research done from a copy. A person independent of process must review the log. Any check not resolved within five working days must be voided. (page 4-13)</p> <p>Funds must be deposited on a <u>daily</u> basis. (page 4-14)</p> <p>Payers must be instructed to make checks and money orders payable to the standing trustee as "Chapter 13 Trustee." For example, "John Doe, Chapter 13 Trustee." (page 4-14)</p>

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<p>The standing trustee <u>should discourage</u> payments in currency. (page 9-14)</p> <p>The standing trustee <u>must seek UST approval</u> for electronic transfers from debtors. (page 9-14)</p> <p>Positive pay is not required. (page 9-15)</p> <p>All disbursements are to be made by check and are to be recorded in the cash disbursements journal. (page 9-6)</p> <p>No equivalent.</p> <p>If funds are received in a closed case, the standing trustee may not post them to the case. Such funds shall be posted to the suspense account and promptly resolved. (page 9-16)</p>	<p>The standing trustee <u>must not</u> accept payments in currency unless acceptance is unavoidable. (pages 4-14 to 4-15)</p> <p>Standing trustee may obtain debtor payments electronically. (page 4 –15)</p> <p>The standing trustee <u>is required</u> to have positive pay arrangement for all trust accounts on which checks could be written, with the exception of the operating expense account. (page 4-16)</p> <p>Electronic transfers must be initiated by the standing trustee and not by the recipient. Approval of the UST is <u>not</u> required. Procedures for electronic funds transfers should be discussed with the UST (page 4-16)</p> <p>Third parties are not authorized to electronically debit the trust account whether from conversion of actual checks or through a direct authorization to debit. (page 4-17)</p> <p>If funds are received in a case where the final report has been issued, funds may either be posted to a suspense account, <u>posted to the closed case or the case reopened</u>. If funds are posted to closed cases, the standing trustee must run a report monthly that shows all activity in closed cases for that month and have appropriate procedures in place to timely resolve same. (page 4-17)</p>

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<p>Credit Cards: No discussion of personal versus business expenses.</p> <p>Incurring late fees and penalties will result in forfeiture of the credit card. (page 9-16(b))</p> <p><u>Computer Systems:</u></p> <p>No equivalent.</p> <p>User passwords should be changed at least every 90 days. Additional password controls are appropriate for certain functions. (page 9-9)</p> <p>No equivalent.</p> <p>The standing trustee should review user profiles at least annually. (page 9-10)</p>	<p>Credit Cards: Personal expenses cannot be charged to the trust operation credit card. Except for reimbursable travel-related expenses and incidental purchases of goods, trust expenses cannot be charged to a credit card used for personal expenses of the standing trustee.</p> <p>Interest or late fees accrued are not valid authorized expenditures from the expense fund. (page 4-19)</p> <p><u>Computer Systems:</u></p> <p>Standing trustees must select software providers who maintain a reasonable amount of fidelity coverage on employees. (.page 4-20)</p> <p>Requirement to change passwords at least every 90 days applies to system passwords, case administration passwords and other passwords needed for specialized functions. (page 4-21)</p> <p>The standing trustee must ensure that any consultants or vendors with access to live data have had criminal background checks. (page 4-21)</p> <p>Standing trustee must personally review all user profiles at least annually. User profiles must be periodically tested, at a minimum when case administration software is either upgraded or replaced. (page 4-22)</p>

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<p>No equivalent.</p> <p><u>Prohibition of Solicitation of Gratuities, Gifts or Other Remuneration or Thing of Value:</u></p> <p>Neither the standing trustee nor any employee of the standing trustee may purchase assets of the trustee operation. (page 3-7)</p> <p>The standing trustee may not act as agent for companies providing services or products to debtors. Likewise, the standing trustee may not earn commissions or fees for the referral of debtors to debtor schools, to credit counselors or for providing debtor education. (pages 3-7 to 3-8)</p> <p><u>Transmission of Documents:</u></p> <p>Claims should be handled in accordance with FRBP 3002 and 5005 and applicable local rules. (page 3-10)</p>	<p><u>Civil Enforcement and Prevention of Abuse:</u></p> <p>A standing trustee with knowledge of civil fraud or abuse should report those matters to the United States Trustee. (page 5-6)</p> <p><u>Prohibition of Solicitation of Gratuities, Gifts or Other Remuneration or Thing of Value:</u></p> <p>Neither the standing trustee nor any employee of the standing trustee may purchase assets of the trustee operation <u>without written approval of the UST</u>. (page 5-6)</p> <p>Neither the standing trustee <u>nor any employee</u> of the standing trustee may provide services or products targeted to chapter 13 debtors <u>or creditors</u>, except those services provided as a UST approved provider of a personal financial management instructional course. (page 5-6)</p> <p><u>Transmission of Documents:</u></p> <p>Unless otherwise allowed under local rules, original claims and claims dockets must be filed with and maintained by the clerk of court and not the standing trustee. (page 5-11)</p>

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<p><u>Trustee Surety Bonds:</u></p> <p>No equivalent.</p> <p>As soon as the standing trustee becomes aware of an incident which may give rise to a bond claim, the standing trustee must notify the UST and the bonding company. (page 2-2)</p> <p>No equivalent.</p> <p><u>Settlements:</u></p> <p>No equivalent.</p> <p><u>Retention of Records:</u> (page 10-3)</p>	<p><u>Surety and Fidelity Bonds and Insurance:</u></p> <p>The standing trustee must notify the UST immediately if the standing trustee learns that the surety bond or employee fidelity bond is or will be canceled.</p> <p>The standing trustee also must notify the UST immediately if the standing trustee learns of any claim made against the surety bond or employee fidelity bond. ...As soon as the standing trustee becomes aware of an incident which may give rise to a bond or insurance claim, the standing trustee must notify the UST and the bonding or insurance company. (page 5-14)</p> <p>If a standing trustee is sued in his or her capacity as trustee, the standing trustee must notify the UST. (page 5-14)</p> <p><u>Settlements:</u></p> <p>The standing trustee must have the approval of the UST for any settlement decisions that will affect the expense account. (page 5-14)</p> <p><u>Retention of Records:</u></p> <p>Allows for retention in electronic format. Addresses debtor tax returns. (pages 5-15 to 5-16)</p>

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<p><u>Annual and Amended Budgets:</u></p> <p>Budget must be amended when: -increase in employee expenses (except for overtime and benefits relating to overtime); -increase in an employee's salary; -increase in lease payments... (page 9-18)</p> <p>No equivalent.</p> <p>The overall employee benefits package should be no greater than that provided in the community in which the standing trustee's operation is located for similarly sized service businesses. (page 9-20)</p> <p>No equivalent.</p> <p>Standing trustee <u>may request</u> to retain an outside compensation consultant approximately every five years. (page 9-20)</p> <p>Office leases whose terms extend beyond <u>five</u> years are discouraged. (page 9-21)</p>	<p><u>Annual and Amended Budgets:</u></p> <p>Budget must be amended when: b. increase in individual employee salaries, number of positions, hours worked or benefits provided (type or level) d. increase in office square footage... (pages 6-1 and 6-2)</p> <p>The standing trustee should place advertisements when filling new positions or vacancies, conduct interviews and otherwise ensure an open hiring process. (page 6-3.)</p> <p>The overall employee benefits package <u>including leave</u> must be no greater than that provided by similarly sized service businesses in the community in which the standing trustee's operation is located. (page 6-3)</p> <p>Employees whose salaries are in excess of the maximum salary range are not eligible for a cost of living or merit increase. Employees whose salaries are less than the minimum salary range must be raised to the minimum prior to receiving their merit increase. (page 6-3)</p> <p>Standing trustee <u>must</u> retain an outside compensation consultant approximately every five years. (page 6-4)</p> <p>Office leases whose terms extend beyond <u>seven</u> years are discouraged. (page 6-4)</p>

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<p>Reimbursement for meals is authorized if the official travel causes the standing trustee or an employee to be away from the office for more than <u>ten</u> consecutive hours. (page 9-25)</p> <p><u>Monthly Reports:</u></p> <p>The report to the UST must be sent within thirty (30) days after the end of the month. (page 9-7)</p> <p><u>Independent Audits:</u></p> <p>No equivalent.</p>	<p>Reimbursement for meals is authorized if the official travel causes the standing trustee or an employee to be away from the office for more than <u>twelve</u> consecutive hours <u>and the travel is more than 50 miles</u> from the residence or official duty station. (page 6-9)</p> <p><u>Monthly Reports:</u></p> <p>The monthly report, bank statements and <u>four-column bank reconciliations</u> must be sent to the UST within 30 days after the end of each month. (page 7-1)</p> <p><u>Independent Audits:</u></p> <p>UST may approve the use of expense funds by the standing trustee to defend an action brought by an auditor when the UST has decided to terminate an audit services agreement. (page 7-2)</p>