

Twenty-Five Years of Standing Trustee Oversight

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This year marks the 25th anniversary of the nationwide expansion of the United States Trustee Program (Program). During that time, the standing trustee world has seen great changes in the way the Program meets its statutory and regulatory responsibilities and communicates with the standing trustees. I have been fortunate to spend the past 20 years with the Office of Oversight. This article offers my perspective on the changes I have witnessed during these years.

When I first started with the Program in 1992, it had been four years since the nationwide expansion. A number of you may remember that time. It was one of adjustment, with trustees moving from bankruptcy court oversight to that of the Program. The Program was opening offices and developing policies to implement our responsibility to supervise cases and trustees under chapters 7, 11, 12 and 13.

Today, our working relationship with the standing trustees and the NACTT is one of open dialogue and mutual respect. The improved relations we enjoy are the result of hard work and a commitment on both sides to meaningful liaison and open communications. Further, the tools we have to assist the Program in its statutory responsibility to supervise the administration of cases and standing trustees are far more comprehensive.

Handbook for Chapter 13 Standing Trustees

The *Handbook for Chapter 13 Standing Trustees* I was given to read on my first day in 1992 had been in effect for less than a year. It was 35 pages long with another 106 pages of appendices, and much of it was reporting forms and instructions. Its focus was primarily financial; there were no sections on conduct of the meeting of creditors, claims review or other case administration, and very little on internal controls.

The early 1990s marked the start of a renewed focus on standing trustee oversight. The Program developed new policies covering a wide range of topics such as the selection of standing trustees, trustee supervision generally, standing trustee audits, enforcement actions when departures from standards were identified and requirements for financial institutions holding trust funds. In 1993, the Program issued the Standing Trustee Initiatives incorporating these policies and, in 1998, the Initiatives were incorporated into a new *Handbook for Chapter 13 Standing Trustees (Handbook)*. As noted in the “Acknowledgements” section, the new *Handbook* was developed with “valuable assistance and perceptive suggestions” from the standing trustees. The *Handbook* significantly expanded the Program’s guidance concerning the duties of the standing trustee, case administration, and financial and operational policies. The relationships that started during this period facilitated other collaborative efforts that led to improvements in the oversight of case administration, both for the Program and the standing trustees.

The 1998 *Handbook* was rewritten with considerable assistance from the Handbook Working Group, a joint committee of the Program and the NACTT. A number of people provided substantial input, most notably former United States Trustees W. Clarkson McDow, Jr., and Jake Miller, Doreen Solomon (as standing trustee and later as Assistant Director for Oversight) and standing trustee Debra Miller.

The Program's latest update to the *Handbook* became effective in October 2012. It updated policies and formalized changes required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The 2012 *Handbook* includes seven chapters and is more than 100 pages long. Its focus is on appointment and qualifications; administration of cases; financial and operational policies, procedures and reporting; other responsibilities; budgets; and reports, audits and compliance. In addition, it provides a number of supplemental materials. The *Handbook* and supplemental materials are available on the Program's Web site at http://www.justice.gov/ust/eo/private_trustee/library/chapter13/index.htm.

Program Staff Expertise

In the early days, standing trustee oversight was highly decentralized and was basically handled by each of the individual offices. Realizing that this sometimes led to inconsistency in procedures, practices, and oversight, the Program began its move toward a more centralized system of oversight that would promote greater consistency not only within a region, but nationally as well.

Today, there is a standing trustee coordinator in each region. The standing trustee coordinator is the primary point of contact for the standing trustee, the United States Trustee and the EOUST. He or she has extensive knowledge of standing trustee duties and related policies, and is responsible for monitoring adherence to those policies. The Program holds periodic regional standing trustee coordinator conferences to train staff on emerging areas of oversight. Assistant U.S. Trustees and trial attorneys routinely review court filings for novel issues of law.

The Office of Oversight also has evolved in its role, which has allowed us to focus on the bigger picture and more efficiently and effectively consider matters that have a broader impact.

Improvements in Our Working Relationship

The Program's relationship with the standing trustees has continued to grow and strengthen. The Program meets several times a year with the NACTT Liaison Committee. Issues of mutual interest are discussed frankly and with respect. The United States Trustees hold annual meetings with the standing trustees in their regions to provide training and an opportunity to discuss legal and financial questions in the bankruptcy arena. The EOUST leads trustee-only sessions at the annual meeting of the NACTT, providing standing trustees and Program personnel the chance to discuss important issues. In addition, much progress has resulted from joint working groups.

The Handbook Working Group converted the budget form, monthly report form and annual report form into standard Excel spreadsheets that can automatically populate data

between reports. With input from the NACTT, the Program has further streamlined the budget form, which has made evaluation of expenses far more transparent and routine.

In addition, as part of our implementation of BAPCPA, in June 2011 the Program issued a final rule governing administrative review of a decision by the United States Trustee to deny a standing trustee's request for an expense. This rule, codified at 28 C.F.R. § 58.11, formalizes much of what had become the Program's informal process for resolving budget disputes and ensures that the appeal process is fair and effective.

Technology

By the end of the 1990s it was clear that technological advances were changing the way standing trustees would do business in the future. With that, there was increased risk to the trustee operation. Not only were trust funds an asset to protect but trustee data had to be protected from manipulation and from identity theft. As a consequence, the Program and NACTT began to work more closely on technology policies. Our first substantive joint effort led to the 2003 development of the Standing Trustee Alliance for Computer Security (STACS). STACS is offered through the NACTT to help standing trustees improve the security of their computer systems. We also have worked together on other issues including wireless technology and remote access.

Improvements in technology and communications have allowed the standing trustees and Program staff to monitor case administration and financial and operational procedures more efficiently. Standing trustees and Program staff can review case administration data to identify problem areas and monitor progress. This sort of data collection and analysis is replacing the onsite multi-day visits from Program analysts, and thus saving taxpayer money, trustee time and Program staff time.

Conclusion

The Program and the standing trustees have worked very hard to establish our current strong working relationship. The foundation laid by former Director Jerry Patchan and built upon by former Directors Kevyn Orr and Larry Friedman continues to foster the positive exchange of information and ideas between the Program and the NACTT. While the road was not always straight or easy, we have developed a system of oversight in the chapter 13 area that is streamlined, fair and transparent, and that works toward the common goal of ensuring the proper administration of bankruptcy cases.