

U.S. Department of Justice  
Executive Office for United States Trustees

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# Handbook for Chapter 12 Standing Trustees

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# **CHAPTER 1**

## **INTRODUCTION**

## **CHAPTER 1 – INTRODUCTION**

### **A. *PURPOSE***

The United States Trustee appoints and supervises standing trustees and monitors and supervises cases under chapter 12 of title 11 of the United States Code. 28 U.S.C. § 586(b). The Handbook, issued as part of our duties under 28 U.S.C. § 586, establishes or clarifies the position of the United States Trustee Program (Program) on the duties owed by a standing trustee to the debtors, creditors, other parties in interest, and the United States Trustee. The Handbook does not present a full and complete statement of the law; it should not be used as a substitute for legal research and analysis. The standing trustee must be familiar with relevant provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure (Rules), any local bankruptcy rules, and case law. 11 U.S.C. § 321, 28 U.S.C. § 586, 28 C.F.R. § 58.6(a)(3).

Nothing in this Handbook should be construed to excuse the standing trustee from complying with all duties imposed by the Bankruptcy Code and Rules, local rules, and orders of the court. The standing trustee should notify the United States Trustee whenever a provision of the Handbook conflicts with local rules or orders of the court. The standing trustee is accountable for all duties set forth in this Handbook, but need not personally perform any duty unless otherwise indicated. All statutory references in this Handbook refer to the Bankruptcy Code, 11 U.S.C. § 101 et seq., unless otherwise indicated.

This Handbook does not create additional rights against the standing trustee or United States Trustee in favor of other parties.

### **B. *ROLE OF THE UNITED STATES TRUSTEE***

The Bankruptcy Reform Act of 1978 removed the bankruptcy judge from the responsibilities for day-to-day administration of cases.

Debtors, creditors, and third parties with adverse interests to the trustee were concerned that the court, which previously appointed and supervised the trustee, would not impartially adjudicate their rights as adversaries of that trustee. To address these concerns, judicial and administrative functions within the bankruptcy system were bifurcated.

Many administrative functions formerly performed by the court were placed within the Department of Justice through the creation of the Program. Among the administrative functions assigned to the United States Trustee were the appointment and supervision of chapter 12 trustees.<sup>1/</sup> This Handbook is issued under the authority of the Program's enabling statutes.

### **C. STATUTORY DUTIES OF A STANDING TRUSTEE**

The standing trustee has a fiduciary responsibility to the bankruptcy estate. The standing trustee is more than a mere disbursing agent and must be personally involved in the trust operation. If the standing trustee can no longer perform the duties and responsibilities of the position, the standing trustee must immediately advise the United States Trustee. 28 U.S.C. § 586(b), 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b).

The standing trustee's statutory duties are set forth in 11 U.S.C. § 1202, which incorporates by reference some of the duties of chapter 7 trustees found in 11 U.S.C. § 704 as well as those of a Chapter 11 Trustee or Examiner. These duties include, but are not limited to, the following:

1. Be accountable for all property received; [§704(a)(2)]
2. Ensure the debtor shall perform the debtor's intention as specified in section § 521(a)(2)(B) of this title; [§704(a)(3)]

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<sup>1/</sup> 28 U.S.C. § 586(b),(c),(d),(e).



3. If a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper; [§704(a)(5)]
4. If advisable, oppose the discharge of the debtor; [§704(a)(6)]
5. Unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest; [§704(a)(7)]
6. Make a final report and file a final account of the administration of the estate with the United States Trustee and the court; [§704(a)(9)]
7. Perform the duties specified in 1106(a)(3) and 1106(a)(4) of this title if the Court, for cause and on request of a party in interest, the trustee, or the United States Trustee, so orders. Pursuant to this provision, the standing trustee is required to:
  - a. investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan [§ 1106(a)(3)]; and
  - b. once the investigation is completed, file a statement of the investigation [§ 1106(a)(4)(A)].
8. Appear and be heard at any hearing that concerns:
  - a. the value of property subject to a lien [§ 1202(b)(3)(A)];
  - b. confirmation of a plan [§ 1202(b)(3)(B)];

- c. modification of the plan after confirmation [§ 1202(b)(3)(C)]; or
  - d. the sale of property of the estate [§1202(b)(3)(D)].
- 9. Ensure that the debtor commences making timely payments required by a confirmed plan [§ 1202(b)(4)];
- 10. If the debtor ceases to be a debtor in possession, perform the duties specified in the following sections of the Bankruptcy Code:
  - a. 704(a)(8) – reports of operations.
  - b. 1106(a)(1) – perform various duties specified in Section 704.
  - c. 1106(a)(2) – file the list, schedules and statements required under Section 521(i) if the debtor has not done so.
  - d. 1106(a)(6) – for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor’s books and records and the availability of such information.
  - e. 1106(a)(7) – file post-confirmation reports.
  - f. 1203 – exercise the rights and powers formerly granted to the debtor.
- 11. If there is a claim for domestic support obligation (DSO), provide the applicable notice to the holder of the claim and appropriate State child support enforcement agency, as set forth in § 1202(c).

## **CHAPTER 2**

# **APPOINTMENT, QUALIFICATIONS, PERCENTAGE FEE AND COMPENSATION OF THE STANDING TRUSTEE**

## CHAPTER 2 – APPOINTMENT, QUALIFICATIONS, PERCENTAGE FEE AND COMPENSATION OF THE STANDING TRUSTEE

### A. *ELIGIBILITY*

The United States Trustee is authorized by law to appoint one or more individuals to serve as standing trustee in chapter 12 cases. 28 U.S.C. § 586(b). In order to be eligible for appointment as a standing trustee, an individual must possess the qualifications set forth in 28 C.F.R. § 58.4. 28 U.S.C. § 586(d). An individual seeking appointment as a standing trustee must submit an application in a format prescribed by the United States Trustee, and must successfully undergo a background investigation as well as reinvestigation checks conducted every five years. 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b)(1) and 58.3(b)(8).

#### ***Related Provisions:***

28 U.S.C. § 586(b)	UST Appointment of Standing Trustee
11 U.S.C. § 321	Eligibility to Serve as Trustee
28 C.F.R. § 58.3	Qualification for Membership on Panels of Private Trustees
28 C.F.R. § 58.4	Qualifications for Appointment as Standing Trustee and Fiduciary Standards
SF-85P	Questionnaire for Public Trust Positions
DOJ-488	Tax Check Waiver
FD-258	Fingerprint Cards
I-9	Employment Eligibility Verification
DOJ-555a	Disclosure and Authorization Pertaining to Consumer Reports Pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681

### B. *RECRUITMENT AND SELECTION*

When seeking applicants for a position as standing trustee, the United States Trustee will engage in a process of public advertising and outreach to identify persons interested in serving.

Appointments of standing trustees are made by the United States Trustee on a non-discriminatory basis. 28 C.F.R. § 58.5.

The number of standing trustees appointed in any judicial district is determined by the United States Trustee acting in consultation with the Director of the Executive Office for United States Trustees. The assignment of cases to standing trustees is within the discretion of the United States Trustee subject to administrative review as outlined in the Code of Federal Regulations. The standing trustee must be competent to perform the duties of the office as defined by statute, be an able administrator and be able to carry out fiduciary duties free from improper influence or conflict. 28 C.F.R. § 58.4(b) referencing 58.3(b)(4), 28 C.F.R. § 58.6(a)(12).

**Related Provisions:**

28 C.F.R. § 58.5	Non-discrimination in Appointment
28 C.F.R. § 58.6	Administrative Review

**C. STANDING TRUSTEE COMPENSATION AND BENEFITS**

Pursuant to 28 U.S.C. §586(e), the Attorney General fixes a maximum annual compensation for the standing trustee. This maximum compensation, including benefits as a percentage thereof, is fixed on an annual basis after submission and approval of the standing trustee's budget. The maximum allowable compensation is the lesser of:

1. an amount not to exceed the highest rate of basic pay in effect for level V of the Executive Schedule plus cash value of employment benefits;
2. five percent of all payments received under plans; and
3. funds available for compensation (excluding prior year's operating reserve).

The benefit portion of maximum annual compensation is paid to the standing trustee in the form of cash, and is included in the maximum figure set from time to time by the Attorney General.

The maximum annual compensation of a standing trustee, including the benefit cash allowance for a particular fiscal year, is calculated by prorating the compensation level fixed for each portion of the fiscal year. A standing trustee must pay all approved actual and necessary expenses before receiving compensation. 28 U.S.C. §§ 586(b), (e)(1). While unpaid expenses may be carried over to the next fiscal year, unpaid compensation may not. Compensation must be paid with current year revenues. 28 U.S.C. § 586(e)(2). Therefore, no portion of the standing trustee's operating reserve carried forward from the prior fiscal year may be utilized to pay the standing trustee's compensation. The annual compensation, including the cash value of benefits, is payable on a monthly basis after expenses are paid and it may not be paid in advance.

In no event shall the compensation paid to date exceed the prorated share of the maximum amount that any standing trustee could receive pursuant to 28 U.S.C. § 586(e)(1)(A). If the standing trustee does not serve through the end of the fiscal year, and the annual rate of basic pay did not change, the maximum annual compensation due the standing trustee, including the cash value of all employment benefits, shall be calculated based on the number of days the standing trustee served at that rate of basic pay plus the percentage add-on for cash value of benefits. If the annual rate of basic pay did change during the fiscal year, compensation is calculated based on the number of days the standing trustee served at each rate of basic pay in effect during the time period.

The standing trustee is required to issue and file all Internal Revenue Service (IRS) Form 1099's as required by law.

#### ***D. CALCULATION OF PERCENTAGE FEE***

A standing trustee's percentage fee is fixed by the Director of the Executive Office for United States Trustees by delegation from the Attorney General and after consultation with the United States Trustee for the region in which the standing trustee serves. 28 U.S.C. § 586(e). The standing trustee has no authority to negotiate a percentage fee in a particular case or cases that differs from the fee fixed by the Director.

Pursuant to 586(e)(1)(B) the percentage fee in a Chapter 12 case shall not exceed:

10% of payments made under the debtor's plan with respect to payments not exceeding \$450,000; and

3% of payments under the debtor's plan which exceed \$450,000.

The percentage fee is collected from all payments received by the standing trustee under the plan including third party disbursements made pursuant to a plan unless otherwise stated in the Director's notice fixing the percentage fee. All payments received by the standing trustee under the plan may include funds for adequate protection payments made pursuant to court order.

<b><i>Related Provisions:</i></b>
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28 U.S.C. § 586(e)	Trustee Compensation & Percentage Fee
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#### ***E. SURETY BONDS***

The Bankruptcy Code requires the standing trustee to maintain a bond in favor of the United States conditioned on the faithful performance of official duties. 11 U.S.C. § 322. The amount of the bond and the sufficiency of the surety will be determined by the United States Trustee. For a further discussion regarding maintaining and adjusting the required level of bond coverage see Chapter 5, page 5-10.

<b><i>Related Provisions:</i></b>
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11 U.S.C. § 322	Surety Bond
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## **CHAPTER 3**

# **ADMINISTRATION OF CHAPTER 12 CASES**



## CHAPTER 3 - ADMINISTRATION OF CHAPTER 12 CASES

### A. INITIAL REVIEW OF CHAPTER 12 CASES

#### Summary of Standing Trustee Responsibilities

1. Screen each case promptly for conflicts of interest and decline appointment if there is a conflict or lack of disinterestedness.
2. Review each debtor's petition, schedules and initial paperwork for timeliness, completeness and consistency, and verify that the debtor takes corrective action as necessary.
3. Review each debtor's claim of exemptions and object if the exemption improperly decreases the funds available under the liquidation analysis.
4. Review whether each debtor is eligible for chapter 12 and has filed in the proper judicial district and take appropriate action as necessary.
5. Bring motions to dismiss in cases filed by debtors whose multiple filings violate the Bankruptcy Code or indicate "bad faith."
6. Review disclosures by debtor's attorneys and petition preparers and take appropriate action when fees are objectionable or the requirements of law are not followed.
7. If required, review the certificate of credit counseling and take appropriate action if the certificate is missing or is not issued by an approved credit counseling agency.

#### 1. CONFLICTS OF INTEREST

The standing trustee must decline any appointment where the standing trustee has a conflict of interest, lacks disinterestedness, or is an insider. 11 U.S.C. §§ 101, 1202(a). Conflicts of interest include, without limitation, the representation by a standing trustee's firm of a debtor or any party in interest in any chapter 12 case being administered by the standing trustee. 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 the standing trustee. This duty to review for conflicts in assigned cases is ongoing.

To address conflicts of interest, the standing trustee must advise the United States Trustee in writing of any actual or potential conflicts upon becoming aware of them, and disclose any actual or potential conflicts at the meeting of creditors or on the court record, if applicable. Fed. R. Bankr. P. 2008. If the standing trustee discovers a conflict after accepting an appointment, the standing trustee must immediately file a notice of resignation in the case and notify the United States Trustee, who will reassign the case to another trustee. Conflict waivers by either the debtor or a creditor are not effective to obviate the necessity for the trustee to resign.

To the extent that a standing trustee has a large number of resignations due to conflicts, the United States Trustee, with the approval of the Director, may appoint another standing trustee. One ground for termination of the assignment of cases to a standing trustee is "routine inability to accept assigned cases due to conflicts of interest . . . ." 28 C.F.R. § 58.6(a)(12).

If the standing trustee or employee of a standing trustee is otherwise engaged in another occupation, business or practice related to 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 United States Trustee all relevant details of that engagement or affiliation. 28 U.S.C. § 586(b), 28 C.F.R. § 58.4(d)(2).

***Related Provisions:***

11 U.S.C. § 101(14)	Definition of "Disinterested Person"
11 U.S.C. § 101(31)	Definition of "Insider"
28 C.F.R. § 58.6(a)(12)	Termination of Case Assignments

**2. INITIAL REVIEW OF SCHEDULES AND PETITION**

The standing trustee must review the petition, matrix or list of creditors' names and addresses, statements and schedules, and other initial paperwork for consistency and completeness. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(4).

Although the standing trustee has no duty to independently verify the factual accuracy of the debtor's documents, the trustee should exercise sound business judgment when evaluating them. The standing trustee also must verify that the initial paperwork is complete

and internally consistent. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(4).

The standing trustee may move to dismiss if a debtor does not timely file the initial documents and does not file a request for an extension of time. The standing trustee may move to dismiss or take other appropriate action if the debtor's documents are incomplete or do not otherwise substantially comply with the Bankruptcy Code, Rules or local rules. Depending on the factual circumstances of the case, the standing trustee may also ask the court not to dismiss a case on the grounds that the debtor attempted in good faith to file the initial documents and that keeping the case open would serve the best interests of creditors.

***Related Provisions:***

11 U.S.C. § 101(18)	Definition of Family Farmer
11 U.S.C. § 101(19A)	Definition of Family Fisherman
11 U.S.C. § 109	Who May be a Debtor
11 U.S.C. § 521(a)(1)	Debtor's Duty to File Documents and (i)
11 U.S.C. § 1208(c)	Conversion or Dismissal
28 U.S.C. § 1408	Venue
Fed. R. Bankr. P. 1005	Caption of Petition
Fed. R. Bankr. P. 1007	Filing of Schedules
Fed. R. Bankr. P. 1014	Dismissal and Change of Venue

### 3. EXEMPTIONS

The standing trustee must be familiar with the exemptions that can be claimed by debtors. The standing trustee must review all initial claims of exemption and later-filed amendments. If the debtor improperly claims an exemption, the standing trustee must timely file an objection or take other appropriate action. Fed. R. Bankr. P. 4003.

***Related Provisions:***

11 U.S.C. § 522	Exemptions
Fed. R. Bankr. P. 4003	Objections to Exemptions
Fed. R. Bankr. P. 1009	Amendments to Schedules

#### 4. ELIGIBILITY FOR CHAPTER 12

The standing trustee must review the schedules in each case to verify that the debtor is eligible to file for chapter 12, (if applicable) has filed the credit counseling certificate or a certification of exigent circumstances in support of a waiver, and that each debtor has filed the petition in the proper judicial district. 11 U.S.C. § 109, Fed. R. Bankr. P. 1014.

If the debtor is not eligible to be a debtor for the reasons stated in section 109 of the Bankruptcy Code, the standing trustee may move to dismiss or take other appropriate action. If venue is improper, the standing trustee may move to dismiss or take other appropriate action, which may include referral to the United States Trustee. The standing trustee may also file a motion to have debtor's counsel disgorge the compensation received if counsel was responsible for filing the case in an improper venue.

<b>Related Provisions:</b>	
11 U.S.C. § 109	Who May be a Debtor
28 U.S.C. § 1408	Venue 28 U.S.C. § 1412
	Transfer of Venue
Fed. R. Bankr. P. 1014(a)(2)	Dismissal and Change of Venue
Fed. R. Bankr. P. 1016	Death or Incompetency of Debtor

#### 5. MULTIPLE FILINGS

The standing trustee should move to dismiss or take other appropriate action when a debtor files chapter 12 in violation of the Bankruptcy Code bar on filing for 180 days or in violation of a court order. The standing trustee also should take appropriate action whenever multiple filings demonstrate an abuse of the bankruptcy system.

<b>Related Provisions:</b>	
11 U.S.C. § 109(g)	Prohibition on Refiling

## 6. REVIEW OF ATTORNEY AND BANKRUPTCY PETITION PREPARER DISCLOSURES AND PRACTICES

The standing trustee has an independent duty to review documents pertaining to compensation paid or agreed to be paid to the debtor's attorney or bankruptcy petition preparer (BPP) pursuant to the Bankruptcy Code, Rules and local rules. This review is a necessary part of investigating the debtor's financial affairs and claims against the estate. 11 U.S.C. § 329, Fed. R. Bankr. P. 2016, 2017. The standing trustee should exercise discretion and take appropriate action against attorneys when proper disclosure is not made or when fees are unreasonable or otherwise objectionable. Appropriate action may include referral to the United States Trustee.

The standing trustee also must be aware of the requirements imposed by law on petition preparers and should take appropriate action when a BPP does not comply with those requirements. 11 U.S.C. § 110(h). In many districts the appropriate action will be referral of the matter to the United States Trustee.

### ***Related Provisions:***

11 U.S.C. § 110(h)(2)	BPP Duty to Disclose
11 U.S.C. § 329(a)	Attorney Duty to Disclose
11 U.S.C. § 330	Compensation of Debtor's Attorney
Fed. R. Bankr. P. 2016(b)	Duty to Disclose
Fed. R. Bankr. P. 2017	Examining Debtor-Attorney Transactions

## 7. REVIEW OF CERTIFICATE OF CREDIT COUNSELING

If a certificate of credit counseling is required, the standing trustee must review the certificate. 11 U.S.C. § 109(h). If the certificate is missing, not timely obtained, or is not issued by an approved credit counseling agency, the standing trustee should consider the individual facts of the case when determining whether to take any further action. The trustee can refer matters concerning credit counseling certificates to the United States Trustee.

## **B. MEETING OF CREDITORS**

### **Summary of Standing Trustee Duties**

1. Preside at meetings of creditors or with prior written approval of the United States Trustee, designate a trained substitute.
2. Schedule meetings within the statutory time limits, conclude meetings promptly, and give notice of rescheduling and continuances in accordance with local rules.
3. Permit the presence of media representatives, but do not permit electronic recording, television, or photography.
4. Permit creditors who are not attorneys to question the debtor on behalf of the creditor, unless otherwise prohibited by law.
5. Verify the debtor's identity and social security number or other applicable tax identification number.
6. Administer the oath to each debtor individually.
7. Conduct the meeting in an orderly manner; exercise and enforce appropriate demeanor.
8. Examine the debtor thoroughly and permit others to ask questions within the time limits permitted by the meeting schedule.
9. Report a debtor's invocation of the Fifth Amendment to the United States Trustee.
10. Advise individuals with limited English proficiency of free telephone interpreter services; place any interpreter under oath.
11. If debtor has a physical disability, notify the United States Trustee immediately and reasonably accommodate the disabled debtor.
12. Electronically record all meetings, deliver the electronic record to the United States Trustee, and report the meeting as required by local rule or the United States Trustee.
13. Require all debtors to attend the meeting in person unless local rules or United States Trustee procedures permit alternatives in extenuating circumstances; do not otherwise waive the debtor's appearance in person at the meeting.
14. Reschedule the meeting in the absence of the debtor's attorney, unless the debtor agrees to proceed without counsel and other circumstances justify proceeding.
15. Verify that the debtor has complied with tax return obligations.

16. Provide the statutory notice, if required, to DSO holders within a reasonable time after the meeting of creditors but generally no later than one week after the meeting.

***Related Provisions:***

11 U.S.C. § 341	Meeting of Creditors
11 U.S.C. § 343	Examination of the Debtor
11 U.S.C. §1202	Trustee Duties
Fed. R. Bankr. P. 2002	Notices
Fed. R. Bankr. P. 2003	Meeting of Creditors
Fed. R. Bankr. P. 2004	Examination

**1. PRESIDING OFFICER**

The standing trustee, as designee of the United States Trustee, is the presiding officer at the meeting of creditors. The standing trustee may not delegate the duty to preside at the meetings. However, upon prior written approval, the United States Trustee may designate another person to preside. In this event, the standing trustee must ensure that the designated substitute is qualified and trained to conduct the meeting. 11 U.S.C. § 341, 28 U.S.C. § 586(b). Among other qualifications, the designated substitute should have conducted meetings of creditors in the presence of the standing trustee prior to presiding at meetings without the standing trustee.

The standing trustee should periodically review the electronic record of meetings conducted by the designated substitute presiding officer to assure that the meetings are conducted in accordance with the Bankruptcy Code, the Rules and the standing trustee's instructions.

**2. SCHEDULING, NOTICING, RESCHEDULING AND CONTINUANCES**

The standing trustee must work with the United States Trustee and the clerk of the court to ensure the prompt scheduling and noticing of the meeting of creditors within the time provided by Rule 2003. 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 the United States Trustee to explore improved scheduling options.

The meeting must be concluded promptly unless the standing trustee states on the record a reason for not concluding the meeting. 28 U.S.C. § 586(b).

If a meeting must be rescheduled after the notice has been issued, the standing trustee must advise the United States Trustee and request debtor's counsel notify all parties expected to attend the meeting. The standing trustee should be aware of and comply with the local rules and practices governing rescheduling requests and continuances. If the meeting is not concluded, the trustee must so state on the record and announce information regarding the date and time of the continued meeting. Fed. R. Bankr. P. 2003(e).

### **3. MEDIA AND THIRD PARTY RECORDING**

Representatives of the media are permitted to be present at the meeting but may not question the debtors. No one is permitted to electronically record the meeting other than the United States Trustee, the standing trustee or a certified court reporter. No one may televise, make video tapes, or photograph the debtor or any party at the meeting.

### **4. APPEARANCES**

Individuals who represent creditors, but who are not attorneys, may be present and participate in the meeting. Generally, the standing trustee must permit these persons to examine the debtor. 11 U.S.C. §§ 341(c), 343.

<b><i>Related Provisions:</i></b>
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11 U.S.C. § 341(c)      Appearances by Non-attorneys
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### **5. VERIFICATION OF DEBTOR IDENTITY AND SOCIAL SECURITY NUMBER OR OTHER APPLICABLE TAX IDENTIFICATION NUMBER**

At the meeting of creditors, each individual debtor must present original government-issued photo identification and confirmation of the debtor's social security number or tax identification number. The standing trustee must confirm on the record the source and accuracy of the information presented. The standing trustee must not ask the debtor to verbally recite on the record the social security number or



address but should verify both. 11 U.S.C. § 521(h), 28 U.S.C. § 586(b), Fed. R. Bankr. P. 4002.

Any document used to confirm a debtor's identity and social security number must be an original. 11 U.S.C. § 521(h), 28 U.S.C. § 586(b). Acceptable forms of picture identification (ID) include: driver's license, U.S. government ID, State ID, student ID, passport (or current visa, if not a U.S. citizen), military ID, resident alien card, and identity card issued by a national government authority.

Acceptable forms of proof of social security number include: social security card, medical insurance card, pay stub, W-2 form, IRS Form 1099, and Social Security Administration (SSA) Statement. In the discretion of the standing trustee, copies of a W-2 Form, IRS Form 1099, or a recent payroll stub may be accepted.

When debtors state that they are not eligible for a social security number, the standing trustee must inquire further in order to verify identity. 11 U.S.C. § 521(h), 28 U.S.C. § 586(b). In that situation, proof of an Individual Tax Identification Number (ITIN) issued by the IRS for those not eligible for a social security number is acceptable documentation.

If the debtor's identity cannot be confirmed, or the social security number listed on the debtor's bankruptcy documents cannot be confirmed or is incorrect, the standing trustee must refer the matter to the United States Trustee. 28 U.S.C. § 586(b). See the Supplemental Materials for the Notice to United States Trustee of Debtor Identity Problem. Representatives of corporate debtors testifying at the meeting of creditors must produce an original government issued photo identification. The standing trustee should separately verify the tax identification number of the corporation.

## **6. OATH**

The standing trustee must administer the oath to each debtor by asking the debtor to raise his or her right hand and respond affirmatively to the questions seeking an oath or affirmation. 11 U.S.C. § 343, Fed. R. Bankr. P. 2003(b)(1), Fed. R. Evid. 603. The standing trustee shall not administer the oath to debtors collectively. Spouses, however, may be sworn together. Any interpreter must be sworn in accordance with Rule 604 of the Federal Rules of Evidence,

made applicable by Rule 9017. At a telephonic meeting, the oath should be administered by a notary public or a person having the authority to administer the oath, and the person administering the oath should verify the debtor's identification and social security number.

Except as noted above, the presiding officer at the meeting has the authority to administer oaths. There is no requirement that the standing trustee be a notary, or bring a notary to the meeting to administer the oath.

**Related Provisions:**

Fed. R. Evid. 603	Oath or Affirmation
Fed. R. Evid. 604	Interpreters
Fed. R. Bankr. P. 2003(b)	Oath

**7. CONDUCTING THE MEETING**

The scope of the meeting of creditors is broad. The role of the standing trustee at these meetings is to conduct the meeting in an orderly, yet flexible manner, and to provide for a wide range of questions to the debtor as to matters affecting the debtor's financial affairs and conduct. The standing trustee's demeanor toward all parties must be appropriate and professional. During the course of the meeting, the standing trustee must exercise control over the demeanor of the debtors, attorneys, and creditors. 11 U.S.C. § 521(a)(3). Uncooperative or recalcitrant debtors may be reminded of their duty to cooperate with the standing trustee in the administration of the case.

During the meeting, the standing trustee must not give legal advice to debtors or creditors, and must avoid actions which would result in the perception that the standing trustee is a judge or has judicial power. 28 U.S.C. § 586(b).

**Related Provisions:**

11 U.S.C. § 521(a)(3)	Duty of Debtor to Cooperate with Trustee
Fed. R. Bankr. P. 2004(b)	Scope of Examination
Fed. R. Bankr. P. 4002	Duties of Debtor

## **8. QUESTIONS**

The standing trustee must examine the debtor to the extent necessary to determine the existence of assets, the value of property subject to a lien, transfers, exemptions, and other matters. Standing trustees must ask certain required questions listed in the Supplemental Materials. 11 U.S.C. § 343, Fed. R. Bankr. P. 2003(b)(1). After the standing trustee has completed the examination, the standing trustee must inquire if there are any creditors or other parties in interest present who wish to ask questions of the debtor and permit those persons with questions a reasonable amount of time to ask them. 11 U.S.C. §§ 341(c), 343.

Cases requiring more time may be continued temporarily in order to complete the meeting of creditors in more routine cases. A lengthy case should be reconvened at the end of the calendar, or, if necessary, continued to another day. Parties should not be permitted to take more than a reasonable period of time to make inquiries at the meeting. Parties may use discovery, or other means, such as examination provided under Rule 2004, to obtain more detailed information.

## **9. INVOCATION OF FIFTH AMENDMENT BY THE DEBTOR**

If during the meeting, the debtor asserts the fifth amendment privilege against self-incrimination, the standing trustee should proceed with the questions. The standing trustee must make a record of each question, even if the debtor asserts the privilege. Fed. R. Bankr. P. 2003(c). A debtor may not make a blanket assertion of the privilege, but must refuse to answer each particular question when it is posed, so that the bankruptcy court can determine whether the privilege is justified, or whether the debtor can be compelled to answer one or more of the questions. At the conclusion of the questioning, the standing trustee must continue the meeting and inform the United States Trustee. 28 U.S.C. § 586(b).

The United States Trustee will, if appropriate, advise the United States Attorney of the debtor's assertion of the privilege. Authority to seek immunity on behalf of the debtor rests with the United States Attorney and only the district court can grant the request.

If the standing trustee obtains an order compelling the debtor to testify, or if the debtor is granted immunity, but still refuses to answer the questions, the standing trustee may seek other relief as appropriate.

***Related Provisions:***

11 U.S.C. § 343	Examination of the Debtor
11 U.S.C. § 344	Self-incrimination; Immunity

## **10. LANGUAGE INTERPRETERS**

Individuals with limited English proficiency (“LEP”) may seek assistance in order to participate in the meeting of creditors. The standing trustee must advise LEP individuals of free telephone interpreter services offered by the United States Trustee for the purposes of the meeting or that they may choose, at their expense, a qualified interpreter to assist them. 28 U.S.C. § 586(b). Individuals are not required to notify standing trustees in advance of their meeting if they wish to use the service. Standing trustees should not treat LEP individuals differently based on their need for an interpreter and should not use this information to move an LEP individual’s case to the end of the docket. The standing trustee and the standing trustee’s employees may not serve as interpreters. The LEP individual may not use family members, friends, the debtor’s attorney or the attorney’s employees, unless telephone service at the meeting site is not available. Any interpreter must be placed under oath in accordance with Rule 604 of the Federal Rules of Evidence, as incorporated by Rule 9017. The standing trustee should complete the Interpreter Usage Report form following each meeting of creditors in which the service is utilized. See the Supplemental Materials. 28 U.S.C. § 586(b).

## **11. DISABILITY OF DEBTOR**

When the standing trustee becomes aware of a debtor’s physical disability, such as a hearing impairment, that interferes with the debtor’s ability to attend or participate in a meeting, the standing trustee should notify the United States Trustee. 28 U.S.C. § 586(b). The United States Trustee, in consultation with the debtor and the standing trustee, shall determine the reasonable accommodation to be made.

## 12. RECORD OF MEETING

All meetings must be electronically recorded using equipment provided by, or purchased with the approval of, the United States Trustee. The standing trustee is responsible for ensuring parties speak clearly and that the meeting is properly recorded. The electronic recording shall be delivered to the United States Trustee as soon as practicable after the conclusion of the meeting, unless otherwise instructed by the United States Trustee. Fed. R. Bankr. P. 2003(c).

Depending upon the requirements of the United States Trustee, the standing trustee may be required to complete a record of the proceeding, such as a minute sheet. A copy should be filed promptly with the United States Trustee and with the Clerk of the Bankruptcy Court, if the clerk so requests. The standing trustee should retain a copy.

<b><i>Related Provisions:</i></b>
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Fed. R. Bankr. P. 2003(c)      Record of Meeting
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## 13. NON-ATTENDANCE BY DEBTORS

The debtor must attend the meeting of creditors. This is true even if no creditors attend. Neither the standing trustee nor the United States Trustee may waive the requirement for the appearance of the debtor at the meeting. When spouses have filed jointly, the Bankruptcy Code requires both debtors to attend the meeting. 11 U.S.C. § 343, Fed. R. Bankr. P. 2003(b), Fed. R. Bankr. P. 4002.

The United States Trustee is to be contacted if there are extenuating circumstances that make the debtor unable to appear in person. These circumstances may include military service, illness, disability, or incarceration. The standing trustee must comply with these rules and requirements. Americans with Disabilities Act, Soldiers and Sailors Relief Act, 28 C.F.R. § 58.6(a)(3). The United States Trustee will work with the standing trustee to provide alternative means of conducting the meeting.

Alternatives to the debtor's attendance at the meeting in person may include a telephonic meeting or video conference under oath as approved by the United States Trustee. See Declaration Regarding Administration of Oath and Confirmation of Identity and Social Security

Number in the Supplemental Materials. Written interrogatories may be used only in extreme circumstances where telephone and video alternatives are not possible.

When a debtor fails to appear under circumstances not excused by the United States Trustee, the standing trustee must take appropriate action, including:

- a. Continuing the meeting to another calendar date and notifying the United States Trustee, if requested, of the new date;
- b. Filing a motion to dismiss or convert the case; or
- c. Following other appropriate procedures as required by the United States Trustee.

11 U.S.C. § 343, Fed. R. Bankr. P. 2003(b), Fed. R. Bankr. P. 4002.

#### **14. NON-ATTENDANCE BY ATTORNEYS**

If a debtor's attorney fails to appear at the meeting, the standing trustee may either continue the meeting or proceed with questioning the debtor. Generally, the better practice is to continue the meeting. In some circumstances, it may be appropriate to proceed, but the standing trustee should only do so if local law and applicable rules of professional conduct in the jurisdiction clearly permit examination of the debtor outside the presence of the debtor's attorney.

The unjustified failure of an attorney to appear at the meeting warrants a standing trustee's motion under 11 U.S.C. § 329(b) to compel a refund of the fees. Repeated unjustified failure to appear should be reported to the United States Trustee.

#### **15. TAX RETURNS**

The debtor is required to provide to the standing trustee not later than seven days before the date first set for the meeting of creditors a copy of the Federal income tax return required under applicable law (or at the debtor's election, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case

and for which a Federal tax return was filed. The standing trustee must have appropriate procedures in place to verify that the debtor has timely submitted the returns. 11 U.S.C. §§ 521(e)(2).

If the standing trustee retains the tax returns of the debtor, appropriate procedures must be in place to comply with the United States Trustee directives as to the retention of tax returns. Program guidelines for control of tax returns are found in the Supplemental Materials.

<b><i>Related Provisions:</i></b>
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11 U.S.C. § 521(e)(2) Debtor's Duties: Submitting Recent Tax Returns
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## **16. NOTICE TO DOMESTIC SUPPORT OBLIGATION HOLDERS**

The standing trustee must provide the two statutorily required written notices to the holder of a DSO claim and the appropriate State child support enforcement agency. 11 U.S.C. §§ 1202(b), 1202(c). The first notice to a DSO claim holder advises of the right to payment in the bankruptcy case, the right to use the collection services of the State child support enforcement agency of the State where they reside, and the contact information for the agency. At the same time, a notice is sent to the agency providing them with the claim holder's contact information. While the Bankruptcy Code is silent on the timing of the first required notices, the standing trustee should send these notices generally no later than a week after the meeting of creditors is held. However, if the information is otherwise available to the standing trustee, the standing trustee may send the notices at any time prior to the meeting of creditors.

The standing trustee must send the second required notice to the DSO claim holder and the State child support enforcement agency when a discharge is granted. This notice must contain the debtor's last known address, the last known name and address of the debtor's employer, as well as contact information for certain creditors whose claims were either reaffirmed or not discharged. 11 U.S.C. § 1202(c). The notices shall be sent within a reasonable period of time following the granting of the debtor's discharge. If the case is closed by the standing trustee while an applicable section 523 dischargeability action is pending against the debtor, the standing trustee shall send the discharge notice and include the name of the creditor, with a notation that an

action to determine the dischargeability of the creditor's claim is pending.

In order to assist State child support enforcement agencies in identifying debtors with DSOs, the standing trustee must include the debtor's full Social Security number on those notices going to the State child support enforcement agency, except where prohibited by State law or regulation. The debtor's full Social Security number must not be included on the notices going to the DSO claim holder. 28 U.S.C. § 586(b). If the standing trustee chooses to file the notice with the court, the standing trustee must ensure that the first five digits of the debtor's Social Security number are redacted from the notice. Fed. R. Bankr. P. 9037.

**Related Provisions:**

11 U.S.C. § 1202(c)	Notices of Domestic Support Obligations
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**C. REVIEW AND CONFIRMATION OF PLAN**

**Summary of Standing Trustee Duties**

1. Verify that debtors file plans timely and that plans and modifications conform to the legal requirements for confirmation.
2. Review the liquidation analysis provided in each plan.
3. Conduct a disposable income analysis in each case and object as appropriate if all projected disposable income is not committed to make payments to unsecured creditors under the plan.
4. Conduct a feasibility review in each case and object as appropriate to confirmation if the plan is not feasible.

**1. FILING OF A PLAN**

The standing trustee must have appropriate procedures in place to verify that debtors timely file plans, or have moved to extend the deadline for cause shown. 11 U.S.C. § 1221, Fed. R. Bankr. P. 3015.



The standing trustee must be familiar with the requirements regarding the contents and confirmation of a chapter 12 plan. 11 U.S.C. §§ 1222, 1225. The standing trustee may object to confirmation of the plan or take other appropriate action, when the proposed plan or modified plan clearly fails to meet confirmation requirements.

The standing trustee also must be familiar with case law and the statutory requirements regarding the permissible and required length of plan payments and the date on which the term of the plan begins to run. 11 U.S.C. §§ 1222.

The Bankruptcy Code provides that the standing trustee shall appear and be heard at any hearing concerning confirmation of a plan.

***Related Provisions:***

11 U.S.C. §1202(b)(3)(B)	Duty of Trustee to Appear At Confirmation Hearing
11 U.S.C. § 1221	Filing of a Plan
11 U.S.C. § 1222	Contents of a Plan
11 U.S.C. § 1223	Pre-confirmation Modification
11 U.S.C. § 1224	Confirmation Hearing
11 U.S.C. § 1225	Confirmation of a Plan
11 U.S.C. § 1227	Effect of Confirmation
11 U.S.C. § 1229	Post-confirmation Modification
Fed. R. Bankr. P. 3015	Plans

**2. LIQUIDATION ANALYSIS**

The court may only confirm a plan if the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 on such date. The standing trustee must review a liquidation analysis of real and personal property prior to confirmation or modification of a plan. 11 U.S.C. § 1225(a)(4). Liquidation value is determined by subtracting allowed exemptions and claims secured by the debtor's property, along with expenses allowed under § 506 of the Bankruptcy Code, from the value of the debtor's property. Depending upon controlling law in the jurisdiction, hypothetical costs of sale and capital gains tax may also be deducted. The standing trustee may base the liquidation analysis on property values disclosed by the debtor in the schedules and other documents, on values the standing

trustee anticipates may be proven at the confirmation hearing, or on values obtained by testimony at the meeting of creditors.

If a potential preferential or fraudulent transfer has been disclosed or is discovered, the standing trustee must include the anticipated chapter 7 recovery as part of the value of the chapter 12 estate. Denial of improper claims of exemption and invalid or unperfected liens also must be considered. Plan payments to unsecured creditors must equal or exceed the amount they would receive in a chapter 7 liquidation. 11 U.S.C. § 1225(a)(4).

<b>Related Provisions:</b>	
11 U.S.C. § 1225(a)(4)	Liquidation Analysis

### 3. DISPOSABLE INCOME TEST

The standing trustee must be familiar with controlling law and precedent in the jurisdiction defining disposable income and allowable expenses. If the plan fails to meet the requirements of the disposable income test, the trustee should object as appropriate if the debtor does not commit all projected disposable income toward plan payments to unsecured creditors. 11 U.S.C. § 1225(b).

<b>Related Provisions:</b>	
11 U.S.C. § 1225(b)	Disposable Income Test

### 4. FEASIBILITY TEST

The court is required to determine that the debtor will be able to make all payments proposed under the plan and to comply with the plan. The standing trustee must make an independent judgment regarding feasibility, based upon the information provided by the debtor in the schedules and other documents, and object as appropriate under controlling law and precedent in the jurisdiction. 11 U.S.C. § 1225(a)(6).

<b>Related Provisions:</b>	
11 U.S.C. § 1225(a)(6)	Feasibility Test

## **D. CLAIMS**

### **Summary of Standing Trustee Responsibilities**

1. Review claims promptly and object when claims are untimely, improperly documented, improperly classified, or are duplicates.
2. Not make plan payments to creditors who do not file claims, or file untimely claims, except as permitted by controlling law in the jurisdiction.
3. Verify that claims are properly classified in the plan and permit separate classification only as permitted by controlling law in the jurisdiction.
4. Allow and make payments on post-petition claims only as permitted by the Bankruptcy Code or as provided in the plan.
5. Move for subordination of a claim only in rare circumstances.

#### **1. REVIEW OF CLAIMS**

The Bankruptcy Code requires the standing trustee to examine proofs of claim and object to the allowance of any claim that is improper if a purpose would be served. Accordingly, the standing trustee must verify that claims are proper with respect to timeliness of filing, dollar amount and supporting documentation. The standing trustee must review the actual proofs of claim and make an independent determination of classification and amount of the claim. The standing trustee also must review, and if appropriate, object to nonpriority unsecured claims if the plan proposes a distribution to nonpriority unsecured creditors. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(5), 11 U.S.C. §§ 506, 1222.

Some of the issues a standing trustee must consider when reviewing claims are:

- a. The standing trustee must have a procedure in place to identify duplicate claims and to object or take other appropriate action. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(5).
- b. The standing trustee must verify that the proper interest rate is paid on claims. 11 U.S.C. §§ 506(b), 511.

- c. The standing trustee must review schedules and compare liens and judgments listed in the schedules and plan to claims that are filed, and take appropriate action to reconcile any discrepancies. 28 U.S.C. § 586(b).
- d. The standing trustee must 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. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(5).
- e. The standing trustee must review secured and unsecured claims for appropriate documentation, accuracy and timeliness. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(5).

<b><i>Related Provisions:</i></b>	
11 U.S.C. § 502(b)	Allowance of Claims
11 U.S.C. § 1202(b)(1)	Duty to Review Claims (§ 704(a)(5))

## 2. FILING AND TIMELINESS OF CLAIMS

A proof of claim must be filed in order for an unsecured creditor to take part in the distribution process in a chapter 12 case. Fed. R. Bankr. P. 3002(a). A proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). However, a proof of claim filed by a governmental unit will be timely if filed not later than 180 days after the order for relief. 11 U.S.C. § 502(b)(9), Fed. R. Bankr. P. 3002(c)(1). Courts are divided as to whether a secured creditor must file a proof of claim. Therefore, the standing trustee must follow controlling legal authority in the jurisdiction as to payment of secured creditors who have not filed claims.

If a creditor does not timely file a proof of claim, the standing trustee or debtor may file a claim on behalf of the creditor within 30 days after the expiration of the time for filing claims set forth in Fed. R. Bankr. P. 3002(c). However, given that sufficient information to allow the filing of an accurate claim is often lacking, the standing trustee ordinarily should not file a claim on behalf of a creditor. As an alternative, the

standing trustee may provide notice that will alert the debtor to consider filing claims on behalf of non-filing creditors so as to obtain the full benefits available to the debtor from a chapter 12 filing.

**Related Provisions:**

11 U.S.C § 502 (b)(9)	Untimely Claims, Tax Claims
Fed. R. Bankr. P. 3001	Proof of Claim
Fed. R. Bankr. P. 3002	Filing Proof of Claim or Interest
Fed. R. Bankr. P. 3004	Filing Claims by Debtor or Trustee

**3. CLASSIFICATION OF CLAIMS**

The standing trustee must be familiar with controlling law and precedent in the jurisdiction regarding classification of claims and object to such classification if a purpose would be served.

**4. SUBORDINATION OF CLAIMS**

The standing trustee may obtain a court order subordinating certain claims to other claims for purposes of distribution. Subordination may be based upon an agreement, or upon principles of equitable subordination. Generally, equitable subordination requires misconduct on the part of the creditor that has injured the debtor or conferred an unfair advantage to the creditor. The standing trustee should bring motions for subordination only in rare circumstances when the general body of creditors would benefit, the legal grounds for subordination are clear, and it would be difficult for the debtor or another creditor to bring the action.

**Related Provisions:**

11 U.S.C. § 510	Subordination of Claims
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## **E. EMPLOYMENT OF ATTORNEYS AND OTHER PROFESSIONALS**

### **Summary of Standing Trustee Duties**

1. A standing trustee may employ outside attorneys or other professionals as an expense of the trust only upon approval of the United States Trustee.
2. Legal defense of a standing trustee or employee of a standing trustee personally as an expense of the trust operation is subject to a determination by the United States Trustee that the conduct complained of is within the scope of the standing trustee's official duties and that defense of the allegation is an actual and necessary expense of the trust operation.

#### **1. EMPLOYMENT OF PROFESSIONALS**

The standing trustee may employ an outside attorney, consultant, or other professional as an expense of the trust operation for a special purpose only upon approval of the United States Trustee. A request for approval for a special purpose must include the amount, terms and conditions of employment, a copy of any proposed written agreement, an explanation as to why the services are not capable of being handled by staff employees, and, if applicable, the reason the expense would not more appropriately be borne by an individual estate through service of a professional employed under 11 U.S.C. § 327. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(2).

Disclosure in a standing trustee annual or amended budget is considered a request for approval of employment of an outside professional to represent the trustee in routine matters in the same manner as a staff attorney. A standing trustee seeking to employ outside counsel may redact from any written agreement submitted to the United States Trustee any information regarding the legal theories or assessments of the case.

## **2. LEGAL DEFENSE**

When the standing trustee requests approval to employ an attorney to defend the standing trustee or an employee personally as an expense of the trust operation, the request needs to contain the following additional information: (a) a detailed summary of the facts surrounding the challenged conduct, (b) copies of relevant documents, and (c) a budget describing the legal services to be performed with the anticipated cost of the services.

A standing trustee employing an attorney as an expense of the trust operation to defend the standing trustee or an employee personally will be required to submit to the United States Trustee a quarterly status report of the standing trustee or trustee's counsel. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586(b). Continuing approval of the employment is contingent on the United States Trustee's determination that the conduct complained of appears to have been performed within the scope of the standing trustee's official duties, and that defense of the allegation is an actual and necessary expense of the trust operation.

Defense or prosecution of an action by or against the United States Trustee is personal to the standing trustee and does not constitute an actual and necessary expense of administering a standing trustee's cases.

### **F. PLAN PAYMENTS**

The standing trustee must have in place procedures to verify that debtors timely commence plan payments. 11 U.S.C. § 1202(b)(4). In most cases the standing trustee will receive plan payments directly from the debtor or from the debtor's employer via a wage order.

The standing trustee must also have in place controls to identify cases in which the debtor is delinquent in plan payments. Standing trustees can monitor case delinquencies through the use of periodic reports. The standing trustee must move for dismissal or conversion or take other appropriate action throughout the life of a case in which the debtor is significantly delinquent in payments. 11 U.S.C. § 1208(c). Early and accurate identification of problem cases and prompt action by the standing trustee is essential.

**Related Provisions:**

11 U.S.C. § 1226(a)	Commencement of Plan Payments
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**G. DISBURSEMENTS****Summary of Standing Trustee Duties**

1. Disburse a debtor's plan payments in accordance with the Bankruptcy Code, and other controlling authority in the jurisdiction.
2. Properly classify and pay creditors' claims in accordance with the debtor's plan.
3. Detect and recover erroneous disbursements.

**1. DISBURSEMENTS**

The standing trustee must retain debtor payments until confirmation, unless otherwise ordered by the court or otherwise required by law or local rule. If the plan is confirmed, the standing trustee must distribute payments in accordance with the plan as soon as practicable. 11 U.S.C. § 1226(a).

If the case is dismissed or converted pre-confirmation, the standing trustee must return to the debtor any funds on hand, after deducting § 503(b) claims to the extent allowed by court order and the percentage fee fixed for the standing trustee serving in the case. If the case is dismissed or converted post-confirmation, the standing trustee must distribute any funds on hand in accordance with controlling law of the jurisdiction. 11 U.S.C. § 1226(a). Courts are divided on the issue of the disposition of funds if the case is converted to chapter 7. The standing trustee must follow legal authority in the jurisdiction, or seek a court order regarding disposition of the funds.

**Related Provisions:**

11 U.S.C. § 524(i)	Failure of Creditor to Credit Payments
11 U.S.C. § 1226	Plan Payments



## 2. CLASSIFICATION AND PAYMENT OF CLAIMS

The standing trustee must have procedures in place to properly classify and pay creditors' claims in accordance with the debtor's plan. 11 U.S.C. § 1226(c).

## 3. ERRONEOUS DISBURSEMENTS

The standing trustee must have a procedure in place to detect and recover erroneous disbursements. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586(b).

The standing trustee must first attempt to recover the erroneous disbursement from the party and must have documented reasonable efforts to recover the disbursement. If unsuccessful, the standing trustee must determine whether the erroneous disbursement is less than the deductible on the standing trustee's errors and omissions policy. If the amount is less than the deductible, the standing trustee must request authorization from the United States Trustee to use funds from the expense account. If the amount is greater than the deductible, the standing trustee must consult with the United States Trustee on the appropriate course of action. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586(b).

## H. EXERCISE OF AVOIDANCE POWERS

### Summary of Standing Trustee Duties

1. Be familiar with the avoidance powers granted to the standing trustee by the Bankruptcy Code.
2. Pursue avoidance actions in appropriate cases, or, in the alternative, obtain a tolling agreement preserving the standing trustee's rights.

## 1. AVOIDANCE POWERS

A fundamental goal of the Bankruptcy Code is to ensure equality of distribution among creditors of the same class. The standing trustee must be familiar with the powers provided to the debtor-in-possession

and the standing trustee by sections 544-553 of the Bankruptcy Code and insure that they are utilized to avoid unequal treatment among creditors.

<b><i>Related Provisions:</i></b>
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11 U.S.C. §§ 544 - 553	Trustee Avoidance Powers
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## **2. STANDING TRUSTEE RESPONSIBILITY**

The standing trustee must exercise business judgment to determine whether it is appropriate to pursue avoidance actions. 11 U.S.C. §§ 544-553. Courts are divided as to whether the debtor has authority to file avoidance actions. Furthermore, the debtor may have no incentive to pursue a preference or fraudulent transfer action, as, for example, when the debtor has made transfers to relatives or friends.

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, by which the debtor agrees that the value of the transfer will be factored into the liquidation analysis and the disposable income test. If the standing trustee "cashes out" such a transfer, the standing trustee should determine whether it is appropriate 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. If the "cash out" agreement should fail, the tolling agreement may preserve the standing trustee's rights to pursue avoidance actions. In addition, if the case is subsequently converted, the tolling agreement may preserve the rights and powers of a successor trustee to proceed with an avoidance action.

Generally, any action brought by the standing trustee to recover money or property pursuant to an avoiding power is brought as an adversary proceeding and governed by Rule 7001. The standing trustee does not need court approval to pursue such an action. If it is necessary to employ outside counsel to pursue avoidance actions, employment must be approved by the bankruptcy court pursuant to section 327, with the cost of counsel to be borne by the estate rather than from the standing trustee's expense account. 11 U.S.C. § 327, 28 U.S.C. § 586(b).

## ***I. DISCHARGE OF DEBTOR***

<b>Summary of Standing Trustee Duties</b>
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- |                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"><li>1. Certify promptly to the court when the debtor has successfully completed the plan.</li><li>2. Object to an application for a hardship discharge in cases where the debtor is not eligible.</li><li>3. Provide the statutory second notice, if required, to DSO holders.</li></ol> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### **1. ELIGIBILITY FOR DISCHARGE**

The standing trustee must promptly certify to the court in accordance with local rules or practice that the debtor has successfully completed the plan. 11 U.S.C. § 1228.

### **2. HARDSHIP DISCHARGE**

A debtor may apply for a “hardship” discharge before completing payments under the plan, at any time after the confirmation of the plan, but only if:

- a. the debtor’s failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- b. the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- c. modification of the plan under § 1229 is not practicable.

A hardship discharge is not as broad as a standard chapter 12 discharge. It is equivalent to the discharge received by a chapter 7 debtor.

The standing trustee must review applications for hardship discharges and must object if the debtor does not qualify under the statutory standards. 11 U.S.C. § 1228(b).

### 3. SECOND NOTICE TO DOMESTIC SUPPORT OBLIGATION HOLDERS

The standing trustee must send a second notice to a DSO claim holder and the State child support enforcement agency when a discharge is granted. The second notice must contain the following information: the last known address of the debtor, the last known name and address of the debtor's employer; and the name of each creditor that holds a claim that was not discharged or reaffirmed. 11 U.S.C. § 1202(c).

<b><i>Related Provisions:</i></b>	
11 U.S.C. § 1202(c)	Notices of Domestic Support Obligations
11 U.S.C. § 1228	Chapter 12 Discharge
Fed. R. Bankr. P. 1007(b)(7)	Filing of Statements

### J. FINAL REPORT

The standing trustee must file a final report promptly after review of the administration of the case and after all checks have cleared. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(9). Generally, the final report is to be filed within 150 days of the last disbursement in the case. The standing trustee must serve the report on the debtor, the debtor's attorney and the United States Trustee, unless the United States Trustee has requested otherwise. Fed. R. Bankr. P. 5009.

The standing trustee must have procedures in place for the review of each case prior to filing the final report to ensure that the case has been administered properly and all claims have been paid according to the plan. 11 U.S.C. § 1226(c). This review must be conducted by the standing trustee or a staff member who has not monitored the file during the course of the case. 28 U.S.C. § 586(b).

Subject to Rule 1019, the standing trustee must not file a document giving the final accounting of receipts and disbursements and requesting a discharge of the trustee's duties until all checks relating to the case have cleared the bank. 28 U.S.C. § 586(b). However, the standing trustee may have in place a procedure that certifies to the

court that a debtor has completed payments under the plan before the final accounting is completed.

Section 347(a) of the Bankruptcy Code requires the standing trustee to stop payment on any check remaining unpaid ninety days after the final distribution and pay the unclaimed funds to the court. 11 U.S.C. § 347, Fed. R. Bankr. P. 3011. In some jurisdictions, the court may allow or require standing trustees to reissue final disbursement checks. The standing trustee should consult with the United States Trustee before implementing such a procedure.

The standing trustee must use the Chapter 12 Standing Trustee's Final Report and Account form. 28 U.S.C. § 589b, 28 C.F.R. § 58.7. This form is available on the Program website at [www.justice.gov/ust](http://www.justice.gov/ust). The Uniform Form cannot be altered.

If a closed case has to be re-opened, the standing trustee should contact the United States Trustee to discuss options available.

<b><i>Related Provisions:</i></b>
11 U.S.C. § 1202(b)(1)      Final Report (adopting § 704(a)(9))

## **CHAPTER 4**

# **FINANCIAL AND OPERATIONAL POLICIES, PROCEDURES AND REPORTING REQUIREMENTS**

## **CHAPTER 4 – FINANCIAL AND OPERATIONAL POLICIES, PROCEDURES AND REPORTING REQUIREMENTS**

The requirements in this chapter are designed to ensure the standing trustee has procedures in place to protect the property the standing trustee receives from the debtor, primarily plan payments. The general authority for the United States Trustee requirements is 28 U.S.C. § 586(b) and the United States Trustee's interpretation of 11 U.S.C. § 704(a)(2) as made applicable to standing trustees by 11 U.S.C. § 1202(b).

### **A. BANK ACCOUNTS AND DEPOSIT, INVESTMENT AND DISBURSEMENT OF FUNDS**

#### **1. BANKS**

The standing trustee must deposit all receipts in a banking institution that:

- a. is insured by the Federal Deposit Insurance Corporation;
- b. complies with the requirements of the Bankruptcy Code and guidelines of the United States Trustee; and
- c. is approved by the United States Trustee to hold deposits of bankruptcy estate accounts.<sup>2/</sup>

The standing trustee must disclose to the United States Trustee the identity of each banking institution in which the standing trustee has an account. 11 U.S.C. § 345.

#### **2. DEPOSIT, INVESTMENT, AND DISBURSEMENT OF FUNDS**

The standing trustee must deposit all funds to the appropriate bank account promptly upon receipt. The standing trustee must not deposit any funds received into the standing trustee's business, personal, or law firm trust accounts. 11 U.S.C. § 345.

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<sup>2/</sup> To be approved by the United States Trustee, the banking institution must execute a Uniform Depository Agreement.

All interest bearing funds held by the standing trustee shall yield the maximum reasonable net return, taking into account the safety of the deposit or investment, the services provided by the bank, and other requirements of the Bankruptcy Code and this Handbook.

Funds deposited in any standing trustee account may not be transferred or withdrawn in cash or for any personal use of the standing trustee or the staff.

The standing trustee must assist the United States Trustee in obtaining bank records, documents and information related to the standing trustee's accounts. The standing trustee must provide an authorization for the bank's release of information to the United States Trustee (See "Release" in the Supplemental Materials). 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b)(7).

### **3. BANK ACCOUNTS**

The standing trustee must have a pre-confirmation trust account, a post-confirmation trust account, and an operating expense account. The pre-confirmation and post-confirmation trust account may be combined into a single bank account provided that the standing trustee can adequately distinguish between pre- and post-confirmation funds.

#### **a. Pre-confirmation Trust Funds**

Pre-confirmation trust funds may not be deposited in an interest bearing account unless authorized by the United States Trustee. Authorization will be given only if (i) the standing trustee's accounting system is able to accurately allocate the interest earned by each debtor's account, (ii) the standing trustee refunds all earned interest to a debtor if a debtor's case is dismissed or converted prior to confirmation, (iii) the standing trustee transfers interest allocated to each debtor's account to the operating expense account only upon confirmation, and (iv) the standing trustee issues an IRS Form 1099 to debtors receiving interest refunds of \$10 or more.



If the standing trustee maintains a separate pre-confirmation trust account, when the plan is confirmed the standing trustee must transfer the plan payments made by the debtor or on the debtor's behalf (debtor payments) to the post-confirmation trust account, and transfer any interest earned on those debtor payments to the operating expense account.

If the case is dismissed prior to confirmation, the plan payments and any interest earned will be refunded to the debtor after deducting the trustee's percentage fee (computed on plan payments only) and any section 503(b) award. The percentage fee and any section 503(b) award to the trustee are to be transferred to the operating expense account after all other section 503(b) awards have been paid.

**b. Post-confirmation Trust Funds**

The standing trustee must make all disbursements under confirmed plans from the post-confirmation trust account. All interest earned by the account must be transferred to the operating expense account at least monthly. If the standing trustee maintains a separate post-confirmation trust account, the standing trustee must transfer the debtor payments to the pre-confirmation trust account if the case is unconfirmed. Transfer must be done on a regular basis, and no less than monthly.

**c. Operating Expense Account**

The standing trustee must deposit all percentage fee income, interest income, 503(b) awards to the trustee and other receipts not deposited in the pre- or post-confirmation accounts into the operating expense account. The standing trustee must pay all compensation, operating expenses, and payments to the United States Trustee System Fund out of the operating expense account. The standing trustee may not use the operating expense account for deposit or payment of any funds unrelated to the administration of the standing trustee's chapter 12 cases.

**Related Provisions:**

11 U.S.C. § 345	Money of Estates
11 U.S.C. § 1226(a)	Payments

**B. BANK REQUIREMENTS****1. GENERAL PROVISIONS**

A standing trustee may deposit funds in a banking institution only if the bank agrees to the terms set forth below. If a bank holding a standing trustee's funds fails to comply with any of these terms, the standing trustee must promptly notify the United States Trustee and move the funds to a bank that complies with these terms.

- a. Provide monthly bank statements in paper form to the standing trustee and quarterly bank balance reports to the United States Trustee.
- b. Provide canceled checks with the monthly bank statements. Canceled checks may be in the form of: (1) the canceled original checks; (2) canceled substitute checks; (3) electronic images of both the front and back of each canceled check; or (4) any combination thereof. Electronic images of canceled checks must be presented using one of two methods: (1) unalterable CDs, with the front and back of the canceled checks segregated by account, or (2) on paper with no more than four checks (front and back, eight images total) per statement page. Electronic images of canceled checks in paper form must be printed on paper that is identifiable as coming from the depository, for example paper containing the depository's logo.
- c. Provide an annual statement detailing any personal financial relationship with the standing trustee and certifying that the standing trustee has not and will not

receive favorable treatment inuring to the personal benefit of the standing trustee.

- d. Comply with the collateral requirements more fully described in the following section on Collateral. 11 U.S.C. § 345.
- e. Provide the United States Trustee with the standing trustee's bank records on request of the United States Trustee, and with written authorization of the standing trustee. See "Release" in the Supplemental Materials.

<b><i>Related Provisions:</i></b>
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12 U.S.C. §§ 5001-5018	Check Clearing For the 21 <sup>st</sup> Century Act
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## **2. COLLATERAL**

A standing trustee may deposit funds only in a banking institution that agrees to collateralize all chapter 12 funds on deposit in excess of the FDIC insurance limitation. 11 U.S.C. § 345. For purposes of the FDIC limitation, unless the United States Trustee approves an exemption, the standing trustee must aggregate the funds of individual debtors in the commingled trust accounts. 12 C.F.R. § 330. The United States Trustee will approve the exemption from aggregation only if the United States Trustee receives the following written assurances:

- a. The financial institution must provide written evidence that its deposit account records specifically disclose the existence of a fiduciary relationship. Words such as "trust account" or "trustee" must be used. To verify that account records continue to reflect the existence of a fiduciary relationship, the depository institution shall be required to provide an affidavit to the United States Trustee on an annual basis. 12 C.F.R. § 330.5.
- b. The standing trustee must provide written evidence that records are maintained in the regular course of business which reflect the interest of each debtor in the commingled

funds deposited to the trust accounts and that each of the respective interests is less than the FDIC insurance limitation. Although all funds for a particular debtor will ordinarily be maintained in one account and in a single financial institution, a standing trustee may occasionally hold debtor funds in multiple accounts or in a certificate of deposit. To ensure the FDIC insurance limit is not exceeded, the United States Trustee also must be able to ascertain from the standing trustee's records, the amount and location of all funds held on account for each estate, including funds deposited into separate trust accounts or certificates of deposit. The FDIC insurance limit applies per financial institution to the interest of each single debtor even if the debtor's funds are in more than one account. While there is no prescribed way to provide the written evidence, it is preferable that the standing trustee maintain a computer generated report which identifies each case and the amount held on account for the case, and demonstrates that the report has been reconciled with the last monthly bank statement(s). 12 C.F.R. § 330.13.

- c. The standing trustee must notify the bank and the United States Trustee 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 United States Trustee if the interest in the funds on deposit attributed to the suspense funds or to the expense account exceed the FDIC insurance limitation. 11 U.S.C. § 345.

The financial institution may post a surety bond in lieu of collateralizing chapter 12 accounts. The bond must be approved by the United States Trustee. 11 U.S.C. § 345.

If the bank fails to comply with the collateral requirements of the Bankruptcy Code as well as the requirements more fully detailed in this Handbook, or fails to enter into the most recent "Uniform Depository Agreement" between the bank and the United States Trustee, the United States Trustee shall notify the standing trustee.

If the bank fails to provide the United States Trustee with any bank records, documents, and information related to the standing trustee's accounts on request of the United States Trustee after receiving the standing trustee's written consent, the United States Trustee shall notify the standing trustee.

<b><i>Related Provisions:</i></b>	
11 U.S.C. § 345	Money of Estates
12 C.F.R. § 330	Deposit Insurance Coverage

## **C. FINANCIAL RECORD KEEPING AND REPORTING**

### **1. GENERAL CHARACTERISTICS**

The standing trustee's financial record keeping and reporting system must reflect accurately the results of the operation. The systems must have the following characteristics:

- a. Financial records must be updated timely and separately reflect each day's activities. The records must show the financial position as of a certain date.
- b. Financial records must be stored in secure facilities. Records must be protected from fire and natural disaster.
- c. Subsidiary records must be reconciled periodically with general ledger account balances.
- d. The financial record keeping system must allow the standing trustee or auditor to trace and verify transactions.
- e. The financial record keeping system must facilitate preparation of internal reports that will assist the standing trustee in the performance of duties.

- f. Financial records may be kept in either paper or an electronic format.

## **2. ACCOUNTING RECORDS**

A standing trustee must maintain the following accounting records:

- a. General Ledger - the central detailed record of the trustee=s business accounts. The general ledger contains the accounts that make up the entity's financial statements. Separate accounts exist for individual assets, liabilities, fund balance, revenue, and expenses.
- b. Subsidiary ledger B a group of related accounts that total to the amount of a control account. Example: the control account would be "funds on hand". The subsidiary account will be an individual debtor account. The total of all individual debtor accounts will agree to the total "funds on hand" (control account).
- c. Cash Receipts Journal – list of all funds received including funds from or on behalf of debtors and funds from creditors.
- d. Cash Disbursements Journal – list of all disbursements from the trust accounts.
- e. Individual Case Cash Receipts and Disbursements Ledgers – listing of receipts and disbursements in each individual debtor’s account.
- f. Fixed Asset Register (Inventory) – a subsidiary account listing all items of property which exceed \$500 in cost and have a useful life of more than one year. Upon disposition of assets, the standing trustee must delete items from the register and identify their disposition. All assets must be listed and identified. The standing trustee must submit a copy of the Fixed Asset Register to the United States

Trustee as of the end of each fiscal year with the Annual Report.

### **3. ACCOUNTING REPORTS**

#### **a. Final Reports**

Subject to Rule 1019, the standing trustee must promptly file a final report and account for each chapter 12 debtor after final distribution and after all checks relating to the case have cleared the bank. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(9). Generally, the final report should be filed within 150 days of the last disbursement in the case. The standing trustee must use UST Form 101-12-FR-S. 28 U.S.C. § 589b, 28 C.F.R. § 58.7.

The report must show the total of all receipts from the debtor and total disbursements made to each creditor by the standing trustee during the reporting period. 28 U.S.C. § 589b.

#### **b. Periodic Debtor Reports**

The standing trustee must mail, at least annually, to the debtor and debtor's attorney, a report showing all receipts from the debtor and all disbursements made during the reporting period. The report also must show the amount of undistributed funds on hand. This report may be sent by electronic mail. The standing trustee must maintain a copy of these reports or certify to the United States Trustee that the reports have been sent. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(7), 28 C.F.R. § 58.4(b) incorporating 28 C.F.R. § 58.3(b)(7).

### **D. INTERNAL FINANCIAL CONTROLS**

The standing trustee must be actively and personally involved in establishing and maintaining a system of internal controls to safeguard trust funds and property, to ensure the integrity of financial records, and to discourage employee theft.

The system of internal controls must include at least the following components:

## **1. PERSONNEL MANAGEMENT**

The standing trustee must actively supervise employees in the performance of their cash management and accounting duties. If the standing trustee has three or more full-time employees, the standing trustee must have written employee job descriptions and document routine staff procedures. The standing trustee must maintain and review records of employee's time and attendance and must document paid overtime.

## **2. SEGREGATION OF DUTIES**

To the extent possible, the standing trustee must assign employees tasks in only one of the following categories of job duties: (1) physical control over assets, i.e., handling of receipts, returned checks or any other item than can be reduced to cash; (2) bookkeeping, i.e., posting or accumulating either computer or manual records and transactions; or (3) reconciling account records and transactions, i.e., bank reconciliations, suspense accounts, etc.

As much as is practicable, the standing trustee must arrange duties of the trustee operation so that no one person is responsible for any transaction from beginning to end:

- a. The standing trustee must be actively involved in the process of issuing all checks, authorizing stop payments, and reviewing the reconciliation of bank statements.
- b. When small staff size precludes segregation of duties, the standing trustee must be actively involved in that duty.
- c. Whenever possible the standing trustee must separate cash handling duties from record keeping and reconciliation functions.



- d. Whenever possible, employees involved in the preparation of trust and expense disbursement checks must not be involved in the mailing process.
- e. Whenever possible, employees involved in processing returned disbursement checks must not be involved with initial check authorization, preparation, or bookkeeping.
- f. Whenever possible, employees involved in the reconciliation process must not have check disbursement responsibilities.
- g. The standing trustee must open and review expense account bank statements and canceled checks prior to the bank account reconciliation by other staff.
- h. When a check printer or facsimile check signing machine is used, the standing trustee must establish procedures designed to overcome the absence of direct signer involvement. Procedures might include sole control of the signature cartridge or signature plate by the standing trustee, or restricting access to check printing. The standing trustee must have a procedure in place to secure or lock the signature cartridge, plate, chip or machine. When the trustee signature is embedded in the case software, the standing trustee needs to control all unused checks, such as by maintaining a log and comparing to a listing of all checks written and the positive pay file.
- i. The standing trustee must not use a signature stamp for the signing of checks or other negotiable instruments.

### **3. MONITORING BANK ACCOUNTS AND CHECK STOCK**

#### **a. Reconciliation**

The standing trustee must reconcile checks and deposits into and out of all trust, expense and other bank accounts monthly.

Both the preparer and reviewer must initial and date the reconciliations. Any unusual entries on the bank statements must be investigated. Bank account reconciling items requiring correction must be resolved timely. 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. 12 U.S.C. § 5006. Reconciliations must be reviewed and approved by the standing trustee and approval indicated by initials or the signature of the standing trustee.

If the standing trustee chooses to write non-computer generated checks, the standing trustee must review each cleared non-computer generated check.

In addition, the standing trustee must reconcile the total of the balances in the individual debtor ledgers with the trust account balances per the bank statements. This reconciliation must be conducted monthly.

**b. Blank Check Stock**

Blank check stock must be kept in a safe or locked file cabinet or room with restricted access to prevent unauthorized access and use. 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. The standing trustee must maintain a log of those control numbers and account for every check. If the check numbers are pre-printed, the standing trustee must maintain a log of those numbers and account for every check.

**c. Returned Checks Written on Trust Account**

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 the standing trustee determines that the extra work involved in reissuing checks is more significant than the risk posed by maintaining live checks in the office, the check must be logged in, the original secured in

a locked place, and the research done from a copy. Disposition of the check must be noted on the log. A person independent of this process must periodically review the log. Any check not resolved within five working days must be voided.

Voided checks must be maintained in an electronic or paper format in a separate file and be processed by an individual uninvolved with initial check preparation and authorization.

**d. Outstanding Checks**

Checks that are allegedly lost, have been outstanding for more than 90 days (stale-dated) or checks returned by the post office (i.e., for an inadequate address or some other reason) must be processed by an individual uninvolved with initial check preparation and authorization. A check must be voided and the cause of the problem researched and corrected before the check is reissued. The standing trustee must maintain documentation to verify the efforts undertaken.

**4. RECEIPTS**

Upon receipt, checks and money orders must be recorded in the cash receipts log or alternatively documented in a manner approved by the United States Trustee. Checks must be restrictively endorsed in writing or by stamping "For deposit only to \_\_\_\_\_." Currency and checks must be kept in a safe or locked cabinet until deposited. Funds must be deposited on the date of receipt, to the extent practical, but no later than one business day after receipt.

All receipts must be logged when received, copied, deposit tickets prepared and funds deposited on a daily basis. Incoming receipts must be opened and logged under dual control or the trustee must have some other acceptable procedure in place. Deposits must be reconciled with the cash posting in a timely manner.

If the standing trustee uses a bank lockbox service, the lockbox agreement must protect the standing trustee against bank employee theft. If the lockbox service also includes a file of receipts that may be

loaded to cases on the standing trustee's system, the file sent from the lockbox service must be reviewed for accuracy before the new data is accepted into the case administration software.

Payers must be instructed to make checks and money orders payable to the standing trustee as "Chapter 12 Trustee." For example, "John Doe, Chapter 12 Trustee."

## **5. CURRENCY**

The standing trustee must not accept payments in currency unless acceptance is unavoidable. If the standing trustee cannot avoid accepting currency, the following procedures apply:

- a. The standing trustee must provide a pre-numbered receipt to the payer and immediately deposit the funds in the account.
- b. If it is not possible to deposit funds immediately, because the standing trustee uses a remote bank, immediately convert the currency to a cashier's check or money order and place it in a secure location until deposited.
- c. If currency is received late in the day and it is impossible or impractical to follow the above procedures, secure the funds in a safe or locked drawer until the next business day when these procedures can be carried out. The standing trustee also may want to investigate the possibility of using the bank's night depository or 24 hour services if the bank is not in a remote location.
- d. All supporting documentation should be retained to provide an audit trail.

## **6. ELECTRONIC TRANSFER OF DEBTOR PAYMENTS**

The standing trustee may obtain debtor payments electronically. Electronic transfers may be initiated by the standing trustee, debtor or the debtor's employer.

The standing trustee must have procedures in place to ensure that debtor payments and other receipts are properly identified to the debtor's case.

Electronic transfers initiated by the standing trustee must be pursuant to a prior agreement with the debtor. The standing trustee must have procedures in place to address disputed, returned or NSF transfers.

## **7. POSITIVE PAY**

The standing trustee is strongly encouraged to have a positive pay arrangement or a reverse positive pay arrangement for all trust accounts on which checks could be written, with the exception of the operating expense account.

## **8. DISBURSEMENTS**

Except as provided below, all checks must state that the check will be void if not cashed within 90 days. Stale outstanding checks must be canceled and reissued within 120 days.

Electronic transfers must be initiated by the standing trustee and not by the recipient. Procedures for electronic funds transfers should be discussed with the United States Trustee. The standing trustee must institute internal controls to provide an audit trail.

Third parties are not authorized to electronically debit the trust account whether from conversion of actual checks or through a direct authorization to debit with the following exception. The bankruptcy court may electronically debit the trust account for payment of court fees and unclaimed funds to creditors. Specific procedures should be discussed with the United States Trustee.

## **9. MAINTAINING DEBTOR ACCOUNTS**

The standing trustee should periodically monitor the debtor accounts to identify and resolve negative balances on hand in a case. Action to cure negative balances must be commenced by the standing trustee within 60 days of discovery.

The standing trustee must ensure that available funds on hand equals receipts less disbursements on each debtor account. The software system must provide a method to identify individual debtor accounts where this condition does not exist. This report must be run monthly and corrections made timely.

If funds are received in a case where the final report has been issued, they may either be posted to a suspense account, posted to the closed case or the case may be reopened. 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.

## **10. SUSPENSE ACCOUNTS**

The standing trustee may use a suspense account for the deposit of unidentified receipts and funds received in cases where the final report has been issued. If after a minimum of twelve months, the source of the receipts remains unidentified, the standing trustee must request written approval from the United States Trustee to transfer these receipts to the expense fund. The written request should include a description of the steps the standing trustee has taken to try to identify the source of the funds and an acknowledgement that expense funds may have to be transferred to the trust account if the source is later determined. Other uses of the suspense account should be rare.

The standing trustee is required to monitor and reconcile the suspense account on a monthly basis.

## **11. MANAGEMENT REPORTS**

The standing trustee must review the accounting system and case ledgers for the following on a monthly basis:

- a. Balances over \$100,000 – identifies cases with balance on hand in excess of \$100,000.
- b. Activity in closed cases – identifies any activity in cases where the final report has been issued.
- c. Negative balances – identifies cases which have disbursed more than funds available.
- d. Suspense account reconciliation - identifies total receipts and disbursements to be reviewed in conjunction with reconciliation.
- e. Large checks – identifies all disbursement checks over an amount specified by the standing trustee.

In addition, at least annually, the standing trustee must reconcile the number of cases which are open, filed, dismissed, converted, transferred or closed with the records of the Bankruptcy Clerk's office.

## **12. USE OF CREDIT CARDS**

The standing trustee may obtain a credit card to be used solely for purchases of budgeted items that are actual and necessary to the trust operation provided that the standing trustee maintains documentation that will provide the auditor and the United States Trustee upon request, with the detail for each purchase. Personal expenses cannot be charged to the trust operation credit card. Any checks received from the credit card company are to be destroyed and no cash advances obtained. All credit card bills are to be paid in full each billing cycle unless there is an item in dispute or prior written approval from the United States Trustee is received. A reasonable annual fee

for the credit card is allowable. However, any interest or late fees accrued are not valid authorized expenditures from the expense fund.

The standing trustee may use a credit card routinely used for personal expenses only for reimbursable travel-related expenses and incidental purchases of goods. A request for reimbursement, with appropriate documentation, must be submitted promptly.

## **E. COMPUTER SYSTEMS**

### **1. COMPUTER SYSTEM SECURITY**

The system must require that passwords be unique and be changed at least every 90 days. The password of a terminated user should be changed immediately. This requirement applies to system passwords, case administration passwords and other passwords needed for specialized functions, such as transmitting positive pay files. Requirements for ECF and PACER passwords should be determined locally.

The standing trustee must install or use firewalls, virus protection or other appropriate devices or software to safeguard the computer system from unauthorized access and outside threats.

The standing trustee must back up the computer server weekly and the data files daily. A copy of the backup should be stored in a secured location offsite weekly.

The computer should be physically safeguarded from unauthorized access and use. Computer hardware and software should be in a secure, limited access area.

Hard drives of all laptops must be encrypted. The encryption tool must meet industry standards such as the most current Federal Information Processing Standard (FIPS). Mobile storage media (for example, USB thumb drives) or the files on them must be encrypted.

The standing trustee must ensure that any consultants or vendors with the ability to change live data have had criminal background checks.



## **2. COMPUTER SOFTWARE SECURITY**

Standing trustees must have a set of rules governing the use of the standing trustee's computer system by employees. These rules should explain the employee's responsibilities as a user and the penalties for noncompliance and should include policies for employees regarding Internet access, personal use of the computer, personal email and personal instant messaging. All employees must sign the policy acknowledging receipt of these rules of behavior and an understanding of their responsibilities. A sample policy statement is found in the Supplemental Materials.

## **3. REMOTE ACCESS SECURITY**

The standing trustee must not allow remote access to the trustee's computer system (including the Internet or wireless Local Area Networks (LANs)) unless the standing trustee has taken appropriate steps to ensure that the remote connection is secure. A Virtual Private Network (VPN) is recommended. Only trustee-owned laptops and storage media should be used remotely. The trustee should consider retaining a computer security consultant to review the proposed remote access solution and verify that it meets industry security standards which generally include:

- a. A VPN solution that authenticates remote users and encrypts network communications to the trustee's office network.
- b. A VPN solution that supports two factor authentication and uses the most current FIPS compliant encryption module.
- c. A service that is installed on a dedicated server (such as a VPN appliance) along with an appropriately configured firewall.
- d. Separate user accounts and passwords for VPN access and the trustee's computer systems access.

- e. The inability of users to change or set security or access rights to trusted systems remotely.

## **F. CASE ADMINISTRATION SOFTWARE**

The standing trustee must automate the chapter 12 financial reporting, accounting, case administration, and reporting systems as outlined in this Handbook.

### **1. SELECTION OF COMPUTER SOFTWARE PROVIDER**

The Standing Trustee is encouraged to use a computer software provider rather than rely on devices such as electronic spreadsheets. There are a number of private companies that offer software specifically designed for chapter 12 trust operations. The United States Trustee does not endorse or recommend any particular computer software or service provider. Any software provider selected by the standing trustee must comply with the requirements in the Handbook.

Standing trustees must select software providers who maintain a reasonable amount of fidelity coverage on employees. The fidelity coverage may be in the form of a commercial crime policy that includes employee fidelity coverage or may be a separate blanket position fidelity bond. The provider must furnish proof of coverage upon request.

### **2. SYSTEMS DOCUMENTATION AND OPERATIONAL MANUAL**

The standing trustee or software provider must provide and maintain a series of instructions for processing routine transactions. The documentation should be capable of instructing new users of the operation of the software system.

### 3. COMPUTER SOFTWARE SECURITY

The standing trustee must ensure that the computer system used for chapter 12 case administration software contains the following security measures, at a minimum:

- a. The software must be capable of producing a list or record of computer users which contains the permissions granted each user (user profile) in the accounting software. The standing trustee must personally review all user profiles listing permissions granted each user at least annually to ensure that the access is consistent with duties and internal controls. User profiles must be periodically tested, at a minimum when case administration software is either upgraded or replaced.
- b. The software must be capable of identifying the user, and must be capable of limiting by password or data entry controls a user's access or a user's ability to change data to those employees who have a need for access to these fields.
- c. The software must contain a tamper-proof feature that consecutively numbers checks as they are printed. The software must prohibit the reuse of check numbers. The number sequence on manual checks must not duplicate the computer-generated numbers.
- d. The software must not allow the deletion of transactions.
- e. The software must provide an audit trail for all deletions or changes.
- f. The software must automatically produce "exception reports," "kick out reports," "trace reports" or "error reports" which are designed to identify any deletions and errors in data entry. The standing trustee must review these reports to ensure the integrity of data processed.

- g. The software must maintain a record of all changes to the case administration software. This data must be retrievable electronically and be able to be sorted by user ID, case number or transaction type.

## **G. SECURITY AND PERSONAL SAFETY CONSIDERATIONS**

Participants in the bankruptcy system run the unfortunate risk of becoming the target of threats, violence or other crimes. As a result, the standing trustee must take all reasonable measures to insure the safety and security of employees, debtors, creditors and other persons involved in chapter 12 cases.

All security concerns must be taken seriously, and prudent countermeasures must be implemented in consultation with the United States Trustee. The United States Marshals Service, local police departments and other law enforcement agencies will frequently assist in providing a security threat assessment upon request.

### **1. SAFETY OF OFFICE AND EMPLOYEES**

The standing trustee should take reasonable measures to ensure the safety and security of employees and others involved in chapter 12 cases. Unauthorized access from public areas to secure areas of the office may be controlled by deadbolt locks, punch locks or similar devices. Visitors should not be cleared into secure areas of the office until the identity of the staff member that they wish to see and the purpose of their visit has been ascertained, and clearance from the staff member in question has been obtained.

Standing trustees should have a written security plan that addresses emergency evacuation and procedures for responding to bomb threats, severe weather, and other threatening conditions. The standing trustee should provide staff members with phone numbers for police, fire, and medical emergencies, and must make employees aware of the nearest fire alarm. If the standing trustee receives threats to disrupt meetings, hearings, or other office activities, the standing trustee should consult with the United States Trustee and other appropriate authorities immediately to determine the best course of

action. The standing trustee may request authority to employ a private security guard to maintain order.

## **2. SAFETY AND SECURITY**

All cases, files, paper and computer records, when not in use, should be stored in secure facilities, and not accessible to the public.

## **3. DUTY TO REPORT INTRUSIONS**

The standing trustee is required to report to the United States Trustee if the standing trustee becomes aware of an intrusion into the office or into the computer system regardless of loss.

## **4. DUTY TO REPORT LOSS OR POTENTIAL LOSS OF PERSONALLY IDENTIFIABLE INFORMATION (PII)**

The standing trustee is required to report to the United States Trustee the loss or potential loss of personally identifiable information (PII), including loss or potential loss arising from the theft of paper files, personal computers, laptops, personal digital assistants (PDAs), and removable drives such as USB flash drives and CD-ROMs. The Program has adopted the definition of PII used by the Office of Management and Budget (OMB) which defines PII as “[i]nformation which can be used to distinguish or trace an individual’s identity, such as their name, social security number or biometric records, etc. alone, or when combined with other personal or identifying information, which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.” Information that is not generally considered PII, because many people share the same information, includes: first or last name, if common (like Smith or Jones); country, state or city of residence; age (especially if not specific); sex or race; name of school a person attends or workplace; and grades, salary, or job position. However, when multiple pieces of information of this type are brought together, they may uniquely identify a person, therefore, even non-PII kinds of data must be protected from loss.

The standing trustee must report any loss or potential loss of PII to the United States Trustee upon discovery even though the standing trustee may have limited information about the extent of the loss at that time. The standing trustee must provide updates to the United States Trustee as further information is obtained and apprise the United States Trustee of the standing trustee's proposed course of action.

Once the standing trustee has identified the scope of the loss or potential loss, the standing trustee must promptly determine the appropriate course of action and the level of notification required to affected individuals, the resources needed, and any appropriate remedial actions. Some of the risk factors that the trustee may use to determine the appropriate response are: sensitivity of the data lost; amount of data lost and number of individuals affected; likelihood data is usable or may cause harm; likelihood the data was intentionally targeted; strength and effectiveness of security technologies protecting data; nature of the data (operational or personal); and ability of the trustee to mitigate the risk of harm.

The standing trustee must notify law enforcement officers and insurance carriers as appropriate.

The determination of the appropriate level of notification provided to affected individuals should take into consideration the risk the data loss poses to the individuals. At a minimum, the standing trustee must notify the affected individuals if the loss involves full social security numbers, or banking, credit card or other financial PII. The standing trustee must also review state law to determine if there are state law requirements that govern notifications to affected individuals. Examples of non-state specific notification letters can be obtained from the United States Trustee.

The standing trustee must take appropriate actions to mitigate the risk of further losses. The action to be taken will depend largely on the circumstances of the breach. If the office was broken into, for example, all locks and user and operating system passwords should be changed. If a laptop was stolen from an unlocked car, the standing trustee must make sure employees know that equipment or removable

media are to be secured at all times and any PII data is to be encrypted. The standing trustee should consider requiring employees to complete courses on safeguarding personal information and computer security awareness.

## **5. DISASTER RECOVERY**

The standing trustee must develop and maintain a written office disaster recovery plan for the financial and administrative records, as well as for the computer system and data. Off-site storage of backup files for all critical records should be maintained in the event of natural disaster or physical damage to the premises.

## **CHAPTER 5**

# **ADDITIONAL STANDING TRUSTEE RESPONSIBILITIES**



## CHAPTER 5 – ADDITIONAL STANDING TRUSTEE RESPONSIBILITIES

### A. **DUTY TO REPORT AND REFER SUSPECTED CRIMINAL ACTIVITY**

#### 1. DUTY

The standing trustee is often in the best position to initially identify fraud or criminal activity in chapter 12 cases. The United States Code requires a standing trustee to refer suspected violations of Federal criminal law to the appropriate United States Attorney. A similar duty is imposed on the United States Trustee by 28 U.S.C. § 586(a)(3)(F).

#### ***Related Provisions:***

18 U.S.C. § 3057	Referral of Suspected Crimes
28 U.S.C. § 586(a)(3)(F)	Duty of United States Trustee to Refer Suspected Crimes

#### 2. REFERRAL PROCEDURE

When criminal activity is suspected, it is important that the standing trustee and the United States Trustee coordinate efforts in the criminal referral process. The mechanics of criminal referrals should be discussed with the United States Trustee. Depending upon local practice, a standing trustee may be asked to submit any referral to the United States Attorney through the United States Trustee or furnish a copy to the United States Trustee. 18 U.S.C. § 3057.

The standing trustee should provide as much specific factual and documentary information as possible in a criminal referral. To the extent the information is available, the referral should ordinarily include:

- a. the bankruptcy case name, file number and chapter;

- b. a chronological summary including dates and specific facts related to the who, what, where, when and how of the suspected crime;
- c. a brief narrative of what occurred in relation to each allegation referring to copies of relevant documents;
- d. an estimate of the amount of loss involved;
- e. names, addresses, phone numbers, titles, and descriptions of all persons involved; and
- f. copy of all documents relevant to the allegations.

### **3. BANKRUPTCY CRIMES**

The most common bankruptcy crimes are set forth in 18 U.S.C. §§ 152 - 157.

#### **a. Concealment of Assets; False Oaths and Claims; Bribery**

Section 152 of title 18 makes it a crime for any individual to “knowingly and fraudulently” (1) conceal property; (2) make a false oath or account in relation to a bankruptcy case; (3) make a false declaration, certification, verification or statement in relation to a bankruptcy case; (4) make a false proof of claim; (5) receive a material amount of property from the debtor with intent to defeat the Bankruptcy Code; (6) give, offer, receive or attempt to obtain money, property, reward or advantage for acting or forbearing to act in a bankruptcy case; (7) transfer or conceal property with the intent to defeat the Bankruptcy Code; (8) conceal, destroy, mutilate or falsify documents relating to the debtor’s property or affairs; or (9) withhold documents related to the debtor’s property or financial affairs from the standing trustee or other officer of the court.

**b. Embezzlement**

Section 153 of title 18 is specifically directed to the standing trustee or other officer of the court and relates to the knowing and fraudulent misappropriation, embezzlement or transfer of property, or destruction of any estate document, by the standing trustee or other officer of the court. Agents, employees or other persons engaged by the standing trustee are also covered by the statute.

**c. Adverse Interest and Conduct of Officers**

Section 154 of title 18 also is specifically directed to the standing trustee or other officer of the court and prohibits a standing trustee or other officer of the court from knowingly purchasing, directly or indirectly, any property of the estate of which such person is a trustee or officer; or the knowing refusal to permit a reasonable opportunity for the inspection of estate documents or accounts when directed by the court to do so. The statute also specifically identifies the United States Trustee as the only party in interest who does not require a court order directing the standing trustee or court officer to permit a reasonable opportunity for inspection.

**d. Fee Arrangements**

Section 155 of title 18 makes it a crime for any party in interest or the attorney of a party in interest to knowingly and fraudulently enter into an agreement with another party in interest or their attorney, for the purpose of fixing the fee or compensation to be paid to them for services rendered in connection therewith, from assets of the estate.

**e. Knowing Disregard of Bankruptcy Law or Rule**

Section 156 of title 18 makes it a misdemeanor if a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a "bankruptcy petition preparer" in any manner to disregard the requirements of the Bankruptcy Code or the Rules. A bankruptcy petition preparer does not include a debtor's

attorney or an employee of such attorney, but applies to a person who prepares for compensation a document for filing by a debtor in bankruptcy court or district court. 11 U.S.C. § 110. While bankruptcy petition preparers are not commonly used by debtors in chapter 12, there are “farm consultants” or other similar entities that may act as petition preparers.

**f. Bankruptcy Fraud**

Section 157 of title 18 is similar to the Federal mail fraud and wire fraud statutes in that it requires a person to devise or intend to devise a scheme or artifice to defraud. A person commits bankruptcy fraud if, for the purpose of executing or concealing this scheme or artifice to defraud, that person:

1. files a petition under title 11;
2. files a document in a proceeding under title 11; or
3. makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title.

Persons other than the debtor may commit bankruptcy crimes. During the course of the administration of the estate, the standing trustee also may become aware of potential theft or embezzlement by professionals (e.g., appraisers, auctioneers, attorneys) or by the standing trustee’s own employees.

There are several other criminal statutes that may be relevant to bankruptcy related crimes including those relating to bank fraud, tax fraud, mail and wire fraud, mortgage fraud, identity theft and money laundering. The United States Trustee has available additional information on these statutes.

#### **g. Document Destruction (Sarbanes-Oxley)**

The Sarbanes-Oxley Act, 18 U.S.C. § 1519, provides a broader tool for document related offenses than those codified under 18 U.S.C. § 152. It provides for longer sentences, has a lesser intent element, and addresses alteration of documents, which is not covered under section 152 of title 18.

Section 1519 of title 18 can be used to prosecute persons seeking to gain advantage of bankruptcy without any of its pitfalls. For example, a person who alters a Notice of Case Filing by changing the debtor's name to stay collection proceedings can be charged under this statute. In contrast, the traditional bankruptcy fraud statutes may not be applicable to such conduct when the perpetrator is a non-debtor.

#### **4. SOURCE OF INFORMATION FOR REFERRALS**

A primary source of criminal referrals is a debtor's testimony at the meeting of creditors. While the debtor is under oath, the standing trustee may acquire or develop facts that may indicate a potential bankruptcy related crime. For example, a debtor could lie during questioning concerning recent repayments of debts, gifts or transfers to insiders. It is important that the standing trustee make a strong record at the meeting of creditors – it is often the standing trustee's one and only opportunity to question the debtor under oath. In all cases where the standing trustee suspects criminal activity after questioning at the meeting, the standing trustee must immediately notify the United States Trustee so that the electronic record or tape from the meeting may be properly secured and stored to preserve its later use in a criminal proceeding. 28 U.S.C. § 586(a)(3)(F). Other common sources include information from members of the public, or information gleaned from financial statements which the debtors have prepared for lending institutions. If this information is received prior to the meeting of creditors, it may generate pertinent questions for the debtor.

## **5. CRIMINAL ACTIVITY BY STANDING TRUSTEE EMPLOYEES**

In the event the standing trustee suspects or finds that one of the employees of the standing trustee has committed theft or embezzlement, or any other criminal activity which could jeopardize the chapter 12 operation, the standing trustee must immediately notify the United States Trustee. The standing trustee must cooperate with the United States Trustee in the investigation and institute all procedures directed by the United States Trustee concerning such allegations. 18 U.S.C. § 3057, 28 U.S.C. § 586(a)(3)(F).

### ***B. CIVIL ENFORCEMENT AND PREVENTION OF ABUSE***

The duty of the standing trustee to detect and prevent fraud and abuse by debtors, creditors and other parties to chapter 12 cases is generally described in other parts of this Handbook. A standing trustee with knowledge of civil fraud or abuse should report those matters to the United States Trustee. As an example, if the standing trustee becomes aware that a mortgagee or its representative has committed an egregious error regarding the type of charge or amount claimed owing, or that a mortgagee or its representative is making repeated substantial errors in its proofs of claim or motions for relief from stay, the standing trustee should notify the United States Trustee.

### ***C. PROHIBITION OF SOLICITATION OF GRATUITIES, GIFTS OR OTHER REMUNERATION OR THING OF VALUE***

Neither the standing trustee nor any employee of the standing trustee may solicit or accept any gratuity, gift, or other remuneration or thing of value from any person with whom the standing trustee deals in the performance of the standing trustee's duties and responsibilities. An exception is made if the gift is of nominal value and in connection with a holiday or special event.

Neither the standing trustee nor any employee of the standing trustee may purchase assets of the trust operation without written approval of the United States Trustee.

Neither the standing trustee nor any employee of the standing trustee may provide services or products targeted to chapter 12 debtors or creditors.

The standing trustee and the employees of the office of the standing trustee shall sign and submit to the United States Trustee with the Annual Report certification of compliance with this section. 28 U.S.C. § 586(b), 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b)(7).

#### ***D. PROHIBITION OF ADVERTISING***

The 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 chapter 12 of the Bankruptcy Code. 28 U.S.C. § 586(b), 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b)(1). A standing trustee may disseminate information to interested persons about chapter 12, and may participate in meetings, educational seminars, or institutes concerning chapter 12.

#### ***E. RESTRICTIONS ON EMPLOYMENT***

The standing trustee shall not employ a relative of the standing trustee except as provided by 28 C.F.R. § 58.4(d)(1). The standing trustee also shall not employ a relative of the United States Trustee or of an Assistant United States Trustee in the region in which the standing trustee has been appointed, or a relative of a bankruptcy court judge or of the clerk of the bankruptcy court in the judicial district in which the standing trustee has been appointed. 28 C.F.R. § 58.4(d)(1).

#### ***F. DUTY TO COMPLY WITH APPLICABLE EMPLOYMENT RELATED LAWS***

The standing trustee must comply with all applicable Federal, State and local employment related laws. The standing trustee may wish to

consult with or hire an employment law attorney to insure the trustee is in compliance with applicable State and Federal law. The following Federal laws may apply:

1. **Equal Opportunity Laws:** The standing trustee must maintain a workplace free of discrimination. The standing trustee must comply with all applicable equal opportunity laws and must not discriminate against employees or job applicants on the basis of race, color, religion, sex, national origin, age or disability.
2. **Sexual Harassment:** The standing trustee must provide a work environment that is free of discrimination and unlawful harassment. If required by applicable law, a complaint procedure must be established and included in the operation's personnel manual. Employees must be made aware of applicable complaint procedures.
3. **Fair Labor Standards Act:** If required by applicable law, the standing trustee must comply with the Fair Labor Standards Act and any applicable State or local employment laws.
4. **Immigration Laws:** The standing trustee must comply with the Immigration Reform and Control Act of 1986 and all other applicable immigration laws, and must employ only United States citizens and aliens who are authorized to work in the United States. The standing trustee must not unlawfully discriminate on the basis of citizenship or national origin.
5. **Americans with Disabilities Act:** The standing trustee must comply with the Americans with Disabilities Act to the extent applicable.
6. **Family Medical Leave Act:** If required by applicable law, the standing trustee must comply with the Family Medical Leave Act.

With respect to the trust operation, the standing trustee is required to file all appropriate tax reports with local, State and Federal agencies and pay any amounts due. Included in these reports are such items as the employees' W-2 forms, the annual Federal unemployment tax report, quarterly Federal and State payroll tax reports, quarterly State



unemployment tax returns and IRS Form 1099s as required by law. The standing trustee should regularly review all Federal, State and local laws and ordinances to ensure full compliance with all reporting requirements. The standing trustee is expected to pay any required State or local tax promptly.

**G. RESTRICTIONS ON RELATED-PARTY TRANSACTIONS**

In addition to the restrictions on employment discussed above, a standing trustee shall not, on behalf of the trust, contract or allocate expenses with himself or herself, with a relative, or with any entity in which the standing trustee or a relative of the standing trustee has a financial or ownership interest if the costs are to be paid as an expense out of the fiduciary expense fund. See 28 C.F.R. § 58.4(d)(2).

**H. DUTY TO PROVIDE INFORMATION TO INTERESTED PARTIES**

The Bankruptcy Code requires the standing trustee to furnish information concerning a case and case administration as requested by a party in interest.

A standing trustee must endeavor to ensure that case information is reasonably and promptly available, at no cost to debtors, creditors and other interested parties, during business hours. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(7). The cost of performing this statutory duty is covered by the percentage fee fixed under 28 U.S.C. § 586(e). If a standing trustee maintains a website, social security numbers should not be visible. In fulfilling the standing trustee’s duty to furnish information, a standing trustee may direct parties to the clerk’s office to obtain copies or other information not reasonably or readily available at the office of the standing trustee.

<b>Related Provisions:</b>	
11 U.S.C. § 1202(b)(1)	Duty to Furnish Information (adopting 11 U.S.C. § 704(a)(7))

## **I. TRANSMISSION OF DOCUMENTS**

In the administration of a case, the standing trustee must transmit to the United States Trustee a copy of all notices, motions, applications, pleadings and orders filed by the standing trustee, unless otherwise notified by the United States Trustee. Fed. R. Bankr. P. 2002(k).

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. Fed. R. Bankr. P. 3002, Fed. R. Bankr. P. 5005.

### ***Related Provisions:***

Fed. R. Bankr. P. 2002(k)	Notices to the United States Trustee
Fed. R. Bankr. P. 3002	Filing of Claims
Fed. R. Bankr. P. 5005	Filing and Transmittal of Papers

## **J. SURETY AND FIDELITY BONDS AND INSURANCE**

### **1. STANDING TRUSTEE BOND**

The standing trustee has a duty to maintain a surety bond in favor of the United States conditioned on faithful performance. The bond must be approved by the United States Trustee. 11 U.S.C. § 1202(a) incorporating 11 U.S.C. § 322. Usually the surety bond is less costly if acquired in aggregation with similar trustee bonds in a United States Trustee region. The United States Trustee will direct the standing trustee concerning whether to procure an aggregate or individual bond.

Unless two or more standing trustees purchase a single blanket bond in the aggregate, the minimum amount of the blanket bond for the standing trustee is 110% of the highest daily total bank balance estimated by the standing trustee for the upcoming year. Bank balance includes all bank accounts, certificates of deposit or other permissible investments maintained by the trust operation. The

balance is determined from the bank records and reviewed quarterly by the standing trustee and the United States Trustee.

The standing trustee must discuss with the United States Trustee any significant increases in bank balance or any anticipated increase in funds. 11 U.S.C. § 322. If the highest daily total balance is such that the standing trustee's bond is less than 110% of that amount, the standing trustee must confer with the United States Trustee whether to raise the bond amount. Adjustments to the bond should be made only as approved by the United States Trustee. The amount of a blanket bond covering multiple standing trustees shall be set by the United States Trustee.

<b><i>Related Provisions:</i></b>	
11 U.S.C. § 322	Bond Requirement

## **2. REQUIRED INSURANCE**

### **a. Employee Fidelity Coverage**

The standing trustee must obtain a reasonable amount of fidelity coverage on employees. The fidelity coverage may be in the form of a commercial crime policy that includes employee fidelity coverage or may be a separate blanket position fidelity bond. This coverage is almost always insurance, although it may be referred to as a bond. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586(b).

Minimum coverage limits of liability are to be established based upon a review of the employees' duties and job descriptions to determine access to funds and to accounting records. These limits will be reviewed by the United States Trustee as part of the budget process. See the Supplemental Materials for minimum guidelines for employee fidelity coverage.

## **b. Property Coverage**

The standing trustee must maintain all insurance required by contract, such as insurance required by the standing trustee's real property lease. In addition, physical assets that are the property of the office of the standing trustee should be adequately insured. The property policy should include general liability insurance.

## **c. Other Insurance**

The Supplemental Materials discuss other insurance that may be appropriate for the trust operation. Premium amounts will be considered by the United States Trustee as part of the budget process. Generally premiums for policies that fall within the guidelines discussed in the Supplemental Materials may be paid from the expense account. Deductible amounts that fall within the Supplemental Materials guidelines for claims under these policies may be paid from the expense account absent extraordinary circumstances and upon approval by the United States Trustee. An example of an extraordinary circumstance would be one in which the standing trustee directly contributed to the loss.

For example, with written justification from the standing trustee, the United States Trustee may approve the purchase of other insurance policies not discussed in this Handbook or Supplemental Materials, or insurance policies with a coverage or deductible amount different from those in the Supplemental Materials.

## **3. CANCELLATION AND CLAIMS**

The standing trustee must notify the United States Trustee immediately if the standing trustee learns that the surety bond or employee fidelity bond is or will be canceled. The standing trustee also must notify the United States Trustee immediately if the standing trustee learns of any claim made against the surety bond or employee fidelity bond. 11 U.S.C. § 322, 28 U.S.C. § 586(b).

#### **4. NOTIFICATION**

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 United States Trustee and the bonding or insurance 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 must provide to the United States Trustee such information as required in order to perform this duty. If a standing trustee is sued in his or her capacity as trustee, the standing trustee must notify the United States Trustee. 28 U.S.C. § 586(b).

#### **K. SETTLEMENTS**

The standing trustee must have the approval of the United States Trustee for any settlement decisions that will affect the expense account. 28 U.S.C. § 586(b).

#### **L. RETENTION OF RECORDS**

All general ledgers, cash receipts ledgers and disbursement ledgers, and any other documents used in compiling the accounting records for the Annual Report must be retained in electronic format for a period of not less than seven years from the issuance of the Annual Report. Trace reports must be retained in electronic format for a period of not less than seven years. 11 U.S.C. §§ 322.

The standing trustee must maintain all bank records, including bank statements, monthly bank reconciliations, canceled checks, and deposit slips, separate from individual case files and in chronological order, for a period of not less than seven years 11 U.S.C. §§ 322, 1222(c). Canceled checks may be kept in an electronic format.

Individual case receipts and disbursement records must be retained in electronic format for at least two years after an order closing the case

and discharging the standing trustee is entered by the court. 11 U.S.C. § 322.

Individual case files must be retained in either paper or electronic form for at least two years after an order closing the case and discharging the standing trustee is entered by the court. 11 U.S.C. § 322. The decision whether to maintain case files more than two years after closing should be based upon the standing trustee's individual need to refer to the file for subsequent inquiries from creditors or debtors. If the standing trustee has possession of original court documents, such as proofs of claim, their disposition must be in accordance with the guidelines or directives from the court or the clerk.

The United States Trustee maintains the electronic record or tape from the meeting of creditors unless the United States Trustee delegates in writing that responsibility to the standing trustee. If so delegated, the standing trustee shall maintain the electronic record or tape for a period of not less than two years from the date of the meeting of creditors. The electronic record or tape will be stored in a secure cabinet in chronological order or may be stored on a server provided it is in a searchable format (by date). The standing trustee must make copies of the electronic record or tape available to any party in interest requesting a copy of the record and the original record of any meeting must be turned over to the United States Trustee or the court upon request. Fed. R. Bankr. P. 2003.

Debtor tax returns in the standing trustee's possession must be destroyed following the meeting of creditors unless the trustee deems it appropriate to maintain them for use in conjunction with further proceedings in the case. Hard copies shall be destroyed by shredding in the trustee's office or by a qualified professional firm. Electronic copies must be permanently deleted following industry standards and best practices. 28 U.S.C. § 586(b).

# **CHAPTER 6**

## **BUDGETS**

## **CHAPTER 6 - BUDGETS**

### **A. ANNUAL AND AMENDED BUDGETS**

#### **1. ANNUAL BUDGETS**

The standing trustee must submit an annual budget. Budget submissions must reflect estimated actual and necessary expenses of the trust and as such should be based upon historical data, competitive bids, market research, and other analytical methods acceptable to the United States Trustee. 28 U.S.C. §§ 586(b) and (e)(1), 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b)(7), 28 C.F.R. § 58.11.

The fiscal year for the chapter 12 standing trustee is July 1 to June 30. The United States Trustee will provide to the standing trustee the standard budget form with instructions and the due date, no later than April 1 of every year, as well as a description of all materials that must accompany the budget submission.

The standing trustee will receive, no later than July 1, a Notice Fixing Compensation and Percentage Fee and a memorandum from the United States Trustee concerning the approval of the budget for the new fiscal year. If there are unresolved items, the budget will be approved, except for those line items in dispute.

#### **2. AMENDED BUDGETS**

The budget must be amended when any of the following are requested:

- a. Change in the standing trustee's compensation or percentage fee;



- b. Any increase in individual employee salaries, number of positions, hours worked or benefits provided (type or level);
- c. Any payment to a standing trustee, a relative of a standing trustee or an entity in which a standing trustee has a financial or ownership interest;
- d. Any increase in office square footage;
- e. Any expense for any previously unbudgeted item; or
- f. Any upward deviation in a particular summary line item from the last approved budget, unless the change is less than 10% or \$5,000, whichever is greater.

28 U.S.C. §§ 586(b) and (e)(1), 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b)(7), 28 C.F.R. § 58.11.

The United States Trustee may impose additional conditions requiring an amended budget. Amendments may be submitted by letter or amended budget form at the discretion of the United States Trustee.

The standing trustee will receive written notification from the United States Trustee of approval or disapproval of changes to the budget line items. If the amended budget requires a change in the compensation or percentage fee, the standing trustee will receive a new Notice Fixing Compensation and Percentage Fee and a letter from the United States Trustee advising as to the approval of the expenditure.

### **3. OPERATING EXPENSE LINE ITEMS**

The requirements in this section are designed to ensure standing trustee expenses are actual and necessary. The general authority for the United States Trustee requirements is 28 U.S.C. §§ 586(b) and (e)(1), 28 C.F.R. §58.11.

The standing trustee may make necessary preapproved expenditures from fiduciary expense funds to administer the cases efficiently and

effectively. Expenses must be reasonable, actual, necessary, relate to the duties of the standing trustee and be supported by appropriate documentation. The standing trustee must not allocate expenses with a related entity except as provided by 28 C.F.R. § 58.4(d)(2)(ii) and (iii). Expenses must be paid each month before the standing trustee's personal compensation is paid.

**a. Employee Expenses:** This line includes salaries and wages, including overtime and bonuses paid directly to employees and amounts paid for the employer's share of benefits, taxes, etc. This line also includes amounts for temporary labor.

If the standing trustee has three or more full-time employees, position descriptions for new positions, and all revised descriptions, must accompany the annual budget when submitted. The standing trustee should place advertisements when filling new positions or vacancies, conduct interviews and otherwise ensure an open hiring process. The requirement to advertise externally does not apply when the trustee is filling the new position or vacancy internally. This policy does not preclude a standing trustee from hiring as a regular employee a person who came to the standing trustee's employ through a temporary agency.

If the standing trustee has three or more full-time employees, the standing trustee must have in place salary ranges approved by the United States Trustee for each position or category and state whether the position is exempt or non-exempt. The salary ranges should reflect the local market for the same or similar skills for the same number of hours. The standard practice is to base salaries on a 40-hour work week. The standing trustee must submit a summary of the ranges for the upcoming fiscal year with the budget. Employees whose salaries are in excess of the maximum salary range are not eligible for a cost of living or merit increase.

The overall employee benefits package including leave must be no greater than that provided by similarly sized service

businesses in the community in which the standing trustee's operation is located.

The standing trustee may request to retain an outside compensation consultant approximately every five years to ensure that the compensation (salary and benefits) system remains comparable to the local market. No employee of a standing trustee may receive compensation and benefits of a value greater than the maximum compensation of a standing trustee.

The standing trustee must receive prior written approval from the United States Trustee before increasing the number of positions or full-time equivalents (FTEs).

**b. Office Rent and Utilities:** This line item includes charges for rental of office space, including conference rooms, storage space, and rooms for meetings of creditors; and charges for utilities. Office rent for the standing trustee should be reasonable and at or below the local market rate for comparable space. When moving into new office space or renewing a lease, the standing trustee must obtain rental rates for comparable space to ensure that the contract rate is at or below the market rate. The amount of leased space also must be reasonable and necessary to carry out the standing trustee's duties. A guideline for approval by the United States Trustee is total rentable space of 250-350 square feet per person, excluding space for rooms for meetings of creditors and offsite storage. Office space rental may include a parking space for the standing trustee.

Cost savings are usually realized when the standing trustee is able to commit to a period of time exceeding one year. However, given changes in caseload, court locations and other factors, long term leases are not advisable. Leases whose terms extend beyond seven years are discouraged.

**c. Bookkeeping and Accounting Services:** This line item should include charges incurred for all outside bookkeeping and accounting services necessary for the operation of the standing

trustee's office, including charges for preparation of payroll, payroll taxes, annual reports, and reconciliation of bank accounts.

**d. Computer Services:** This line item should include charges for software, data conversion and related consulting. All computer related training, unless conducted in the standing trustee's office as part of a conversion, should be itemized under non-UST training.

**e. Audit Services:** This line item should include charges incurred for the services of any independent audit firms.

**f. Consulting Services:** This line item includes charges incurred under contract with individuals for services by attorneys, appraisers, and other professionals. Accountants should be itemized under Bookkeeping/Accounting Services. Computer related consulting should be itemized under Computer Services. Each consultant and area of expertise must be specifically identified in the budget.

Chapter 3, section E, Employment of Attorneys and Other Professionals, provides guidance as to the requirements for retention and approval of outside professional services as an expense of the trust operation.

**g. Telephone:** This line item includes charges for local phone service, cell phones, long distance and 800 numbers.

**h. Postage:** This line item includes all postal charges and rental of post office boxes.

**i. Office Supplies:** This line item includes charges incurred for consumable supplies and other property of little monetary value, such as hand-held calculators.

**j. Bond Premiums/Insurance (other than for employee benefits):** This includes fees for premiums on surety bonds, including any premiums paid to bond an employee.

This line item also includes premiums for premises liability insurance for the office of the standing trustee (such as fire, theft and accidental injury to property or third persons), workers' compensation insurance, and other insurance, as approved by the United States Trustee. The standing trustee should maintain adequate insurance on the physical assets that are property of the office of the standing trustee. Costs for different types of insurance are to be identified separately. Policies must meet the minimum requirements established by the Program for insurance premiums to be paid from the expense fund. See Supplemental Materials for the minimum guidelines for insurance policies.

**k. Dues, Publications and On-Line Services:** This line item includes mandatory attorney licensing fees for staff attorneys, but excludes other professional licensing fees and membership dues to job-related organizations except as allowed below. The item also includes charges for subscriptions to and copies of journals and periodicals, books and directories as pertinent to the duties of the standing trustee, and includes charges related to on-line research services, PACER and Internet services at the trustee office. Expenses for memberships to professional organizations directly related to job duties (excluding mandatory bar dues) are limited to no more than \$1,000 in total. Payment of professional licensing fees (including mandatory bar membership dues) for the standing trustee is not authorized.

**l. Training Expenses:** These line items include job-related training of standing trustees and their employees.

**Training not provided by the United States Trustee** is limited to 1% of operating expenses, not including the operating reserve, or \$6,500, whichever is greater. The standing trustee is not required to provide supporting detail in the budget if training is within this limit. Training expenditures must be directly related to the duties of the standing trustee or employee. Training on case administration software is to be included in this line item if conducted offsite. The method of travel selected

must be most advantageous to the trust, when cost and other factors are considered. The standing trustee or employee must personally pay any additional costs if they select a less advantageous form of travel.

The United States Trustee may approve additional amounts for training above the formula amount or the \$6,500 maximum upon appropriate justification from the standing trustee.

The standing trustee must attach to the annual report for each fiscal year a listing of each seminar, the employees who attended and the total cost of the seminar.

**Training provided by the United States Trustee** does not count against the formula amount or the \$6,500 maximum.

**m. Maintenance and Service Agreements:** This line item includes charges incurred for the repair and maintenance, or service agreements covering such repair and maintenance, of the office suite and office equipment.

**n. Travel:** This line item includes charges incurred for official travel necessary for the administration of chapter 12 cases including airfare, mileage, meals, lodging and other costs incurred as related to official travel. The method of travel selected must be most advantageous to the trust operation, when cost and other factors are considered. The standing trustee or employee must personally pay any additional costs if they select a less advantageous form of travel. Travel costs related to training are considered training expenses and are reported under that line item.

Mileage reimbursement for use of a personal automobile for necessary travel beyond the usual place of business is authorized at the rate allowed by the IRS. While a long-term lease or the purchase of an automobile with fiduciary expense funds is not authorized, short-term car rentals may be appropriate if cost effective. 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 twelve consecutive hours and the travel is more than 50 miles from the residence or office. Reimbursement for lodging is authorized if a standing trustee or employee travels more than 50 miles from the office and an overnight stay is necessary.

The standing trustee may establish a policy to use government per diem rates for meal and incidental expenses when on official travel or at training to eliminate the need to determine whether expenses are appropriate and whether documentation is sufficient. See GSA website for per diem rates.

**o. Equipment/Furniture Rental:** This line item includes the rental or lease of office equipment. Total rental charges incurred over the life of the lease should be weighed against the total purchase price of comparable equipment or furniture.

**p. Equipment/Furniture Purchases:** This line item includes charges for purchase of furniture and equipment including any installation charges. Equipment and furniture purchased with chapter 12 funds may be used only for the administration of chapter 12 cases by the standing trustee and any successor of the standing trustee.

**q. Leasehold Improvements:** This item includes charges incurred for space adjustments (including partitioning), alterations, fixtures and improvements to a building or office suite.

**r. Other Expenses:** This line item includes all expenses not otherwise classified, such as bank charges, moving expenses, water, coffee, State and local taxes, and charges for conducting background checks on prospective employees.

Items such as the following are not authorized expenditures: flowers, soda, alcohol, food, party supplies, gifts, artwork, advances on employee salary, fines for parking or traffic violations, or tax penalties and interest (e.g., penalty for failing to pay employee taxes timely). The standing trustee may be

required to reimburse the trust for late fees on vendor payments.

#### **4. EXPENDITURES FOR GOODS OR SERVICES OVER \$5,000**

The standing trustee shall obtain a minimum of three price quotes, if available, when requesting the United States Trustee to approve an expenditure of \$5,000 or more per year. Expenditures include purchases of fixed assets, leases of personal or real property, consulting contracts, accounting and bookkeeping services. Approval and bids also must be obtained if the total cost of the lease for personal or real property exceeds \$25,000 over the term of the lease. 28 U.S.C. § 586(b). Approval of legal services is discussed in the Handbook at Chapter 3, section E, employment of attorneys and other professionals.

If the aggregate purchases of items of the same type exceed \$5,000 for the fiscal year, bids and approval must be obtained. 28 U.S.C. § 586(b).

On renewable agreements, such as accounting and bookkeeping services, the standing trustee may ask for costs over a three-year period to avoid having to obtain bids every year. The requirement may also be waived by the United States Trustee if the standing trustee is able to show that three sources for price quotes were not available. The United States Trustee may waive the requirement for three price quotes for legal expenses.

The standing trustee need not choose the lowest bid if another bid is the most cost-effective choice for a standing trustee's needs.

#### **5. OPERATING RESERVE**

The standing trustee, with approval of the United States Trustee, may carry over from one year to the next up to 50 percent of the actual authorized operating expenses, less standing trustee compensation, or \$10,000, whichever is greater. The operating reserve is considered an actual, necessary expense and part of the standing trustee's budget. Because the standing trustee uses cash basis accounting, an operating



reserve provides for funds to meet ongoing obligations in the first part of the new fiscal year.

Any amount over the 50% or \$10,000 limit must be paid to the United States Trustee System Fund pursuant to 28 U.S.C. § 586(e)(2). The standing trustee should monitor receipts and disbursements on a monthly basis. When funds on hand are estimated to approach or exceed the limit by the end of the fiscal year, the standing trustee should contact the United States Trustee and request a reduction in the percentage fee.

The standing trustee may apply to the United States Trustee to obtain a waiver to exceed the 50%/ \$10,000 limit.

## **6. CO-TRUSTEE OPERATIONS**

The United States Trustee will not approve expenses to establish a co-chapter 12 trustee operation. 28 U.S.C. § 586(b).

## **7. FACILITIES AND EQUIPMENT**

The standing trustee must not lease or sublease to another entity any office space or equipment that has been paid for or acquired with fiduciary expense funds. 28 U.S.C. § 586(b).

If the standing trustee has acquired excess space or equipment that is not necessary for the administration of cases, the standing trustee should attempt to sell or otherwise dispose of the equipment in a commercially reasonable manner or renegotiate the lease. If the standing trustee is not able to sell the equipment in a commercially reasonable manner, it should be donated to a non-profit organization. If unsuccessful, the standing trustee may discard the property or may ask permission of the United States Trustee to sell or give the property to employees. The standing trustee must ensure that all information and data on the hard drive has been deleted and wiped from the memory of any computer prior to disposal. 28 U.S.C. § 586(b).

This provision does not prevent the standing trustee from assisting another standing trustee with the approval of the United States Trustee.

**B. BUDGET DISPUTE RESOLUTION**

In the event that the standing trustee and the United States Trustee have a budget dispute, the parties should explore resolution of the dispute by informal means. If informal resolution is not successful, the standing trustee may request a formal administrative review of the United States Trustee’s decision to deny a budget expense request. 28 C.F.R. § 58.11. The formal procedures for administrative review of a United States Trustee’s decision to deny a claim of actual, necessary expenses are found in the Code of Federal Regulations. 28 C.F.R. § 58.11.

After exhausting formal administrative review, the standing trustee may obtain judicial review by the district court of the final agency action to deny an expenditure. 28 C.F.R. § 58.11.

Pending final resolution of the dispute, the standing trustee cannot expend trust funds for any disputed portion of a line item. 28 U.S.C. § 586(b), 28 C.F.R. § 58.11.

***Related Provisions:***

28 U.S.C. § 586(e)(3)	Review of Expense Disputes
28 C.F.R. § 58.11	Procedures for Review of Denial of Claim

## **CHAPTER 7**

# **REPORTS, AUDITS, COMPLIANCE**

## **CHAPTER 7 – REPORTS, AUDITS, COMPLIANCE**

### **A. MONTHLY REPORTS**

The standing trustee must submit to the United States Trustee a monthly report on a cash basis in the form prescribed by the United States Trustee. The monthly report shows activity in the trust account and expense account, and other information related to collateralization of funds and the amount of the standing trustee's bond. The monthly report, bank statements and four-column bank reconciliations must be sent to the United States Trustee within 30 days after the end of each month. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(2), 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b)(7).

### **B. ANNUAL REPORT**

The standing trustee must submit an annual report on a cash basis to the United States Trustee in a form prescribed by the EOUST. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(2), 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b)(7). The report shows activity in the trust account and the expense account for the fiscal year. The report is due 45 days after the end of the fiscal year, or 45 days from the end of the period in which the standing trustee served.

### **C. AUDITS, REVIEWS AND RECORDS**

#### **1. INDEPENDENT AUDITS**

##### **a. Purpose and Frequency**

The standing trustee must submit to independent audits conducted periodically at the direction of the United States Trustee. 11 U.S.C. § 1202(b)(1) incorporating 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586(b). Generally the annual report of the standing trustee shall be audited every three years. The audit is designed to determine the adequacy of internal controls over trust funds, including operating expense funds, the accuracy of amounts and disclosure in the annual report and

compliance with Program policies and guidelines. Audits are the starting point for determining the adequacy of the standing trustee's financial management, internal control procedures, and organizational support and are part of the biennial evaluation process.

**b. Selection and Compensation of the Audit Firm**

Audits firms are selected by the EOUST. The expense of the audit is paid from EOUST funds.

**c. Entrance Conferences**

The standing trustee should bring any issues or extraordinary items to be reviewed or reported to the attention of the auditor before the conduct of the audit.

**d. Exit Conferences and Follow Up**

At the completion of the audit, the auditor, standing trustee, and the United States Trustee participate in an exit conference. The auditor will explain the results of the examination and may make recommendations to improve internal controls, record keeping, and, if applicable, case administration procedures.

**e. Audit Report**

A written report on the results of the audit is issued to the standing trustee, United States Trustee and EOUST no later than six months after issuance of the contract order. The United States Trustee will ask the standing trustee to respond to all findings noted in the audit report. Within 45 days of the date of the written audit report, the standing trustee must submit a written statement identifying what corrective actions have been taken on noted deficiencies, confirming the changes implemented in response to the recommendations, and raising any dispute with any finding or recommendation. 28 U.S.C. § 586(b). Upon resolution of the issues, the United States Trustee will recommend to the Director closure of the audit and provide copies of the supporting correspondence between the United States Trustee and the standing trustee. The United States Trustee will notify the standing trustee that the audit is closed.

#### **f. Follow-up Office Visits**

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 control or from issuance of a qualified opinion, adverse opinion or disclaimer of opinion.

Resolution of audit deficiencies is an integral duty of the standing trustee. Failure to implement necessary changes shall result in appropriate remedial action by the United States Trustee.

### **2. OFFICE VISITS**

Generally in those years in which no independent audit is performed, the United States Trustee shall conduct an office visit of the standing trustee or other form of evaluation.

### **3. MANAGEMENT REVIEWS**

At the discretion of the United States Trustee, a management review may be performed at the standing trustee's office. The objective of a management review is to assess the standing trustee's performance in specific areas, such as case administration, case closing, claims reviews, and financial and personnel management. The standing trustee will be advised of the review at least two weeks in advance. The standing trustee must have all records available and make every effort to ensure that all appropriate employees are on hand. The standing trustee will receive a letter from the United States Trustee discussing the review findings and must provide a written response. 28 U.S.C. § 586(b).

## **D. EVALUATION, COMPLIANCE AND TERMINATION**

### **1. EVALUATION RECORD**

The United States Trustee prepares a formal written review of the standing trustee's performance biennially. The United States Trustee may evaluate performance more frequently. The review monitors the standing trustee's legal administration, financial administration, professional conduct, and cooperation with the United States Trustee. See Supplemental Materials for the Chapter 12 Standing Trustee Performance Review form.

### **2. REMEDIAL AND ENFORCEMENT ACTIONS**

The standing trustee, having a fiduciary responsibility to the bankruptcy estate, is held to a very high standard of honesty and loyalty. The standing trustee who fails to maintain this high standard, or the standards described by this Handbook, or who is otherwise deficient in the administration of cases can be subject to corrective action by the United States Trustee. 28 C.F.R. § 58.6. Examples of corrective actions taken by the United States Trustee can be found on the Program's web site at [www.justice.gov/ust](http://www.justice.gov/ust) and potential remedial actions are discussed below.

If the nature of a standing trustee's actions reflects dishonesty, deceit, fraud, or serious mishandling of estate funds, a single substantiated incident justifies immediate action by the United States Trustee to protect the assets of the trust operation. The remedies available to the United States Trustee include termination of case assignments, motions to remove the standing trustee from all cases, temporary restraining orders, orders for turnover of books and records, and referral to the United States Attorney for criminal prosecution.

Standing trustee conduct that does not constitute dishonesty, fraud, or immediate asset risk merits the use of progressive or cumulative remedies that range from meetings with the standing trustee to filing motions to compel an action, seeking reimbursement, temporarily suspending the case assignments of the standing trustee, or filing a motion to remove the standing trustee from all cases. Imposition of these remedies is at the discretion of the United States Trustee. The types of conduct that may warrant one or more of these remedies

include substandard reporting or asset investigation efforts, repeated instances of inadequate bonding, inadequate internal controls, or weak case administration.

**a. Recovery of Unauthorized Expenses or Compensation**

If the 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 will demand that the funds be returned. If the standing trustee fails to promptly repay the sums demanded, the United States Trustee will inform the Director with a recommendation for further action, including the reduction of compensation, termination of future case assignments, or bringing a removal action or a suit against the standing trustee and the standing trustee's surety.

**b. Reduced Compensation**

Reduced compensation notices may be issued when, and to the extent that, a standing trustee expends funds without prior approval of the United States Trustee or prior to the final resolution of any disputed budget amount. If the 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 Director reduce compensation if a standing trustee fails to undertake satisfactory efforts to correct serious deficiencies, other than budget disputes, or where other alternatives do not sufficiently address the deficiency. A reduced compensation notice may be used until the deficiencies are corrected.

**c. Termination of Future Case Assignments**

Termination of future case assignments may occur when, for example, the standing trustee demonstrates a failure to properly administer cases, or refuses to cooperate with the United States Trustee or to adhere to applicable policies. The termination of



future case assignments may be temporary or permanent. 28 C.F.R. § 58.6.

The formal administrative procedures for suspension or termination of a standing trustee are found in the Code of Federal Regulations. The Code of Federal Regulations also contains a non-exclusive list of grounds for suspension or termination. 28 C.F.R. § 58.6.

**d. Removal from existing case assignments**

The standing trustee's inability to administer cases also may result in the United States Trustee filing a motion under 11 U.S.C. § 324 to remove the standing trustee from all existing cases. The clearest case for removal is the discovery of fraud or embezzlement; however, other cause including mismanagement, misconduct or unsatisfactory performance may form the basis for removal.

***Related Provisions:***

28 U.S.C. § 586(d)(2)	Review of Termination of Case Assignments
28 C.F.R. § 58.6	Procedures for Suspension and Termination