

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LOLITA HENRY and
THOMAS HUGHES, individually,
and on behalf of a class of
similarly-situated persons and entities,

Case No. 2:23-cv-11992

Hon.

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Gregory D. Hanley (P51204)
Jamie K. Warrow (P61521)
Edward F. Kickham Jr. (P70332)
Kickham Hanley PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, MI 48073
(248) 544-1500
Counsel for Plaintiffs

David Findling (P43256)
The Findling Law Firm, PLC
415 S. West Street
Royal Oak, MI 48067
(248) 399-9700
Co-Counsel for Plaintiffs

**PLAINTIFFS' CLASS ACTION COMPLAINT
AND JURY DEMAND**

Plaintiffs Lolita Henry and Thomas Hughes ("Plaintiffs"), by their attorneys,
Kickham Hanley PLLC and The Findling Law Firm, PLC, individually and on behalf

of a class of similarly situated class members, state the following for their Class Action Complaint against the Defendant United States of America (the “U.S. Government”).

INTRODUCTION

1. This is a class action brought under the “Little Tucker Act,” 28 U.S.C. Sec. 1346(a)(2), by and on behalf of certain debtors who have filed for federal bankruptcy protection under Chapter 13 of the Bankruptcy Code (collectively “the Class”). Plaintiffs challenge the U.S. Government’s unconstitutional taking for a public purpose – without compensation – of specific, identifiable funds in which the members of the Class have a property interest in violation of the Fifth Amendment to the U.S. Constitution and, in the alternative, challenge the U.S. Government’s seizure of their funds as an “illegal exaction” under the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

2. This action arises out of the U.S. Government’s wrongful retention of monies paid by Chapter 13 Debtors in the Class that rightfully belong to the Class. A Chapter 13 debtor makes payments to a “standing trustee” – an employee or at least an agent of the U.S. Government – who then disburses those payments to creditors according to a confirmed reorganization plan (hereafter the “Standing Trustees”). The compensation of the Standing Trustees, and virtually all aspects of their funding, operations and activities in Chapter 13 cases are dictated, directed, supervised and controlled by the Office of the United States Trustee, which is part of the United States

Department of Justice. The acts of the Standing Trustees therefore are acts of the U.S. Government.

3. The Standing Trustees and their compensation are funded by taking a percentage of payments they collect from the debtor. 28 U.S.C. Sec. 586(e)(2) (“Section 586”) directs that the Standing Trustee “shall collect” his or her fee “from all payments received . . . under” Chapter 13 reorganization plans for which he or she serves as Trustee.

4. 11 U.S.C. Sec. 1326(a)(1) (“Section 1326”) provides that a Chapter 13 debtor shall commence making “Payments” to the Standing Trustee within thirty days of the date the debtor files their bankruptcy petition or submits their proposed reorganization plan, whichever is earlier (hereafter the “Payments”). The Payments begin before the confirmation hearing on the proposed plan. In light of that, 11 U.S.C. Sec. 1326(a)(2) directs the Standing Trustee to “retain” these pre-confirmation Payments until the confirmation hearing, when the proposed reorganization plan is either confirmed or confirmation is denied. *Id.*

5. Throughout 11 U.S.C. Sec. 1326, ‘Payments,’ which are made by the debtor, is a defined term.

6. “If a plan is confirmed, the trustee shall distribute any such [pre-confirmation] payment in accordance with the plan...” *Id.* But “[i]f a plan is not confirmed, the trustee shall return any such [pre-confirmation] payments . . . to the debtor, after deducting any unpaid claim allowed under section 503(b).” *Id.*

7. 11 U.S.C. Sec. 503(b) (“Section 503(b)”) permits the filing and the bankruptcy court’s approval of an “administrative claims,” which are typically the unpaid fees of the debtor’s attorney. Those claims are “allowed” once approved by the bankruptcy court. Thus, a Standing Trustee holding Payments at the time a plan is rejected, and a case dismissed, must first pay the approved administrative claims, and then distribute the remainder to the Chapter 13 debtors.

8. Importantly, however, if a plan is not confirmed and a Chapter 13 case is dismissed, after payment of approved administrative claims, the Standing Trustee **must** return the balance of all “Payments,” inclusive of the Standing Trustee’s statutory fee percentage, as required by Section 1326. The Standing Trustee’s retention of any portion of the debtor’s Payments not used to satisfy administrative claims is prohibited. Yet, regardless of the clear statutory requirements, Standing Trustees routinely collect and retain their fees in Chapter 13 cases in which the reorganization plans are not confirmed and the debtor’s case is dismissed (hereafter the “Fee Portion”).

9. In addition, 11 U.S.C. Sec. 349(b)(3) explains that the effect of a dismissal is to “revest[] the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.”

10. In a Chapter 13 case, Payments remain the property of the debtor’s “estate.” The Standing Trustees therefore hold the Payments in trust, and, by requiring the Standing Trustees to return to debtors all Payments remaining after paying allowed administrative claims, Section 1326 gives Class members (defined and described below

at ¶¶ 12-14) property rights in those Payments.

11. By retaining the Fee Portion, the Standing Trustees, by and on behalf of the U.S. Government, effect a taking for a public purpose, requiring the U.S. Government to compensate the Class.

12. Because the U.S. Government does not pay compensation to the Class for the Standing Trustees' retention of the Fee Portion, the U.S. Government's actions violate the Fifth Amendment to the U.S. Constitution.

13. In the alternative, the U.S. Government's seizure of the Fee Portion constitutes an "illegal exaction" and thus violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution. As a result, the U.S. Government must disgorge and return the Fee Portion to the Class.

JURISDICTION AND VENUE

14. Plaintiffs are former Chapter 13 Debtors whose Fee Portion collected by the Standing Trustees were unlawfully retained and who seek to act as class representatives for all similarly situated persons and entities (hereafter the "Class").

15. The Plaintiffs are citizens of the State of Michigan residing in the Eastern District of Michigan. Plaintiffs' individual claims do not exceed Ten Thousand Dollars (\$10,000).

16. Defendant United States of America is the federal government and is regularly present in the Eastern District of Michigan.

17. This Court has original subject matter jurisdiction over this case pursuant to the “Little” Tucker Act, 28 U.S.C. Sec. 1346(a)(2), which provides that “district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims,” of a “civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.”

18. The Fifth Amendment takings claims of Plaintiffs and the Class are “founded” “upon the Constitution,” and therefore the U.S. Government has waived its sovereign immunity for these claims. *See Presault v. Interstate Commerce Comm’n*, 494 U.S. 1, 11 (1990).

19. The “illegal exaction claims of Plaintiffs and the Class are “founded” upon an “Act of Congress,” specifically, Section 1326, which expressly prohibits standing Chapter 13 Trustees from retaining the Fee Portion of Funds in their possession in the event that a Chapter 13 reorganization plan is rejected. This Court has subject matter jurisdiction under the “Little Tucker Act” over “illegal exaction” claims. *Trayco, Inc. v. U.S.*, 994 F.2d 832, 837 (Fed. Cir. 1993).

20. The Plaintiffs and each member of the Class have claims against the U.S. Government that are less than \$10,000. Even though, when aggregated, the claims of Plaintiffs and the Class will far exceed \$10,000, but this Court still has jurisdiction under

28 U.S.C. Sec. 1346(a)(2). *See U.S. v. Will*, 449 U.S. 200, 211, n. 10 (1980); *U.S. v. Bormes*, 568 U.S. 6, n. 1 (2012).

21. Venue is proper pursuant to 28 U.S.C. 1402(a)(1) because the Plaintiffs reside in this District and there is no requirement that the unnamed Class members also reside in the District. *See, e.g., Briggs v. U.S.*, 2009 U.S. Dist. LEXIS 5442 (N.D. Cal. 2009); *Whittington v. U.S.*, 240 F.R.D. 344, 348-49 (S.D. Tex. 2006).

GENERAL ALLEGATIONS

A. CHAPTER 13 BANKRUPTCIES, GENERALLY.

22. “Congress established two main types of consumer bankruptcy”: liquidation under Chapter 7 and reorganization under Chapter 13. Chapter 13, at issue here, provides bankruptcy protection to “individual[s] with regular income” whose debts fall within statutory limits. 11 U.S.C. Secs. 101(30), 109(3).

23. Unlike debtors who file under Chapter 7 and must liquidate their nonexempt assets to pay creditors, *see* Secs. 704(a)(1), 726, Chapter 13 debtors are permitted to keep their property, but they must propose, and comply with a court-approved plan under which they pay creditors out of their future income. *See* Secs. 1306(b), 1321, 1322(a)(1), and 1328(a).

24. Chapter 13 thus affords individuals receiving regular income an opportunity to obtain some relief from their debts while retaining their property. To proceed under Chapter 13, a debtor must propose a plan to use future income to repay a portion (or in the rare case all) of his debts over the next three to five years. If the

bankruptcy court confirms the plan and the debtor successfully carries it out, he receives a discharge of his debts according to the plan.

25. A Standing Trustee oversees the filing and execution of a Chapter 13 debtor's plan. "The plan...shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan." 11 U.S.C. Sec. 1322(a)(1).

B. "STANDING" TRUSTEES.

26. There is always a trustee of some sort appointed in a Chapter 13 case. *See* 11 U.S.C. Sec. 1302. This case involves so-called "Standing Trustees." Congress provided for the possibility of Standing Trustees as part of its U.S. Trustee program.

27. Generally speaking, before 1978, bankruptcy courts conducted administrative tasks for each bankruptcy case themselves or, when necessary, bankruptcy courts appointed private trustees to conduct administrative tasks in a given case. Bankruptcy courts would oversee and approve the compensation for a private trustee's work and expenses in each case.

28. Beginning with a pilot program in 1978, which was made permanent in 1986, Congress transferred the administrative functions previously handled by the bankruptcy courts to newly created U.S. Trustees, housed within the Department of Justice rather than the Administrative Office of the U.S. Courts. As part of that transfer, Congress directed the Attorney General to appoint a U.S. Trustee for each judicial

district (except those in Alabama and North Carolina), and to supervise those U.S. Trustees. *See* 28 U.S.C. Secs. 581, 586(c).

29. Congress has the primary obligation to make appropriations to ensure the full funding for the U.S. Trustee program. This obligation is set forth in 28 U.S.C. Sec. 589a, which establishes that the United States Trustee System Fund (the “Trustee Fund”) shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriations Acts for designated purposes. Congress’ annual appropriations to the Trustee Fund are intended to be recovered through “user fees” paid by debtors. While the Trustee Fund is designed to be fully funded through such “user fees,” the U.S. Government always retains the obligation to fully fund any shortfalls. *See, e.g.,* 28 U.S.C. Sec. 589a(e).

30. In its FY 2022 Performance Budget Congressional Submission for the U.S. Trustee Program (“USTP”) dated May 2021, the U.S. Department of Justice described this funding mechanism as follows:

The USTP’s appropriations are offset primarily by revenues deposited into the U.S. Trustee System Fund. A portion of filing fees paid by consumer and business debtors as well as quarterly fees that are based on disbursements made by most chapter 11 debtors comprise the majority of revenue. **The appropriation is initially derived from the general fund of the Department of Treasury (Treasury)**, and subsequently offset by the Program’s fees during the fiscal year as well as the balance of the U.S. Trustee System Fund, if fees are less than the appropriation. [*Id.* at p. 13-14 (emphasis added).]

31. Reflecting Congress’ transfer of administrative duties from bankruptcy courts to the U.S. Trustee Program, which is part of the Department of Justice, the

statutes addressing the U.S. Trustee Program are found in Title 28 of the U.S. Code, rather than in Title 11, which contains the Bankruptcy Code.

32. Congress authorized the Attorney General to appoint U.S. Trustees, who are then authorized to appoint, when necessary, and then to supervise, the Standing Trustees” in several types of bankruptcy cases, including those filed under Chapter 13:

If the number of cases under subchapter V of chapter 11 or chapter 12 or 13 of title 11 commenced in a particular region so warrants, the United States trustee for such region may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustees to serve in cases under such chapter. **The United States trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.** [28 U.S.C. Sec. 586(b) (emphasis added).]

33. Section 586(b), then, addresses Standing Trustees for Chapter 13 cases, as well as Chapter 12 cases involving reorganization by family farmers and fishermen and cases under Chapter 11 (Subchapter V) involving small business reorganization. *See generally* 11 U.S.C. Secs. 1183(a), 1202(a), and 1302(a) (addressing appointment of Standing Trustees in these types of cases).

34. If the U.S. Trustee for a district does not invoke 28 U.S.C. Sec. 586(b) to appoint one or more of the Standing Trustees, the U.S. Trustee can designate an assistant U.S. Trustee to act as trustee in Chapter 13 cases, *see* 28 U.S.C. Sec. 586(b), or appoint a “disinterested” private trustee in a given case, *see* 11 U.S.C. Sec. 1302(a).

35. There are approximately 180 Chapter 13 Standing Trustees in the United States. The individual claims in this case involve Standing Trustees appointed by the

U.S. Trustee for the Eastern District of Michigan, but the Class claims involve Standing Trustees appointed and serving in all other Districts in the United States.

36. A Standing Trustee performs a number of duties in a Chapter 13 case, both before and after a plan's confirmation. *Id.* Sec. 1302(b)-(d). Those duties include facilitating the debtor's development of a proposed reorganization plan and receiving the Payments from the debtor and disbursing those funds to creditors according to a confirmed reorganization plan.

37. The Standing Trustees' actual and necessary expenses, and their compensation, are funded through the Payments collected from debtors. The funds collected are based on an annually calculated percentage which is fixed by the Attorney General after consultation with a United States Trustee that appointed the Standing Trustee:

(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under subchapter V of chapter 11 or chapter 12 or 13 of title 11 [11 U.S.C. Secs. 1181 et seq. or 1201 et seq. or 1301 et seq.], shall fix—

(A) a maximum annual compensation for such individual consisting of—

(i) an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule; and

(ii) the cash value of employment benefits comparable to the employment benefits provided by the United States to individuals who are employed by the United States at the same rate of basic pay to perform similar services during the same period of time; and

(B) a percentage fee not to exceed—

(i) in the case of a debtor who is not a family farmer, ten percent; ... or

(ii) in the case of a debtor who is a family farmer, the sum of—

(I) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed \$450,000; and

(II) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds \$450,000;

based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

(2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under subchapter V of chapter 11 or chapter 12 or 13 of title 11 [11 U.S.C. Secs 1181 et seq. or 1201 et seq. or 1301 et seq.] for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall deposit in the United States Trustee System Fund—

(A) any amount by which the actual compensation of such individual exceeds 5 per centum upon all payments received under plans in cases under subchapter V of chapter 11 or chapter 12 or 13 of title 11 [11 U.S.C. Secs. 1181 et seq. or 1201 et seq. or 1301 et seq.] for which such individual serves as standing trustee; and

(B) any amount by which the percentage for all such cases exceeds—

(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus

(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases. Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.

See 28 U.S.C. Sec. 586(e).

38. To summarize: the Attorney General sets a Standing Trustee's maximum annual compensation. *Id.* Sec. 586(e)(1)(A). There is no variance in the Standing Trustee's compensation based on performance. No Chapter 13 Standing Trustee can earn more than \$172,100 (\$244,766 with benefits) (an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule). No trustee can earn more, although a small minority earn less. 98% of the Chapter 13 Standing Trustees are paid the same \$244,766.

39. After consideration of the Standing Trustee's annual compensation and his or her projected yearly expenses, the Attorney General fixes a percentage of the payments that the Standing Trustee receives from the Chapter 13 debtors that the Standing Trustee will take as his fee. *Id.* Sec. 586(e)(1)(B).

40. For Chapter 13 bankruptcies, Congress has capped that "percentage fee" at 10%. *Id.* Section 586(e)(1)(B)(i). The Standing Trustee is required by statute to turn over fees collected from all debtors that exceed the amount necessary to compensate the Standing Trustee and cover his or her expenses to the district's U.S. Trustee to be deposited in the U.S. Trustee System Fund. *Id.* Sec. 586(e)(2).

C. "STANDING" CHAPTER 13 TRUSTEES AND UNITED STATES TRUSTEES.

41. The statutory creation of the Standing Trustees represented an effort to transfer ministerial responsibilities incident to Chapter 13 cases from a judicial arena to an administrative one, that is, from the bankruptcy courts to the Attorney General. The

Attorney General considers the volume of cases committed to each trustee, reviews each trustee's program-related expenses for the prior year, and projects the amount of funds that will be handled during the upcoming year. This overall forecast—rather than the vicissitudes of each individual filing—becomes the cynosure of the fee calculation. And, to prevent the Standing Trustees from receiving excessive compensation, the statute sets a ceiling on both annual and per case compensation. *See* 28 U.S.C. Secs. 586(e)(1)(A), (e)(2).

42. Congress has plainly chosen to spread the costs of the Standing Trustees *pro rata* over all Chapter 13 debtors within the court's jurisdiction. Thus, a Standing Trustee undertakes the obligation to serve in all cases filed within the district. She or he cannot know in advance which cases will actually arise or the degree of effort they will require. Her or his agreement to accept the percentage fee in exchange for a commitment to undertake all or part of the district's trusteeship duties is thus based on a calculation of the average effort required compared with the average payments involved. The cases in which she receives greater compensation will presumably be counterbalanced by those for which her fees will be minimal, or nothing.

43. Congress provided the same structure for compensation and expenses for the operations of both the United States Trustees and the Standing Trustees:

United States Trustees Expenses:

- a. Necessary office expenses of the United States trustee shall be allowed when authorized by the Attorney General. 28 USC Sec. 588;

- b. The United States trustee may employ staff and other employees on approval of the Attorney General. 28 USC Sec. 589;
- c. The Attorney General may use the Fund for the following purposes in connection with the operations of United States trustees:
 - (1) salaries and related employee benefits;
 - (2) travel and transportation;
 - (3) rental of space;
 - (4) communication, utilities, and miscellaneous computer charges;
 - (5) security investigations and audits;
 - (6) supplies, books, and other materials for legal research;
 - (7) furniture and equipment;
 - (8) miscellaneous services, including those obtained by contract; and
 - (9) printing. [28 USC §589a(a).]

Standing Chapter 13 Trustees Expenses

- a. The Attorney General shall fix a percentage fee...based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee:
- b. The Chapter 13 Trustee Handbook, pgs. 6-3 to 6-10, describes the permissible actual and necessary expenses which may be incurred by a standing trustee:
 - 1. Employee Expenses;
 - 2. Travel;
 - 3. Office Rent and Leasehold Improvements;
 - 4. Utilities, Telephone and Computer Services;
 - 5. Consulting Services and Audit Services;
 - 6. Office Supplies, Dues, Publications and On-Line Services;
 - 7. Maintenance and Service Agreements, Equipment/Furniture Rental and Equipment/Furniture Purchases;
 - 8. Miscellaneous expenses including, Bookkeeping and Accounting Services, Bond Premiums/Insurance (other than for employee benefits), Training Expenses and Debtor Education; and
 - 9. Other Expenses such as Noticing and Postage.

44. Congress enacted legislation which established, other than the Executive Schedule Level, the same compensation for the United States Trustees and the Standing Trustees.

United States Trustee Compensation:

Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule...[28 USC 589a(a).]

Standing Trustee Compensation:

Section 586(e)(1) requires the Attorney General to consult with the U.S. Trustee and “fix” a maximum annual compensation and a percentage fee for Standing Trustees in Chapter 12 and Chapter 13 cases. 28 USC § 586(e)(1).

(A) a maximum annual compensation for such individual consisting of—

(i) an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule;

D. THE ROLE OF THE U.S. JUSTICE DEPARTMENT IN THE SUPERVISION, DIRECTION AND CONTROL OF THE CHAPTER 13 STANDING TRUSTEES ACTIVITIES.

45. As previously noted, Congress has expressly required the U.S. Trustees to supervise the Standing Trustees. 28 U.S.C. Sec. 586(b) (“**The United States trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee**”) (emphasis added).

46. Consistent with this mandate, the funding of the Standing Trustees’ operations (detailed above), and virtually all aspects of their activities in Chapter 13

cases, are dictated, directed, supervised and controlled by the Attorney General and the U.S. Trustees.

47. In a federal regulation governing the “Qualifications and Standards for Standing Trustees, the Justice Department states that “Section 586 confers **broad powers on the United States Trustees** to review the conduct of standing trustees that they have appointed.” 28 CFR Part 58 (emphasis added)

48. The Office of the U.S. Trustee has summarily described its relationship with the standing Chapter 13 trustees as follows: “The Program has a **robust system for oversight of private trustees** that includes regular training, reviews of financial operations, and evaluations of performance to ensure the effective administration of bankruptcy estate assets.” USTP Annual Report for FY 2021 at p. 17 (emphasis added). *See also* FY 2022 Performance Budget Congressional Submission for the United States Trustee Program dated May 2021 at p. 33 (observing that in Chapter 13 cases, “the USTP must **closely monitor** the trustees’ accounting, financial management, and administration of debtor funds and property of the bankruptcy estate for the payment to creditors and ensure that the funds are appropriately safeguarded”) (emphasis added).

49. To exercise its “broad powers,” implement its “robust system for oversight,” and “closely monitor” the Standing Trustees, the Justice Department has issued a “Handbook for Chapter 13 Standing Trustees (the “Handbook”) (Exhibit A, hereto). The Justice Department states that the Handbook “**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,” and that “[t]he standing trustee is accountable for all duties set forth in this Handbook, but need not personally perform any duty unless otherwise indicated.” Exhibit A at p 1-1 (emphasis added).

50. Among other things, the Handbook provides detailed instructions for “Administration of Chapter 13 Cases” (Chapter 3), “Financial and Operational Policies, Procedures, and Reporting Requirements” (Chapter 4), “Additional Standing Trustee Responsibilities” (Chapter 5), “Budgets” (Chapter 6) and “Reports, Audits, Compliance” (Chapter 7). *Id.*

51. There is virtually no aspect of a Chapter 13 Standing Trustee’s activities that are not expressly dictated by the U.S. Government. Indeed, even a cursory examination of the Table of Contents of the Handbook confirms the extensive control the U.S. Trustee exercises over the Standing Trustees:

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52. Chapter 13 cases are designed to move fairly quickly. After a debtor files his bankruptcy petition, a trustee is appointed and the debtor has fourteen days to file a proposed plan to adjust his debts. *See* 11 U.S.C. Secs. 1302(a), 1321-22, Bankr. R. 3015(b).

53. “Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier.” 11 U.S.C. Sec. 1326(a)(1). That means that the debtor must begin making payments even if there has not yet been a confirmation hearing on the

proposed plan. Such pre-confirmation payments are payable to the trustee “in the amount...proposed by the plan.” *Id.* Sec. 1326(a)(1)(A).

54. In requiring these pre-confirmation payments, Congress reasoned that “when the payments do not begin promptly, the debtor becomes accustomed to living on money that will not be available once the plan becomes operational,” and that “the period between the filing of a plan and confirmation provides a good test of whether the debtor will be able to carry out the plan, or whether some modification is necessary.” *In re Acevedo*, 497 B.R. 112, 121 n. 22 (Bankr. D. N.M. 2013) (quoting S. Rep. No. 98-65, at 15-16 (1983)).

55. As for what becomes of those pre-confirmation payments that 11 U.S.C. Sec. 1326(a)(1)(A) requires the debtor to make to the Standing Trustee, 11 U.S.C. Sec. 1326(a)(2) provides that:

[a] payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b). (Emphasis added.)

56. As the United States Court of Appeals for the Tenth Circuit and the Ninth Circuit have recently ruled, 28 U.S.C. Sec. 586(e)(2) and 11 U.S.C. Sec. 1326(a), read together, unambiguously require a Chapter 13 Standing Trustee to return pre-confirmation payments (net of payment of approved administrative claims) to the debtor without deducting the Standing Trustee’s fee when no plan is confirmed. *See*

Goodman v. Doll, 57 F.4th 1129 (10th Cir. 2023); *Evans v. McCallister*, 69 F.4th 1101 (9th Cir. 2023).

57. Notwithstanding this statutory dictate, the Standing Trustees, including the Standing Trustees assigned to Plaintiffs' cases here, routinely retain the Fee Portion paid by Chapter 13 debtors whose reorganization plans are not approved by the bankruptcy courts. Because the Fee Portion belongs to the Chapter 13 debtors and/or administrative claimants, this wrongful retention of the Fee Portion by agents of the U.S. Government effects an unconstitutional taking.

58. The Fee Portion wrongfully retained by the Standing Trustees have inured to the direct benefit of the U.S. Government. Under the statutory framework governing the funding of the Standing Trustees, the user fee system is designed so that it covers only the costs incurred by the Standing Trustees. In other words, it is not a system designed to generate profits for the Standing Trustees. In this regard, Section 548(e)(2) provides:

(2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under subchapter V of chapter 11 or chapter 12 or 13 of title 11 [11 U.S.C. Secs. 1181 et seq. or 1201 et seq. or 1301 et seq.] for which such individual serves as standing trustee. **Such individual shall pay to the United States trustee, and the United States trustee shall deposit in the United States Trustee System Fund—**

(A) any amount by which the actual compensation of such individual exceeds 5 per centum upon all payments received under plans in cases under subchapter V of chapter 11 or chapter 12 or 13 of title 11 for which such individual serves as standing trustee; and

(B) any amount by which the percentage for all such cases exceeds—

(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus

(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases. Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section. [Emphasis added.]

59. Although not allowed by Section 548, the U.S. Trustee allows Standing Trustees to retain 25% of the annual revenues they receive in excess of their expenses as “working capital,” to be used to cover ongoing operating expenses in the following year. Since 2019, however, the Standing Trustees have collected fees that exceed the 25% “cap” by over \$100 million. Even if the U.S. Trustee has the discretion to authorize the 25% working capital reserves, by statute, the excess funds held by the Standing Trustees must be transferred to the U.S. Trustee System Fund maintained by the U.S. Government, to be used for the public purpose of supporting the U.S. Trustee system.

60. Importantly, the U.S. Trustee system provides a variety of support to the bankruptcy courts that goes beyond the Chapter 13 proceedings in which the Class has been involved. Further, 28 USC §589a(a) explains the monies in the United States Trustee Fund are in fact held in the Treasury of the United States. Therefore, the excess monies garnered from illegal fees taken from the Class are being used to subsidize the entire system, and the operations of the United States as a whole.

61. Even though the U.S. Trustee has inexplicably allowed the Standing Trustees to nominally retain the accumulated \$100 million of “profit” in their respective operating accounts, the Standing Trustees are statutorily required to turn that money over to the U.S. Trustee and therefore hold those funds in trust for the U.S. Government. Because the \$100 million necessarily includes all or part of the Fee Portions wrongfully retained by the Standing Trustees, the U.S. Government has now seized and controls those funds.

F. THE CHAPTER 13 BANKRUPTCY PROCEEDINGS INVOLVING THE NAMED PLAINTIFFS.

62. In 2021, Plaintiff/Debtor Lolita Henry (“Henry”) lived in Detroit, Michigan. Henry, through counsel, initiated a Chapter 13 case (U.S. Bankruptcy Court for the Eastern District of Michigan, Case No. 2145916-MLO) on July 14, 2021. Standing Chapter 13 Trustee David Ruskin was assigned to the case.

63. Henry proposed a reorganization plan (including two amendments thereto) which called for Henry to make monthly payments to the Standing Trustee for the benefit of her creditors. In March 2022, the bankruptcy court dismissed the case without confirming the plan. By that time, Henry had made pre-confirmation payments to the Standing Trustee totaling \$18,450. From those pre-confirmation payments, the Standing Trustee retained \$1,660.50 as the Trustee’s fee.

64. In 2022, Henry initiated another Chapter 13 case (U.S. Bankruptcy Court for the Eastern District of Michigan, Case No. 22-42959-MLO) on April 13, 2022. Standing Chapter 13 Trustee Tammy Terry was assigned to the case.

65. Henry proposed a reorganization plan which called for Henry to make monthly payments to the Standing Trustee for the benefit of her creditors. In August 2022, the bankruptcy court dismissed the case without confirming the plan. By that time, Henry had made pre-confirmation payments to the Standing Trustee totaling \$24,631.70. From those pre-confirmation payments, the Standing Trustee retained \$1,394.48 as the Trustee's fee.

66. In 2023, Plaintiff/Debtor Thomas Hughes ("Hughes") lived in Howell, Michigan. Hughes, through counsel, initiated a Chapter 13 case (U.S. Bankruptcy Court for the Eastern District of Michigan, Case No. 22-31690-JDA) on November 14, 2022. Standing Chapter 13 Trustee Carl Bekofske was assigned to the case.

67. Hughes proposed a reorganization plan (including two amendments thereto) which called for Hughes to make monthly payments to the Standing Trustee for the benefit of his creditors. In March 2023, the bankruptcy court dismissed the case without confirming the plan. By that time, Hughes had made pre-confirmation payments to the Standing Trustee totaling \$8,930. From those pre-confirmation payments, the Standing Trustee retained \$893 as the Trustee's fee.

CLASS ALLEGATIONS

68. Plaintiffs bring this action as a class action, pursuant to F. R. Civ. P. 23, individually and on behalf of a proposed class (the “Class”) consisting of all persons in the United States who (1) filed Chapter 13 petitions, (2) made pre-confirmation payments to a Standing Trustee, (3) had plans that were not confirmed by the bankruptcy court handling their cases, and (4) had the Standing Trustee retain less than \$10,000 of their pre-confirmation payments as a fee (after payment of allowed administrative claims) within the six years preceding the filing of this action or during the pendency of this action.

69. The members of the Class are so numerous that joinder of all members is impracticable. Indeed, while the number of Class members is not yet known, the number of Class members is most certainly in the tens of thousands.

70. Plaintiffs’ claims are typical of the claims of members of the Class. Plaintiffs are members of the Class they seek to represent, and Plaintiffs were injured by the same wrongful conduct that injured the other members of the Class.

71. The U.S. Government has acted wrongfully in the same basic manner as to the entire class.

72. There are questions of law and fact common to all Class Members that predominate over any individualized questions and that will be proved using the same evidence for each member. These predominant common questions of law and fact

necessitate a class action proceeding in order to generate common answers, drive the resolution of the litigation, and include by way of example and not limitation:

- a. Whether Section 1326 and Section 586 collectively prohibit a standing Chapter 13 trustee from taking a fee from Funds when the Chapter 13 debtor's reorganization plan is not approved;
- b. Whether or not the U.S. Government effected a taking under the Fifth Amendment of the Constitution by requiring or authorizing the withholding and/or reallocating specific property that belonged to Plaintiffs;
- c. Whether the retention by Standing Chapter 13 Trustees of the Fee Portion of the Funds in cases where the proposed reorganization plans are not approved constitutes an "illegal exaction" by the U.S. Government; and
- d. Whether the Standing Trustees are employees and/or agents of the U.S. Government in improperly retaining their fees in Chapter 13 cases in which reorganization plans are not confirmed by the bankruptcy courts.

73. Plaintiffs will fairly and adequately protect the interests of the Class, and Plaintiffs have no interests antagonistic to those of the Class. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent and experienced counsel to prosecute this action.

74. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. In addition, since individual refunds may be relatively small for most members of the class, the burden and expense of prosecuting litigation of this nature makes it unlikely that members of the class would prosecute individual actions. Plaintiffs anticipate no difficulty in the management of this action as a class action.

COUNT I

28 U.S.C. Sec. 1346(a)(2) – “Little Tucker Act”

VIOLATION OF FIFTH AMENDMENT TAKINGS CLAUSE

75. Plaintiffs incorporate each of their preceding allegations as if fully set forth herein.

76. Amendment Five to the U.S. Constitution provides that private property shall not “be taken for public use, without just compensation.”

77. The Takings Clause is “designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

78. The members of the Class have a cognizable property interest in the Fee Portion.

79. The U.S. Government, through the Standing Trustees, has asserted ownership of a specific and identifiable parcel of the Class's money—here Defendant has seized and/or impaired the Class's property interest in the Fee Portion for a public use without paying the members of the Class just compensation.

80. A *per se* taking occurs when a property owner suffers a permanent, physical invasion, without just compensation, of any portion of the property. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982).

81. U.S. Supreme Court decisions have made clear that the government effects a “per se” taking when it seizes a specific, identifiable “parcel” of money. *See, e.g., Brown v. Legal Found. of Washington*, 538 U.S. 216, 224, 235, 123 S. Ct. 1406, 155 L. Ed. 2d 376 (2003); *Koontz v. St. Johns River Water Management District*, 133 S.Ct. 2586, 2596, 186 L.Ed.2d 697 (2013).

82. The Fee Portion that the Standing Trustees have wrongfully retained are a specific, identifiable parcel of money owned by members of the Class.

83. The actions of the Standing Trustees described herein constitute an overt confiscation of specific property of the Class and constitute a *per se* taking of the Class members' property in violation of the Fifth Amendment.

84. The Chapter 13 Standing Trustees are employees, or at the very least, agents of the U.S. Government. The Supreme Court has held that if agents of the federal government accomplish takings of private property, “the action of the agent is the act of the government” and it is the federal government that is liable for suit, not the agent. *Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18, 21-22 (1940) (citation and quotation marks omitted).

85. Thus, for example, when separate corporate entities act for the United States, the United States is liable for their takings. *See, e.g., Russian Volunteer Fleet v. U.S.*, 282 U.S. 481, 489 (1931) (United States bound to pay just compensation when Shipping Board Emergency Fleet Corporation, acting under legislative authority, requisitioned contracts for the construction of two vessels); *see also Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440-441 (1982) (holding state government liable for a physical taking, even though the activity in question was carried out by a private cable company); *Casa de Cambio Comdiv S.A., de C.V. v. U.S.*, 291 F.3d 1356, 1363 (Fed. Cir. 2002) (recognizing that the federal government may be held liable for takings that are consummated through its “alter ego or agent”).

86. The Class has been harmed by the U.S. Government’s unlawful practice because they have been unconstitutionally deprived of specific property – the Fee Portion -- that is rightfully and legally owned by them.

87. The U.S. Government’s unconstitutional practices require that it pay just compensation to the Class in the amount of the Fee Portions it has unlawfully withheld.

COUNT II

28 U.S.C. Sec. 1346(a)(2) – “Little Tucker Act”

ILLEGAL EXACTIONS

88. Plaintiffs incorporate each of their allegations of paragraphs 1 through 74 inclusive, as if fully set forth herein.

89. An illegal exaction claim may be brought where “(1) money was taken [from the plaintiff] by the government and (2) the exaction violated a provision of the Constitution, a statute, or a regulation.” *Piszel v. U.S.*, 121 Fed. Cl. 793, 801 (2015) (citation omitted), *aff’d*, 833 F.3d 1366 (Fed. Cir. 2016). “The claim must assert that the value sued for was improperly paid, exacted, or taken from the claimant in contravention of the Constitution, a statute, or a regulation.” *Eastport Steamship Corp. v. U.S.*, 372 F.2d 1002, 178 Ct. Cl. 599, 605 (1967).

90. Exactions can be “direct” when money was paid directly to the Government or “in effect” when money “was paid to others at the direction of the government to meet a governmental obligation.” *Aerolineas Argentinas v. U.S.*, 77 F.3d 1564, 1572-73 (Fed. Cir. 1996). In the latter case, “the government has ‘in its pocket’ money corresponding to the payments that were the government’s...obligation” to make. *Id.* at 1573; *Clapp v. U.S.*, 117 F. Supp. 576, 127 Ct. Cl. 505, 512 (1954) (describing illegal exaction as occurring when “the Government has the citizen’s money in its pocket.”).

91. The retention of the Fee Portion by the Standing Trustees in cases where reorganization plans are not approved constitutes a direct exaction of money by agents of the U.S. Government which violated a provision of a federal statute (Section 1326).

92. In the alternative, the retention of the Fee Portion by the Standing Trustees in cases where reorganization plans are not approved constitutes an “in effect” exaction because it was retained by the Standing Trustees at the direction of the U.S. Government to meet a governmental obligation – *i.e.*, the compensation of the Standing Trustees and/or the funding of the U.S. Trustee System Fund. This retention also violated a provision of a federal statute (Section 1326).

93. The members of the Class have a cognizable property interest in the Fee Portion.

94. The Class has been harmed by the U.S. Government’s unlawful practice of illegal exactions because they have been deprived of specific property that is rightfully and legally owned by them.

95. The U.S. Government’s illegal practices require that it disgorge and pay to the Class the amount of the Fee Portion it has illegally exacted.

COUNT III
28 U.S.C. Sec. 1346(a)(2) – “Little Tucker Act”
VIOLATION OF THE UNIFORMITY CLAUSE,
ARTICLE I, SECTION 8, CLAUSE 1,
UNITED STATES CONSTITUTION

96. Plaintiffs incorporate the allegations of Paragraphs 1 through 74, inclusive, as if fully set forth herein.

97. The Bankruptcy Clause empowers Congress to establish “uniform Laws on the subject of Bankruptcies throughout the United States.” U. S. Const., Art. I, §8, cl. 4 (hereafter the “Bankruptcy Clause”).

98. Under the Bankruptcy Clause’s grant of authority, Congress enacted the “Bankruptcy Code” in 1978. It is the uniform federal law that governs all bankruptcy cases.

99. “The [bankruptcy] uniformity clause requires that the [bankruptcy statute] apply equally to all creditors and all debtors...”. See *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 160 (1974).

100. The U.S. Government’s application of 28 USC 586(e) and 11 USC 1326(a) is not uniform because those statutes do not operate with the same force and effect in every place in which the Standing Trustees perform their duties.

101. Plaintiffs assert noncontractual claims against the U.S. Government for the return of money paid to the U.S. Government in violation of the uniformity requirements of the Bankruptcy Clause.

PRAYER FOR RELIEF

Plaintiffs request that the Court grant the following relief:

A. Certify this action to be a proper class action under Fed. R. Civ. P. 23, with Plaintiffs certified as Class Representatives and Kickham Hanley PLLC and The Findling Law Firm, PLC designated Class Counsel;

B. Define the Class (the “Class”) as consisting of all persons in the United States who (1) filed Chapter 13 petitions, (2) made pre-confirmation payments to a Standing Trustee, (3) had plans that were not confirmed and their cases dismissed by the bankruptcy court, and (4) had the Standing Trustee retain less than \$10,000 of their pre-confirmation payments as a fee (after payment of allowed administrative claims) within the six years preceding the filing of this action or during the pendency of this action.

C. Find and declare that the U.S. Government has violated the Fifth Amendment takings clause of the Constitution by withholding and/or retaining the Fee Portion owned by the members of the Class, and order the U.S. Government to reimburse the Fee Portion owned by the members of the Class;

D. Find and declare that the U.S. Government has illegally exacted the Fee Portion owned by the Class and order that the U.S. Government reimburse the Class for its illegal exaction;

D. Award Plaintiffs and the Class pre-filing, prejudgment and postjudgment interest on the amounts the U.S. Government is required to pay to compensate the Class;

E. Award Plaintiffs and the Class the costs and expenses incurred in this action, including reasonable attorneys’, accountants’, and experts’ fees; and

F. Grant any other appropriate relief.

JURY DEMAND

Plaintiffs, individually and on behalf of the proposed Class, demand a jury trial on all issues so triable.

KICKHAM HANLEY PLLC

/s/ Gregory D. Hanley

Gregory D. Hanley (P51204)
Jamie Warrow (P61521)
Edward F. Kickham Jr. (P70332)
32121 Woodward Avenue, Suite 300
Royal Oak, Michigan 48073
(248) 544-1500
Counsel for Plaintiffs

THE FINDLING LAW FIRM PLLC

/s/ David Findling

David Findling (P43256)
415 S. West Street
Royal Oak, MI 48067
(248) 399-9700
Co-Counsel for Plaintiffs

Date: August 9, 2023

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2023, I electronically filed the ***Plaintiffs' Class Action Complaint and Jury Demand*** with the Clerk of the Court using the electronic filing system.

/s/ Kim Plets

Kim Plets

4878-5498-3542 v.1

EXHIBIT A

EXHIBIT A

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

Handbook for Chapter 13 Standing Trustees

October 1, 2012



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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 13 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). Standing trustees are encouraged to follow Practice Tips identified in this Handbook but these are not considered mandatory.

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 the provision of the Handbook conflicts with the 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 13 trustees.^{1/} 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. The standing trustee must be personally involved in the trustee operation. If the standing trustee is or becomes unable to perform the duties and responsibilities of a standing trustee, 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).

Although this Handbook is not intended to be a complete statutory reference, the standing trustee's primary statutory duties are set forth in 11 U.S.C. § 1302, which incorporates by reference some of the duties of chapter 7 trustees found in 11 U.S.C. § 704. 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)];
3. Investigate the financial affairs of the debtor [§ 704(a)(4)];
4. If a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper [§ 704(a)(5)];
5. If advisable, oppose the discharge of the debtor [§ 704(a)(6)];

^{1/} 28 U.S.C. § 586(b), (c), d), (e).

6. 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)];
7. 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)];
8. Appear and be heard at any hearing that concerns:
 - a. the value of property subject to a lien [§ 1302(b)(2)(A)];
 - b. confirmation of a plan [§ 1302(b)(2)(B)]; or
 - c. modification of the plan after confirmation [§ 1302(b)(2)(C)];
9. Advise, other than on legal matters, and assist the debtor in performance under the plan [§ 1302(b)(4)];
10. Ensure that the debtor commences making timely payments under § 1326 of this title [§ 1302(b)(5)];
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 § 1302(d) [§ 1302(b)(6)]; and
12. If the debtor is engaged in business:
 - 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), § 1302(c)].

D. STANDING TRUSTEE PLEDGE OF EXCELLENCE

The Standing Trustee Pledge of Excellence was developed by the National Association of Chapter Thirteen Trustees. The Program encourages all standing trustees to use it as a guide in operating their offices. A copy of the pledge is included in the Supplemental Materials.

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 13 cases. To be eligible for appointment as a standing trustee, an individual must have the qualifications set forth in 28 C.F.R. § 58.3 and 28 C.F.R. § 58.4. 28 U.S.C. § 586(d). Among other things, the applicant must qualify to be bonded. 11 U.S.C. §§ 322, 1302(a). The proposed appointee must submit an application to the United States Trustee and consent to a background investigation. Trustees must successfully undergo an initial background investigation and five-year background checks. 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 for Appointment
28 C.F.R. § 58.3	Eligibility for Appointment
28 C.F.R. § 58.4	Eligibility for Appointment
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 a new standing trustee, the United States Trustee conducts an open solicitation of persons interested in serving as the standing trustee.

Appointments of standing trustees are made by the United States Trustee on a non-discriminatory basis.

The number of standing trustees to be appointed in any judicial district is within the discretion of the United States Trustee in consultation with the Director of the Executive Office for United States Trustees (Director). The assignment of cases to standing trustees is also within the discretion of the United States Trustee subject to administrative review, when appropriate. The standing trustee must be able to administer cases and 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).

<i>Related Provisions:</i>	
28 C.F.R. § 58.5	Non-discrimination
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 statute provides that the Attorney General shall fix a maximum annual compensation, which includes the cash value of employment benefits. Therefore, 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, can only be paid pro rata on a monthly basis throughout the year after expenses are paid and it may not be paid in advance.

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

Related Provisions:	
28 U.S.C. § 586(e)	Trustee Compensation

D. CALCULATION AND COLLECTION OF PERCENTAGE FEE

A standing trustee's percentage fee is fixed by the Director by delegation from the Attorney General, after consultation with the United States Trustee for the region in which the standing trustee serves. 28 U.S.C. § 586(e)(1)(B). The standing trustee has no authority to negotiate a percentage fee other than that fixed by the Director.

The percentage fee is collected from all payments received by the standing trustee under the plan, including ongoing mortgage payments. 28 U.S.C. § 586(e)(2). Any exceptions to the collection of a fee on specific payments such as ongoing mortgage payments and domestic support obligations will be stated in the Director's notice fixing the percentage fee. The percentage fee collected is the percentage fee in effect at the time the payment is received. The standing trustee is authorized to collect the percentage fee upon receipt of the payment. The trustee must transfer the percentage fee to the operating expense account at least monthly. If the plan is dismissed or converted prior to confirmation, the standing trustee must reverse payment of the percentage fee that had been collected upon receipt if there is controlling law in the district requiring such reversal or if (after consultation with the United States Trustee) the standing trustee determines that there are other grounds for concern

in the district. If the standing trustee determines that all or part of the payment may not be a payment under the plan, the standing trustee may delay collection of the percentage fee on that payment or part of a payment until there is a determination of that issue. [Policy change effective October 1, 2014.]

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. Maintenance of the bond is discussed below in the Handbook at Chapter 5, section K.

<i>Related Provisions:</i>	
11 U.S.C. § 322	Surety Bond
11 U.S.C. § 1302	Bond Requirement

CHAPTER 3

ADMINISTRATION OF CHAPTER 13 CASES

CHAPTER 3 - ADMINISTRATION OF CHAPTER 13 CASES

A. INITIAL REVIEW OF CHAPTER 13 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 13 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 requirements of law are not followed.
7. 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, 1302(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 13 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 a standing trustee. This is an ongoing duty to review for conflicts in assigned cases.

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) .

<i>Related Provisions:</i>

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

<i>Practice Tips:</i>

<p>The standing trustee should adopt a procedure to review each assigned case as soon as possible after appointment, and before the meeting of creditors, for actual or potential conflicts, including prior representations of either the debtor or any creditors.</p>

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, Official Forms 22C-1 and 22C-2, payment advices, and other initial paperwork for consistency and completeness. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(4). [Language amended October 15, 2021.]

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 the accuracy of the debtor's documents. The standing trustee also must verify that the initial paperwork is complete and internally consistent. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(4).

In an effort to control the cost of bankruptcy without interfering with a trustee's obligation to investigate the financial affairs of the debtor or modifying the debtor's duty to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties, the Best Practices for Document Production Requests by Trustees in Consumer Bankruptcy Cases, which provides sound guiding principles for document-production requests, is incorporated as policy into this Handbook. A copy of the Best Practices may be found in the Supplemental Materials. [Language added October 15, 2021.]

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.

<i>Related Provisions:</i>

11 U.S.C. § 521(a)(1) Debtor's Duty to File Documents and (i) 11 U.S.C. § 521(a)(3) Debtor's Duty to Cooperate 11 U.S.C. § 1307(c) Conversion or Dismissal Fed. R. Bankr. P. 1005 Caption of Petition Fed. R. Bankr. P. 1007 Filing of Schedules

<i>Practice Tips:</i>

Schedules filed by the same debtor's counsel in multiple, unrelated cases that list the same assets and the same dollar amounts for all debtors, may be an indication of inaccurately completed schedules. For example, if the same attorney lists "household goods" and "\$1,500" on the schedule for all clients, the standing trustee should take action to correct the practice or coordinate enforcement action with the United States Trustee.
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3. EXEMPTIONS

The standing trustee must be generally familiar with the exemptions that can be claimed by chapter 13 debtors. The standing trustee must review all initial claims of exemption and later-filed amendments. If the debtor improperly claims an exemption, and the improper exemption decreases the amount of funds available to creditors under the liquidation analysis, the standing trustee must timely file an objection or take other appropriate action to cause the debtor to claim only proper exemptions. Fed. R. Bankr. P. 4003.

The standing trustee also must be aware of case law regarding exemptions in cases converted from chapter 13 to chapter 7 and must object if necessary to protect the interests of any potential successor trustee.

<i>Related Provisions:</i>

11 U.S.C. § 522 Exemptions 11 U.S.C. § 1325(a)(4) Liquidation Analysis Fed. R. Bankr. P. 4003 Objections to Exemptions Fed. R. Bankr. P. 1009 Amendments to Schedules
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<i>Practice Tips:</i>

The standing trustee may use the meeting of creditors to gain information about the debtor's exemptions.
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4. ELIGIBILITY FOR CHAPTER 13

The standing trustee must review the schedules in each case to verify that the debtor is eligible to file for chapter 13, 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.

Related Provisions:

11 U.S.C. § 109	Eligibility for Chapter 13
28 U.S.C. § 1408	Venue of Bankruptcy Case
28 U.S.C. § 1412	Transfer of Venue
Fed. R. Bankr. P. 1014(a)(2)	Improper Venue
Fed. R. Bankr. P. 1016	Death or Incompetency of Debtor

Practice Tips:

Factors that may guide the standing trustee's judgment include cases filed in an improper venue for an improper purpose, including to conceal assets, to inconvenience creditors or other parties in interest, or to obtain a perceived advantage by a trustee or judge that might be assigned to the case. These circumstances should be brought to the attention of the United States Trustee.

5. MULTIPLE FILINGS

The standing trustee should move to dismiss or take other appropriate action when a debtor files chapter 13 in violation of the Bankruptcy Code bar on filing for 180 days, if applicable, 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.

Related Provisions:

11 U.S.C. § 109(g)	Prohibition on Refiling
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Practice Tips:

The standing trustee should access the standing trustee's own database and the clerk of court's database to check for a debtor's previous filings. Trustees should also access the national PACER database which lists all bankruptcy filings indexed by debtor's name and last four digits of the social security number. To access PACER, go to www.pacer.uscourts.gov and select the U.S. Party case Index.

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. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(4). This review is a necessary part of investigating the debtor's financial affairs and claims against the

estate. 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.

In business cases, debtor's attorneys routinely provide services to debtors that are in addition to the services provided to the average consumer debtor. The level of complexity of a business case should be a factor in the standing trustee's evaluation of the reasonableness of an attorney's fee request.

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.

<i>Related Provisions:</i>	
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

<i>Practice Tips:</i>
Many districts have set a "no look" fee for chapter 13 cases by local rule. Attorneys need not file an itemized application for fees below the "no look" maximum. The standing trustee should not informally establish a minimum or maximum fee for chapter 13 cases but should review fees based on the individual character of the case.

7. REVIEW OF CERTIFICATE OF CREDIT COUNSELING

The standing trustee must review the certificate of credit counseling. 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 designate a trained substitute, with prior written approval of the United States Trustee.
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.
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 three business days after the meeting.

Related Provisions:

11 U.S.C. § 341	Meeting of Creditors
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11 U.S.C. § 343	Examination of the Debtor
11 U.S.C. §1302	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.

If the debtor attends the meeting of creditors, the standing trustee must conclude the meeting promptly so that the case can proceed expeditiously, unless the standing trustee states on the record a reason particular to an individual case for not concluding the meeting. If the meeting is not concluded, the trustee must state on the record at the end of the meeting that the meeting is continued and the date to which the meeting is continued. Fed. R. Bankr. P. 2003(e).

The standing trustee is discouraged from rescheduling a meeting in advance once the notice has been issued. If the standing trustee must

continue^{2/} a meeting, the standing trustee must announce the continued date to all parties present at the meeting, advise the United States Trustee, if requested, and file a statement specifying the date and time to which the meeting is continued. The standing trustee should be aware of and comply with the local rules and practices governing rescheduling requests and continuances. Fed. R. Bankr. P. 2003(e).

3. MEDIA AND THIRD-PARTY RECORDING

Representatives of the media are permitted to be present, but 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.

<i>Related Provisions:</i>

11 U.S.C. § 341(c) Appearances by Non-attorneys
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5. VERIFICATION OF DEBTOR IDENTITY AND SOCIAL SECURITY 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. The standing trustee must state on the record that the evidence of identification and social security number have been presented, and must state the type of evidence 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.

^{2/} References to "continue" in this Handbook shall have the same meaning as "adjourn." See Fed. R. Bankr. P. 2003(e).

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 people 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.

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.

The standing trustee is expected to conduct the meeting at the location designated by the United States Trustee. If the standing trustee must conduct meetings remotely, the standing trustee must meet the requirements listed in Chapter 3.B.13, Non-Attendance by Debtors. [Language revised February 2014.]

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. 11 U.S.C. § 1302(b)(4).

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

Practice Tips:

- 1. *Introductory Statement.*** When the meeting begins, the standing trustee should make an introductory statement. A suggested introductory statement is:
 "My name is _____, and I have been appointed by the United States Trustee, an officer of the United States Department of Justice, to serve as standing trustee in the cases scheduled for this morning/afternoon. I will preside at these meetings and examinations of the debtors. All debtors present must be examined under oath. All persons appearing must sign the appearance sheet. All persons questioning the debtor must state their names and whom they represent for the record, and speak clearly. The examinations will be electronically recorded and all testimony is under penalty of perjury."
- 2. *Advice at Meeting.*** Although the standing trustee may not give legal advice at the meeting, the standing trustee may state the standing trustee's position on confirmation or any other matter which may arise in connection with a case.

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, feasibility, disposable income, whether the debtor's proposed plan is in the best interest of creditors (liquidation analysis) and other matters. Standing trustees must ask certain required questions listed in the Supplemental Materials. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(4). 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.

<i>Related Provisions:</i>	
11 U.S.C. § 343	Examination of the Debtor
11 U.S.C. § 344	Self-incrimination; Immunity

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 trustees in advance of their meeting if they wish to use the service. 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 to reach the interpreter services. 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 day's meetings, 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, for each case. 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.

<i>Related Provisions:</i>

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.

A standing trustee may be authorized to expend trust funds for equipment and software necessary to conduct meetings of creditors remotely on a regular basis. To request budget approval, a standing trustee must present a plan and budget to the United States Trustee. 28 U.S.C. § 586(b). The plan should include the following: remote communication method to be used; projected cost of equipment, software, and other related items; and benefit to the trustee, debtor, debtor's counsel and creditors. The plan should also include a discussion of how the standing trustee will comply with each requirement contained in section B., Meeting of Creditors, of this Chapter. [Language revised February 2014.]

The United States Trustee is to be contacted if there are extenuating circumstances that make the debtor unable to appear in person. The circumstances may include military service, terminal illness, disability, or incarceration. 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 such as:

- 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. The standing trustee must also have procedures in place to verify that the debtor has filed outstanding tax returns with the appropriate taxing authorities as of the date of the meeting of creditors. 11 U.S.C. §§ 521(e)(2), 1308. To the extent that the debtor does not comply with this requirement, the standing trustee may hold open or adjourn the meeting of creditors for a reasonable time, not to exceed 120 days, to allow the debtor to file the unfiled tax returns.

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.

Related Provisions:

11 U.S.C. § 521(e)(2)	Debtor's Duties: Submitting Recent Tax Returns
11 U.S.C. § 1308	Filing Pre-petition Tax Returns

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. §§ 1302(b), 1302(d). 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 three business days 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. § 1302(d). 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.

<i>Related Provisions:</i>	
11 U.S.C. § 1302(d)	Notices of Domestic Support Obligations

C. REVIEW AND CONFIRMATION OF PLAN**Summary of Standing Trustee Duties**

1. Verify that debtors file plans promptly and that plans and modifications conform to the legal requirements for confirmation.
2. Perform a liquidation analysis in each case.
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. § 1321, Fed. R. Bankr. P. 3015.

The standing trustee must be familiar with the requirements regarding the contents and confirmation of a chapter 13 plan. 11 U.S.C. §§ 1322, 1325. 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. §§ 1322, 1325(b), 1326(a). The standing trustee must object to plans or modified plans that do not provide for payments for the applicable commitment period or that provide for a term that exceeds the statutory maximum of five years. 11 U.S.C. §§ 1322, 1325(b).

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. § 1302(b)(2)(B)	Duty of Trustee to Appear at Confirmation Hearing
11 U.S.C. § 1321	Filing of a Plan
11 U.S.C. § 1322	Contents of a Plan
11 U.S.C. § 1323	Pre-confirmation Modification

11 U.S.C. § 1324	Confirmation Hearing
11 U.S.C. § 1325	Confirmation of a Plan
11 U.S.C. § 1327	Effect of Confirmation
11 U.S.C. § 1329	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 perform a liquidation analysis of real and personal property prior to confirmation or modification of a plan. 11 U.S.C. § 1325(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 13 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. § 1325(a)(4).

Related Provisions:

11 U.S.C. § 1325(a)(4)	Liquidation Analysis
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3. DISPOSABLE INCOME TEST

The standing trustee must be familiar with controlling law and precedent in the jurisdiction defining disposable income and allowable expenses. The standing trustee must review Official Form 22C (Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income) and other information submitted by the debtor to determine if the plan meets the

requirements of the disposable income test, and object as appropriate if the debtor does not commit all projected disposable income toward plan payments to unsecured creditors. 11 U.S.C. § 1325(b).

Related Provisions:

11 U.S.C. § 1325(b)	Disposable Income Test
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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. § 1325(a)(6).

Related Provisions:

11 U.S.C. § 1325(a)(6)	Feasibility Test
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Practice Tips:

Filed claims may impact the feasibility of a plan. Therefore, the standing trustee should make an additional feasibility review after the bar date has passed.
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D. CLAIMS

Summary of Standing Trustee Responsibilities

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| <ol style="list-style-type: none"> 1. Review claims promptly and object when claims are untimely, improperly documented, or 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. |
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1. REVIEW, POSTING, AND OBJECTION - GENERALLY

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. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(5), 11 U.S.C. §§ 506, 1322.

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. § 1302(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. The standing trustee must be familiar with the requirements of the Bankruptcy Code and applicable decisions in the district regarding the payment of interest. 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. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(4).
- 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. § 1326(a)(1)(C).
- e. The standing trustee must review secured and unsecured claims for appropriate documentation, accuracy and timeliness. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(5).

Related Provisions:

11 U.S.C. § 502(b)	Allowance of Claims
11 U.S.C. § 1302(b)(1)	Duty to Review Claims (§ 704(a)(5))
11 U.S.C. § 1326(a)(1)(C)	Payments

Practice Tips:

1. The standing trustee should review claims to determine whether the secured creditor's lien is subject to avoidance pursuant to sections 544 through 549. The standing trustee also should determine whether attorney fees and costs added to the claim are reasonable.
2. The trustee should be aware of the controlling authority in the jurisdiction as to the requirement that secured creditors file proofs of claim. Even if secured claims are not required to be filed, there may be circumstances where the trustee should obtain and review the security documents to ensure that a claim is secured before paying such claim in the plan. The standing trustee also should review claims of creditors seeking adequate protection payments.
3. If a claim is filed as secured by reason of a judgment, the standing trustee should verify that the judgment was properly recorded at least 90 days prior to the filing.
4. The standing trustee should verify the validity and classification of tax claims.

2. REVIEW, POSTING, AND OBJECTION - MORTGAGE PROOFS OF CLAIM

For claims secured by a lien on the debtor's residence that are to be paid by the trustee under the plan, the trustee must, at a minimum:

- a. Verify that copies of documents supporting a perfected security interest are attached to the proof of claim. If the secured creditor/mortgagee fails to attach copies of documents supporting a perfected security interest and the trustee is unable to confirm that the creditor/mortgagee has perfected its security interest, the trustee must take appropriate action. 11 U.S.C. §§ 506, 1302(b)(1) incorporating 11 U.S.C. § 704(a)(5), Fed. R. Bankr. P. 3001.
- b. Verify that there is an itemization of the pre-petition fees, costs, and other charges attached to the proof of claim. If the proof of claim does not include an itemization of the fees, costs, and other charges and the trustee is unable to obtain the itemization,

the trustee must take appropriate action. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(5), Fed. R. Bankr. P. 3001.

- c. Verify whether the proof of claim includes a flat fee for review of the chapter 13 plan prior to confirmation and for preparation of the proof of claim and, if so, whether the fee is reasonable and fairly reflects the attorney's fee incurred. If the trustee determines that the fee is not reasonable, the trustee must object to the claim or take such other action as may be appropriate. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(5), Fed. R. Bankr. P. 3001.
- d. Verify that a secured proof of claim has been filed. If no claim has been filed, the trustee must ensure that the mortgagee's claim is not paid or take other action as may be appropriate. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(5).
- e. If a trustee determines, based on the trustee's facial review of the mortgage proof of claim, that the fees, costs, or charges are material and improper, the trustee must take appropriate action. 11 U.S.C. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(5), Fed. R. Bankr. P. 3001.

3. UNTIMELY CLAIMS

An unsecured creditor must file a proof of claim by the claims bar date to be eligible to receive payment. The standing trustee may not make payment under a plan to an unsecured creditor that did not file a timely proof of claim. 11 U.S.C. § 502(b)(9), Fed. R. Bankr. P. 3002(c). 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 the creditor does not timely file a proof of claim, the standing trustee or debtor may file a claim within 30 days after the expiration of the bar date. In most circumstances, the standing trustee does not have sufficient information regarding a creditor's claim against the debtor, and the standing trustee should not file a claim on behalf of a creditor. As an alternative, the standing trustee may provide notice regarding claims that will alert the debtor to consider filing claims for non-filing creditors.

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

4. 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.

5. POST-PETITION CLAIMS

The Bankruptcy Code allows an entity to file a proof of claim for certain types of post-petition debts, such as contract rejection damage claims, post-petition tax claims or certain consumer claims (of the kind described in 11 U.S.C. § 1305). If such a proof of claim is filed and it is an allowed claim, it will be treated as a pre-petition claim. The debtor may provide for payment of these post-petition tax and/or consumer claims in the plan, but unlike other claims, if holders of these claims do not file a proof of claim, the debtor or the standing trustee may not file a claim on behalf of the claimholder. The standing trustee must not make plan payments on account of these claims if no proof of claim has been filed or the debtor does not provide for payment of the claim in the plan.

In addition, unless the plan provides otherwise, the standing trustee must object to a post-petition consumer claim if the holder of the claim knew or should have known that prior approval by the standing trustee was practicable and was not obtained. 11 U.S.C §§ 1305, 1322(b)(6).

Related Provisions:

11 U.S.C. § 1305	Post-petition Claims
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6. 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.

<i>Related Provisions:</i>	
11 U.S.C. § 510	Subordination of Claims

E. EMPLOYMENT OF ATTORNEYS AND OTHER PROFESSIONALS

Summary of Standing Trustee Duties
<ol style="list-style-type: none"> 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 only upon approval of the United States Trustee. A request for approval 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. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(2). 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. Disclosure in a standing trustee annual or amended budget is not considered a request for approval of employment of an outside professional.

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. § 1302(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. § 1302(b)(5). 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. § 1307(c). Early and accurate identification of problem cases and prompt action by the standing trustee is essential.

Related Provisions:

11 U.S.C. § 1326(a) Commencement of Plan Payments

Practice Tips:

1. **Wage Orders:** A debtor is more likely to successfully complete a plan if payments are made through voluntary wage orders. The standing trustee should encourage voluntary wage orders in all cases where appropriate. If necessary, the cooperation of debtor's counsel should be sought in encouraging voluntary wage orders. In any case in which the debtor fails to make any of the scheduled payments on time, the standing trustee may seek a voluntary wage order as a condition for not filing a motion to dismiss or for withdrawal of a pending motion to dismiss.
2. **Monthly Delinquency Reports:** Most standing trustees generate monthly reports that list cases in which payments are delinquent. The criteria for inclusion on the reports vary widely. Standing trustees should establish a monthly report, and should establish criteria which bring to the standing trustee's attention debtors who are either substantially delinquent in dollar amount or substantially delinquent in number of payments. See Chapter 4 for more information about these reports.

G. CHAPTER 13 DEBTORS ENGAGED IN BUSINESS

Summary of Standing Trustee Duties

1. Establish a procedure for the prompt recognition of a business case.
2. Investigate and report on business case as required by the Bankruptcy Code and Rules.
3. Monitor the business debtor's periodic reports, and take action where appropriate.

1. IDENTIFYING A CHAPTER 13 BUSINESS CASE

The effectiveness of the standing trustee's treatment of the business case is dependent upon the standing trustee's ability to make early identification of the potential business case. The Bankruptcy Code defines a chapter 13 debtor engaged in business as "[a] debtor that is self-employed and incurs trade credit in the production of income from such employment..." However, it is often not possible to determine

from the petition and schedules whether a case fits within that definition. Further, a business debtor may incur trade credit after filing. Therefore, the standing trustee must develop and apply a list of objective criteria to determine which cases to classify as business cases. 11 U.S.C. §§ 1302(c) and 1304.

At a minimum, the standing trustee must consider as a business debtor a debtor with employees or a debtor incurring significant post-petition unsecured business debt.

When the standing trustee's analysis indicates that a chapter 13 filing may be a business case, the standing trustee should inquire further to determine whether the debtor is actually engaged in business. Some standing trustees conduct this inquiry at a meeting prior to the meeting of creditors; others request that the debtor bring documents such as tax returns, financial statements and the like to the meeting of creditors and examine the debtor at that time.

Some factors, which may indicate that a chapter 13 debtor is engaged in business, include the following:

1. The use of the term "doing business as," "d/b/a" or "dba" in the style of the case or as part of the debtor's name;
2. Designation on the petition as a business;
3. Debtor is self-employed;
4. Debtor is incurring trade credit in the production of income;
5. Debtor has one or more employees;
6. Debtor generates business income;
7. The existence of inventory for manufacture and/or resale;
8. The existence of trade debt and/or receivables;
9. Ownership and/or lease of business property;
10. Ownership of rental property;
11. Filing of Schedule C or Schedule E with tax return;
12. Ownership and/or lease of office equipment, furnishings, and supplies;
13. Obligations for payroll taxes, business tax, real estate tax and personalty tax;
14. Obligation for business related insurance;
15. Schedules I and J include business income and expenses; and
16. Business expenses deducted from income to determine "disposable income."

<i>Related Provisions:</i>	
11 U.S.C. § 1304	Debtors Engaged in Business

2. INVESTIGATE AND REPORT ON BUSINESS CASE

If the debtor is engaged in business, the standing trustee must perform certain investigative duties in addition to those performed in a non-business case. 11 U.S.C. § 1302(c).

a. Standing Trustee's Investigation of a Debtor Engaged in Business

The standing trustee's investigation of a debtor engaged in business may vary depending upon the nature and size of the business.

The standing trustee must meet with the debtor and debtor's counsel prior to or at the meeting of creditors to examine and review the debtor's business documents. The standing trustee must direct the debtor to bring to the meeting of creditors documents reflecting the financial condition of the debtor's business. 11 U.S.C. § 1302(c), Fed. R. Bankr. P. 2004.

At the meeting of creditors, the standing trustee must advise the debtor of the debtor's duty under Bankruptcy Rule 2015 to keep records, make reports and give notice of the case. 11 U.S.C. § 1304(c).

Examples of documents reflecting the business debtor's financial condition are:

1. Copies of Federal and State tax returns, along with all supporting schedules, for at least the two years preceding the filing;
2. Copies of financial statements furnished to a third party, such as a trade creditor or a bank, within the two years preceding the filing of the petition, including but not limited to the balance sheet, income statement and cash flow statement;
3. Current books and records of the business, including checks and check registers;
4. Monthly profit and loss statements for at least the year preceding the filing;
5. Current schedule of accounts receivable and accounts payable;
6. Current insurance policies; and
7. Lease agreements.

Related Provisions:

11 U.S.C. § 1302(c)	Duty to Investigate and Report (adopting § 1106(a)(3))
Fed. R. Bankr. P. 2015(c)	Debtor's Duty to Keep Records, Make Reports and Give Notice

b. Contents and Filing of the Investigative Statement or Summary

As soon as practicable, the standing trustee shall file with the court, and serve upon the United States Trustee, a statement of the standing trustee's investigation of the debtor's business operations. The required statement of investigation may be included in an objection to confirmation or report on confirmation filed with the court. If the investigation uncovers evidence of fraud, the standing trustee must notify the United States Trustee and take appropriate action. 11 U.S.C. § 1302(c), 28 U.S.C. § 586(a)(3)(F).

Related Provisions:

11 U.S.C. § 1302(c)	Duty to Investigate and Report (adopting § 1106(a)(4))
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Practice Tips:

- The following list of items may be addressed in the investigative statement:
1. Nature and location of business;
 2. Number of employees;
 3. Status of tax returns and tax delinquencies (Federal, State, local, employer property taxes);
 4. Insurance;
 5. Business licenses;
 6. Condition of books and records;
 7. Prior balance sheet and profit/loss statements;
 8. Aging of accounts receivable and accounts payable;
 9. Debts;
 10. Work-in-progress;
 11. Turnover actions, if applicable;
 12. Any fact pertaining to fraud, dishonesty, incompetence, misconduct or irregularity in the management of the affairs of the debtor or to a cause of action available to the estate; and
 13. Except to the extent the court orders otherwise, a statement

concerning 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.

3. PERIODIC MONITORING

The debtor must file periodic reports required by the Bankruptcy Code and local rules or practices. 11 U.S.C. § 1304, Fed. R. Bankr. P. 2015. The standing trustee must review the periodic reports to verify that the ongoing business, while in bankruptcy, does not fall in deeper financial difficulty than at the time of the filing of the case. The level of monitoring is dependent upon the nature of the case and the business expertise of the debtor.

Related Provisions:

11 U.S.C. § 1304	Debtor Engaged in Business (adopting § 704(a)(8))
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Practice Tips:

Monitoring might include the debtor meeting with the standing trustee's business case analyst, if applicable, to review the budget, an evaluation of the debtor's accounting systems, an on-site tour of the business premises, the requirement that periodic operating reports be filed along with bank statements, tax deposits and payment forms, and monitoring of insurance coverage.

H. DISBURSEMENTS

Summary of Standing Trustee Duties

1. Disburse a debtor's plan payments on a monthly basis 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. MONTHLY DISBURSEMENTS

The standing trustee must retain debtor payments of amounts proposed by the plan until confirmation, unless otherwise ordered by the court or required by law or local rule. 11 U.S.C. § 1326(a)(2). If the plan is confirmed, the standing trustee must distribute such payments in accordance with the plan as soon as practicable. *Id.* The standing trustee must have in place procedures designed to assure that disbursements to creditors are made soon after confirmation and the disbursements are made monthly thereafter.

If the case is dismissed or converted pre-confirmation, the standing trustee must distribute or return funds as required by 11 U.S.C. § 1326(a)(2), after deducting § 503(b) claims to the extent allowed by court order. See also Chapter 2, section D, Calculation and Collection of Percentage Fee. It is the Program's longstanding position to disfavor awards of administrative expenses to standing trustees pursuant to 11 U.S.C. § 503(b) unless otherwise ordered by the court or required by law or local rule. Trustees who receive such awards may not also collect a percentage fee in those cases. If the case is dismissed or converted post-confirmation, the standing trustee must make distributions in accordance with controlling law. [Language revised May 2015.]

Related Provisions:

11 U.S.C. § 348	Effect of Conversion
11 U.S.C. § 349	Effect of Dismissal
11 U.S.C. § 524(i)	Failure of Creditor to Credit Payments
11 U.S.C. § 1326(a)(2)	Plan Payments
28 U.S.C. § 586(e)(2)	Collection of Percentage Fee

Practice Tips:

A standing trustee who receives ongoing mortgage payments should have a procedure in place to verify the status of the mortgage at the end of the bankruptcy.

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. § 1326(c).

3. **ERRONEOUS DISBURSEMENTS**

The standing trustee must have a procedure in place to detect and recover erroneous disbursements. 11 U.S.C. § 1302(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. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586(b).

I. 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 action 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 possesses various powers to avoid unequal treatment among creditors of the same class or other parties in interest. The standing trustee must be familiar with these powers. 11 U.S.C. §§ 544-553.

Related Provisions:	
11 U.S.C. §§ 544 - 553	Trustee Avoidance Powers

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).

Practice Tips:

The standing trustee should determine whether or not a tolling agreement is necessary based on the circumstances of each case. Factors to consider include the value of the assets transferred, the cost and practicality of obtaining a tolling agreement, litigation the action (including any fees and costs incurred by professionals hired to represent the standing trustee), collecting a judgment from the defendant, any defenses to an avoidance action, and whether any portion of the recovery might be subject to an exemption by the debtor.

J. DISCHARGE OF DEBTOR**Summary of Standing Trustee Duties**

1. Certify promptly to the court when the debtor has successfully completed the plan.
2. Object to an application for a hardship discharge in cases where the debtor is not eligible.
3. Provide the statutory second notice, if required, to DSO holders.

1. ELIGIBILITY FOR DISCHARGE

The standing trustee must promptly certify to the court in accordance with local rules or practice when the debtor has successfully completed the plan. 11 U.S.C. § 1328. This certification can be made before or as a part of the final report. The standing trustee may rely on the debtor's certification filed pursuant to section 1328(a) that the debtor has paid all amounts payable under any DSO (this applies only to debtors that have DSOs). The standing trustee is not responsible for certifying to the court that the debtor has completed a post-filing financial management course. However, if the debtor has not filed a statement of completion of a personal financial management course in accordance with section 1328(g) and Rule 1007(b)(7), the standing trustee should remind the debtor that the bankruptcy court will not grant a discharge to the debtor without the statement of completion having been prepared on the official form and filed with the court.

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 § 1329 is not practicable.

A hardship discharge is not as broad as a standard chapter 13 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 to the debtor's hardship discharge if the debtor does not qualify under the above statutory standards. 11 U.S.C. § 1328(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. § 1302(d).

<i>Related Provisions:</i>	
11 U.S.C. § 1302(d)	Notices of Domestic Support Obligations
11 U.S.C. § 1328	Chapter 13 Discharge
Fed. R. Bankr. P. 1007(b)(7)	Filing of Statements

K. 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. § 1302(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. § 1326(c). This review must not be conducted by the same staff member who 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 13 Standing Trustee's Final Report and Account. 28 U.S.C. § 589b, 28 C.F.R. § 58.7. The Final Report form is available on the Program website at www.justice.gov/ust. This 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.

<i>Related Provisions:</i>

11 U.S.C. § 1302(b)(1)	Final Report (adopting § 704(a)(9))
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<i>Practice Tips:</i>

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| <ol style="list-style-type: none"> 1. If a claim is reassigned, both the initial creditor and the subsequent creditor should be listed on the final report. This will improve the accuracy of the final report. 2. The standing trustee may consider serving a copy of the final report on all parties in interest as a further internal control. 3. The standing trustee may implement procedures to allow issuance of a replacement check to creditors who fail to negotiate their final disbursement check within 90 days of issue. However, if the creditor fails to negotiate the replacement check, the standing trustee must pay the unclaimed funds to the Court. The standing trustee should have in place procedures to determine when unpaid funds must be paid to the Court. |
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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. § 1302(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.^{3/}

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.

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.

^{3/} To be approved by the United States Trustee, the banking institution must execute a Uniform Depository Agreement.

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 IRS Form 1099's 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.

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, 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 13 cases.

Related Provisions:

11 U.S.C. § 345

Money of Estates

Practice Tips:

1. Disbursement accounts - in order to improve the security of the trust funds, a disbursement account may be used, provided the account meets all trust account requirements.
2. In order to improve the maximum interest earned on confirmed trust funds prior to their disbursement, the standing trustee may transfer funds to FDIC-insured investment accounts or through direct purchase of U.S. government securities.
3. To the extent that the standing trustee utilizes a payroll service or automatic withdrawals from the operating expense account, procedures should be developed to ensure the security of the expense funds. Those may include a separate payroll account or a block on the expense account to protect against unauthorized withdrawals by the payroll company.

B. BANK REQUIREMENTS

1. GENERAL

A standing trustee may deposit funds in a banking institution only if the bank agrees to the terms 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 promptly 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.

<i>Related Provisions:</i>

12 U.S.C. §§ 5001-5018	Check Clearing For the 21 st 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 13 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 13 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 and 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.

<i>Related Provisions:</i>	
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 operation. The systems must have the following characteristics:

- a. Financial records must be updated daily and reflect each day's activities separate from that of another day. 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's accounting records must be automated and contain the following:

- a. General Ledger – a detailed record of deposits and expenditures of the standing trustee's trust and expense accounts broken down by category.
- b. Cash Receipts Journal – list of all funds received including funds from or on behalf of debtors and funds from creditors.
- c. Cash Disbursements Journal – list of all disbursements from the trust accounts.
- d. Individual Case Cash Receipts and Disbursements Ledgers – listing of receipts and disbursements in each individual debtor's account.
- e. Fixed Asset Register (Inventory) – a subsidiary account listing all items of property which exceed \$500 in cost and have a useful life of at least one year. Upon disposition of assets, the standing trustee must delete items from the register and identify their disposition. All assets must be listed with a unique serial number or an identification number. 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.

Practice Tips:

1. The standing trustee should prepare at year-end a summary showing beginning fixed asset inventory balance, additions, deletions and ending inventory balance, and a detailed listing that agrees with the ending inventory balance. This will assist the auditors in their reconciliation.
2. Fixed assets could be bar coded to assist in tracking.

3. ACCOUNTING REPORTS**a. Final Reports**

Subject to Rule 1019, the standing trustee must promptly file a final report and account for each chapter 13 debtor after final distribution and after all checks relating to the case have cleared the bank. 11 U.S.C. § 1302(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 101-13-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. § 1302(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).

Practice Tips:

1. These reports may be outsourced for efficiency.
2. If not outsourced, reports to the same debtors' attorney may be burned to a CD and sent to that attorney.
3. Debtors or their counsel may be more likely to notice errors if reports are sent every six months.

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

- a. The standing trustee must actively supervise employees in the performance of their cash management and accounting duties.
- b. The standing trustee must have written employee job descriptions.
- c. The standing trustee must document routine staff procedures.
- d. The standing trustee must maintain and review records of employee's time and attendance and must document paid overtime.
- e. The standing trustee must implement a vacation policy which provides that employees be absent from their duties for an uninterrupted period of not less than one week. To provide an effective internal control, another employee must assume the duties performed by the absent individual.

Practice Tips:

1. The standing trustee should be aware of the employee fraud indicators provided by the United States Trustee as listed in the Supplemental Materials.

2. The standing trustee should consider conducting background checks and check with prior employers prior to the hiring of employees. The standing trustees may use an outside agency to conduct any background checks on employee applicants. A background check by an outside agency may include such items as employee reference checks, credit checks, and public record searches. However, any background check should be conducted only with the written consent of the applicant and should be in compliance with applicable State and Federal laws.

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. The standing trustee must separate cash handling duties from record keeping and reconciliation functions whenever possible.
- 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 of the reconciliation and reviewer of the reconciliation 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 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. 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 a daily basis.

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 mitigating procedure in place. Deposit 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 13 Trustee." For example, "John Doe, Chapter 13 Trustee."

<p><i>Practice Tips:</i></p> <ol style="list-style-type: none"> 1. Bank lockbox systems remove substantially all debtor payments from the standing trustee's office and accordingly represent a strong internal control tool. Advantages and costs of a bank lock box system should be considered. 2. If the standing trustee uses a lockbox, the bank should send to the standing trustee weekly a listing of all returned receipts. This package should be opened only by the standing trustee.
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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.

Practice Tips:

1. **Electronic Transfer of Plan Payments Initiated by the Debtor's Employer:** The standing trustee may allow the debtor's employer to initiate the transfer of funds electronically to the standing trustee. The standing trustee must receive sufficient information about a transfer to post it to a particular case at the time that the payment is received.
2. **Electronic Transfer of Plan Payments Initiated by the Standing Trustee at the Debtor's Request:** The standing trustee may initiate the transfer of funds electronically from the debtor pursuant to a prior agreement with the debtor. The standing trustee should have procedures in place to address issues arising from the fact that payments can be returned due to insufficient funds, lack of authorization, or debtor revocation. The

debtor's revocation may occur up to sixty (60) days from the date that the transfer first appears on the bank statement. Consequently, it is recommended that a hold of a minimum of two weeks to a maximum of sixty (60) days be placed on these funds.

7. POSITIVE PAY

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

Practice Tips:

1. The standing trustee should have positive pay or reverse positive pay for the expense account to increase the protection of the account.
2. Positive pay arrangement should also verify check number, check amount and payee name.
3. Positive pay file should be encrypted prior to transmission.

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. [Policy change effective June 2013.]

Practice Tips:

1. Return address on envelope should show a separate post office box from the standing trustee's regular address in order to maintain control over the returned checks and creditor refunds.

2. Standing trustees should be aware of current case law regarding “holder in due course” status in their jurisdiction.
3. Non-check-writing accounts should be protected from unauthorized withdrawals from the account.

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, funds may either be posted to a suspense account, posted to the closed case or the case 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.

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

Other uses of the suspense account should be rare. One example where a separate suspense account would be appropriate is if two

standing trustees are located in the same city. Checks related to cases assigned to one standing trustee may be sent to another standing trustee in error. These funds should be timely remitted to the other standing trustee.

Practice Tips:

A suspense account should be set up for each fiscal year. At year end, the account should be closed to new receipts.

11. MANAGEMENT REPORTS

The following reports must be run and reviewed monthly. The purpose of these reports is to help the standing trustee identify mistakes, irregularities and potential fraud.

- a. Creditor name change error report – identifies where payee on check does not match the name in the master creditor database.
- b. Balances over \$100,000 – identifies cases with balance on hand in excess of \$100,000.
- c. Activity in closed cases – identifies any activity in cases where the final report has been issued.
- d. No disbursement over 90 days for confirmed cases with funds on hand – identifies case with a hold on disbursements.
- e. Out of balance reports – identifies cases where fund balance per system does not equal receipts minus disbursements.
- f. Negative balance reports – identifies cases which have disbursed more than funds available.
- g. Suspense account reconciliation report - identifies total receipts and disbursements to be reviewed in conjunction with reconciliation.
- h. Large check report – identifies all disbursement checks over an amount specified by the standing trustee.
- i. Case reconciliation report - at least annually, the standing trustee must reconcile cases with the bankruptcy clerk's office for the number of cases: open, filed, dismissed, converted, and closed.

12. USE OF CREDIT CARDS

The standing trustee may obtain credit cards to be used solely for purchases that are actual and necessary to the trust operation ("trust operation credit card") 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 trust operation credit cards. Any benefits that accrue from using trust operation credit cards must be applied to the trust operation or forfeited. Any "convenience" checks received from the credit card company must be destroyed and no cash advances may be obtained. All credit card bills must be paid in full each billing cycle unless there is an item in dispute or prior written approval from the United States Trustee is obtained. A reasonable annual fee is allowable. However, any interest or late fees accrued are not valid authorized expenditures of the expense fund.

Except as noted in this paragraph, trust expenses cannot be charged to a credit card used for the personal expenses of the standing trustee or employees. The standing trustee and employees may use personal credit cards for their own reimbursable travel-related business expenses. A request for reimbursement, with appropriate documentation, must be submitted promptly. In addition, the standing trustee may use a personal credit card for incidental purchases of goods. Such purchases should not be a routine occurrence and should not exceed \$100. Any benefits that accrue from the usage of personal credit cards as specified in this paragraph may be used by the individual personally. [Policy change effective October 1, 2014.]

E. COMPUTER SYSTEMS

The standing trustee must automate the chapter 13 financial reporting, accounting, case administration, and reporting systems as outlined in this Handbook.

1. SELECTION OF COMPUTER SOFTWARE PROVIDER

There are a number of private companies that offer software specifically designed for chapter 13 trustee 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.

Practice Tips:

1. As an additional protection, software providers should maintain a reasonable amount of errors and omissions insurance that will provide coverage for actual or alleged acts, errors or omissions arising out of professional services rendered for the trustees.
2. If a standing trustee relies on the software provider to provide computer-based services that impact their control environment, they should consider asking the provider for a service auditor's report that assesses their internal controls (also known as a "SAS 70" audit).

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 SYSTEM SECURITY

The system must require that passwords be unique passwords that must 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.

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

4. COMPUTER SOFTWARE SECURITY

The standing trustee must ensure that the computer system used for chapter 13 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 the 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, transaction type.
- h. 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).
- i. Mobile storage media (for example, USB thumb drives) or the files on them must be encrypted.

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.

Practice Tips:

1. System should prompt for password changes.
2. System administrators should not provide passwords to the users nor maintain a record of the user passwords.
3. Passwords should be "hard" passwords containing at least 8 alphanumeric characters which are a combination of numbers and letters.
4. Biometric security devices in combination with passwords provide additional protections.
5. Expense accounting software should be consistent with these security controls.
6. Standing trustee may consider a software provider's offsite backup service, which automates the backup process.
7. Standing trustee should test the backup system to verify that the images in a paperless or image-based system are also being backed up and retained.
8. Standing trustee should conduct scans for virus and spyware protection regularly to verify the computer's integrity.
9. Standing trustee should participate in a computer security testing program to verify the computer's integrity and safety and security of the system.

10. Additional password controls are appropriate for certain functions, such as initiating bank account transfers or generating disbursement checks.
11. The backup diskette, tape, or other media should be tested or rotated periodically to ensure its continued reliability.

5. 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. 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 13 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 13 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.

<i>Practice Tips:</i>

The standing trustee should consider separating any reception area from the employee space by a secure door using deadbolt locks, punch locks, and security glass.
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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. This duty exists regardless of whether the standing trustee or staff is able to ascertain 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); gender 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.

Notification to Third Parties: The standing trustee must notify law enforcement officers and insurance carriers as appropriate.

Notification to Affected Individuals: The determination of appropriate level of notification 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.

Practice Tips:

The standing trustee should make copies of the product keys for all software (required for software installation) and store them offsite with the backup.

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 13 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. Each United States Trustee has developed specific procedures with the local offices of the United States Attorney and the Federal Bureau of Investigation. 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.

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 extent 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).

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 13 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 13 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 trustee 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 13 debtors or creditors, except those services provided as a United States Trustee approved provider of a personal financial management instructional course.

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 an annual 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 13 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 13, and may participate in meetings, educational seminars, or institutes concerning chapter 13.

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, gender, 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 trustee 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 1099's 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. The Bankruptcy Code also requires the standing trustee to advise the debtor on non-legal matters in performance under the plan and to assist the debtor in same. A standing trustee must have staff and procedures in place 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. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(7), 11 U.S.C. § 1302(b)(4). The cost of performing this statutory duty is covered by the percentage fee fixed under 28 U.S.C. § 586(e).

The duty to provide information is the subject of several provisions in the Standing Trustee Pledge of Excellence. See Supplemental Materials. Examples of information to be made available include debtors' names, addresses, dates of filing, status of meeting of creditors, confirmation status, case status (e.g., dismissed, converted, closed on completion of plan, etc.), plan payments, claims, disbursements to creditors, other items of information which are generally disclosed through the court dockets and files, trustee's final reports, and motions which may be filed by a standing trustee. 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.

Related Provisions:

11 U.S.C. § 1302(b)(1)	Duty to Furnish Information (adopting 11 U.S.C. § 704(a)(7))
11 U.S.C. § 1302(b)(4)	Duty to Advise Debtor

Practice Tips:

One method of providing information which is convenient to debtors, creditors and other parties in interest is the maintenance of a web site. The standing trustee who provides information on the Internet should take precautions to ensure that the site is secure and that information is restricted to parties with the legal right to obtain it. Social security numbers should not be shown on the website.

I. DEBTOR EDUCATION

A standing trustee may be authorized to expend trust funds to provide a debtor education/personal financial management course. These courses should provide the debtor general information about the bankruptcy system, including the rights and duties of chapter 13 debtors, together with information about personal finances, development of family budgets, and any information necessary to assist the debtor in completion of the chapter 13 plan.

In developing a debtor education course, a standing trustee should consider all existing available resources, including volunteer and non-profit agencies. For example, some communities have available courses developed by local colleges and universities, as well as agricultural extension programs. In addition, volunteer experts may be located through the Small Business Administration, local banks or insurance companies. The National Association of Chapter Thirteen Trustees has developed the Trustee Education Network a non-profit organization providing valuable resources on debtor education.

To request budget approval, a standing trustee who is an approved provider pursuant to 11 U.S.C. § 111 must present a plan and budget to the United States Trustee. 28 U.S.C. § 586(b). The initial plan should cover at least the following items: start date of course;

frequency with which the classes are scheduled; location of classes and number of participants expected at each session. More detailed information is included in the application submission.

Once an application is approved, the standing trustee will be authorized to provide the debtor education course during the approval period (six months for a first-time application and one-year intervals thereafter) and to issue certificates through the Certificate Generating System maintained by the Program.

If a standing trustee resigns during the approval period, and the successor trustee wishes to offer the debtor education course, the successor trustee must submit a new application before issuing any certificates in the successor trustee's name. The successor trustee may issue certificates under the prior trustee's name until the application is approved. In most cases, upon submission of the application, the successor trustee will receive immediate conditional approval and will be authorized to provide the debtor education course for the remainder of the prior trustee's approval period. The successor trustee will then be required to submit a new application within the deadlines established by the Program. 28 C.F.R. §§ 58.15 – 58.27.

J. 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.

<i>Related Provisions:</i>	
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

K. 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. § 1302(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 150% of the average monthly bank balances for the prior three months for all bank accounts, certificates of deposit or other permissible investments maintained by the trustee operation. The balances are determined from the bank records and reviewed monthly by the standing trustee and the United States Trustee.

The standing trustee must discuss with the United States Trustee any significant increases in bank balances or any anticipated increase in funds. 11 U.S.C. § 322. If the average monthly bank balances are such that the standing trustee's bond is less than 150% of those amounts, 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.

Related Provisions:	
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. § 1302(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 trustee 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. One extraordinary circumstance would be where the standing trustee directly contributed to the loss.

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 the United States Trustee requires 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).

L. 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).

M. 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, 1325(b).

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, 1325(b). 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 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 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).

Practice Tips:

1. Retain records electronically so they can be searched more easily.
2. For security reasons, the standing trustee should consider shredding trust records. Outsourcing may be the most efficient way to do this but the standing trustee should ensure the company is bonded and preferably with banking clients.

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 13 standing trustee is October 1 to September 30. The United States Trustee will provide to the standing trustee the standard budget form with instructions and the due date, no later than June 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 October 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. Expenses must be paid each month before the standing trustee's personal compensation is paid. The following budget categories are explained:

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.

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.

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.

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.

Each year, the United States Trustee provides the standing trustee guidance for calculating the salary increase pool for the upcoming fiscal year. The salary increase pool is intended to be the sole source for funding salary increases as well as bonuses. Employees whose salaries are in excess of the maximum salary range are not eligible for a salary increase but may be eligible for a bonus. Employees whose salaries are less than the minimum salary range must be raised to the minimum prior to receiving their salary increase. No employee of a standing trustee may receive compensation and benefits of a value greater than maximum compensation of a standing trustee.

The standing trustee must retain an outside compensation consultant approximately every five years to ensure that the compensation (salary and benefits) system remains comparable to the local market. The standing trustee should communicate to the consultant all relevant United States Trustee budget and employment guidance.

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

[Language revised February 2014.]

Practice Tips:

1. Salary raises should be awarded once a year; October 1 is a logical date to use.
2. In preparing the budget, standing trustees should be aware there may be an extra pay period, depending on when the pay date falls.
3. Standing trustees should consider limiting the amount of leave or paid days off that an employee can carry over from one year to the next. Without such a limit, large unfunded liabilities may accrue.
4. The standing trustee should consider common cost-cutting measures such as co-payments for health insurance, larger deductibles, Health Maintenance Organizations (HMO's) or Flexible Spending Accounts (FSA).

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 debtor education programs, 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.

Practice Tips:

1. Leases should include a cancellation clause.
2. Leases that require reimbursement for pro rata real estate taxes, building operating expenses, and other expenses such as common area maintenance (CAM) should be avoided when possible.

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, 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. Each standing trustee will have at least one audit per year.

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. Noticing: This line item includes charges incurred in providing noticing to interested parties, including postage, supplies and processing costs.

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

i. Postage: This line item includes all postal charges and rental of post office boxes, except those related to noticing.

j. Office Supplies: This line item includes charges incurred for consumable supplies and other property of little monetary value, such as hand-held calculators, except those related to noticing.

k. 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 insurances.

l. Dues, Publications and On-Line Services: This line item includes attorney licensing fees required to practice law in the state 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 \$1,500 in total. Payment of professional licensing fees (including mandatory bar membership dues) for the standing trustee is not authorized. [Policy change effective March 1, 2014.]

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

(1) Training not provided by the United States Trustee:

This line item includes all costs associated with training not provided by the United States Trustee. A standing trustee may use up to 4.5% of the annual standing trustee compensation plus 2% of the total salary expense (salaries, overtime, bonuses but not payroll taxes or benefits) or \$15,000, whichever is greater, to provide training for employees and the standing trustee. 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 \$15,000 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, persons attending and total cost of seminar.

Training provided by the United States Trustee is not included in this line item.

[Policy change effective March 1, 2014.]

(2) Training provided by the United States Trustee: This line item includes all costs associated with training provided by the United States Trustee. Travel expenses for NACTT Liaison Committee members, and other members of the NACTT for attendance at committee meetings, board meetings, and executive meetings are an allowable expenditure from the standing trustee's expense funds if such meetings are with and at the request of the Executive Office for United States Trustees. Specific authorization must be obtained. 28 C.F.R. § 58.4(b) referencing 28 C.F.R. § 58.3(b)(7).

n. Debtor Education: This line item includes charges for courses designed to assist the debtor in performance of obligations under the plan and in the development of financial management skills. This category includes all costs associated with the course including space and consulting but does not include employee expenses. Approval requires that the standing trustee be an approved provider of an instructional course concerning personal financial management pursuant to 11 U.S.C. § 111(d).

o. 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.

p. Travel: This line item includes charges incurred for official travel necessary for the administration of chapter 13 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 official duty station. 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.

Practice Tips:

The standing trustee may elect to 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.

q. 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.

r. Equipment/Furniture Purchases: This line item includes charges for purchase of furniture and equipment including any installation charges. Equipment and furniture purchased with chapter 13 funds may be used only for the administration of chapter 13 cases by the standing trustee and any successor of the standing trustee.

Practice Tips:

Often the cost of purchasing equipment is significantly less than leasing it from a vendor.

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

t. 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, tax penalties and interest (e.g., penalty for failing to pay employee taxes timely), and internet services at trustee's or employee's home. The standing trustee may be required to reimburse the trust for late fees on vendor payments.

4. BIDS FOR CERTAIN EXPENDITURES FOR GOODS OR SERVICES

The standing trustee shall obtain a minimum of three price quotes, if available, when requesting the United States Trustee to approve an expenditure of \$15,000 or more per year. The limit shall apply to purchases of fixed assets and leases of personal or real property. 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). If the aggregate purchases of items of the same type exceed \$15,000 for the fiscal year, bids and approval must be obtained. 28 U.S.C. § 586(b). The standing trustee need not choose the lowest bid if another bid is the most cost-effective choice for a standing trustee's needs. [Language modified May 15, 2023.]

Consulting contracts and accounting and bookkeeping services over \$5,000 shall require three price quotes, if available. 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. [Language modified May 15, 2023.]

Approval of legal services is discussed in the Handbook at Chapter 3, section E, employment of attorneys and other professionals. The United States Trustee may waive the requirement for three price quotes for legal expenses. [Language modified May 15, 2023.]

5. OPERATING RESERVE

The standing trustee, with approval of the United States Trustee, may carry over from one year to the next up to 25 percent of the actual authorized operating expenses, less standing trustee compensation.

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 25% 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 25% 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 25% limit in extraordinary circumstances.

6. CO-TRUSTEE OPERATIONS

The United States Trustee will not approve expenses to establish a co-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 the cases, the standing trustee should attempt to sell it, to renegotiate the lease, or otherwise to dispose of it in a commercially reasonable manner. 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 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 any 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 administrative 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 at 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.

<i>Related Provisions:</i>	
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. § 1302(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. § 1302(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. § 1302(b)(1) incorporating 11 U.S.C. § 704(a)(2), 28 U.S.C. § 586(b). The annual report of the standing trustee shall be audited annually. 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. In addition to annual audits, there may be unusual circumstances that lead to a less-than-full-year independent audit, such as resignation, death or removal of the standing trustee or the misappropriation of funds by an office employee. 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 usually selected by a panel consisting of the Assistant Director for Oversight in the EOUST and one or more United States Trustees. The expense of the annual audit is paid from chapter 13 expense funds unless the Director determines that, because of unique circumstances, the Program will pay for the audit. The United States Trustee may approve the use of expense funds by the standing trustee to defend an action brought by an auditor when the United States Trustee has decided to terminate an audit services agreement.

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 January 31. 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 including a series of repeat findings from the prior year, the United States Trustee may, within three months of the standing trustee's response, make an on-site visit to the standing trustee's office to verify compliance. A visit also may result from the auditor's disclosure of material weaknesses in internal 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. 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 Standing Trustee Performance Review form.

2. REMEDIAL AND ENFORCEMENT ACTIONS

The standing trustee, having a fiduciary responsibility to the bankruptcy estate, is held to very high standards of honesty and loyalty. The standing trustee who fails to maintain those high standards, or the standards described by this Handbook, or who is otherwise deficient in the administration of cases can be subject to a wide range of 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.

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 standing trustee operation and the funds. The remedies considered by 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.

The actions which may be pursued by the United States Trustee include:

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 kinds of mismanagement, misconduct or unsatisfactory performance may form the basis for removal.

<i>Related Provisions:</i>	
28 U.S.C. § 586(d)(2)	Review of Termination of Case Assignments
28 C.F.R. § 58.6	Procedures for Suspension and Termination