

GAO

Fact Sheet for the Ranking Minority
Member, Subcommittee on Commercial
and Administrative Law, Committee on
the Judiciary, House of Representatives

March 1995

BANKRUPTCY PROFESSIONAL FEES

Guidelines for Reviewing Fee Applications





United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-259365

March 6, 1995

The Honorable John Conyers
Ranking Minority Member
Subcommittee on Commercial
and Administrative Law
Committee on the Judiciary
House of Representatives

Dear Mr. Conyers:

This fact sheet responds to the request of the former Chairman of the Subcommittee for information on the guidelines available to and used by Assistant U.S. Trustees (AUST) within the Department of Justice to assess the reasonableness of fee requests from attorneys and other professionals involved in bankruptcy cases. It reflects responses from 97 AUSTS, or their designees, to our survey soliciting information on their experiences and views regarding (1) the guidelines available to and used by AUSTS to review professionals' fee requests overall and in chapter 11 cases specifically, (2) the reasons the local Office of U.S. Trustees (OUST) or other parties in bankruptcy cases have objected to chapter 11 fee applications, and (3) the adequacy of compensation for private trustees in chapter 7 cases.¹ As agreed with the Subcommittee, we also examined differences in the offices with and without guidelines in U.S. Trustee activities such as (1) the time spent reviewing professional fee applications, (2) the frequency and/or types of objections made to those applications, and (3) the frequency of informal consultations on fee applications.

Background

The rapid rise in bankruptcy filings in the late 1980s generated congressional concerns about the money paid to various professionals, such as attorneys and accountants, hired to aid in the reorganization or liquidation of bankrupt estates. Congress was particularly concerned about the size of fees charged by professionals in complex and large chapter 11 business bankruptcies, where professional fees could total millions of dollars although these total fees were a small percentage of estate assets.

¹Private trustees usually are attorneys in private practice, although some are accountants, real estate brokers, or other professionals. Private trustees are appointed by the U.S. Trustees to administer chapter 7, 12, and 13 bankruptcy cases. Their exact responsibilities vary, depending upon the chapter under which the bankruptcy was filed. For example, the responsibilities of chapter 7 trustees include collecting assets, converting them to cash, and, upon court approval, distributing the proceeds to creditors and professionals.

Chapter 11 reorganization proceedings provide for the rehabilitation of the business debtor. The U.S. Trustee's responsibilities in chapter 11 cases include reviewing professionals' fee applications and determining if the amounts requested are reasonable, given the work performed.² In chapter 7 proceedings, which liquidate a debtor's assets to pay creditors, the U.S. Trustee is responsible for overseeing the activities of private trustees who liquidate the debtor's nonexempt assets to pay creditors. The U.S. Trustee generally has little direct, detailed knowledge of most chapter 11 cases. They receive 180-day reports in chapter 7 cases.

In chapter 11 cases, the role of the U.S. Trustee is substantially more limited than that of other parties, such as the creditors committees, debtors, and professionals. The U.S. Trustee does not participate in the meetings between creditors committees and professionals to determine goals and strategies of the parties, nor is the U.S. Trustee involved in many of the motions and other proceedings. The U.S. Trustee may, from time-to-time or in specific cases, confer with creditors and professionals about these matters, but generally this occurs on an ad hoc basis. Thus, the U.S. Trustee usually has little first-hand knowledge of the workings of creditors and professionals and may not have the detailed knowledge of a case to judge whether time charged or staffing are adequate, appropriate, or even reasonable for the type of work performed. Moreover, professional fee applications, particularly in large and complex bankruptcies, have generally been presented in a format that showed billing entries in chronological order, making analysis and review difficult.

Because the amount of fees can be large and the issues related to the reasonableness of the fees complex, many courts and U.S. Trustee offices have developed guidelines for professionals to use in submitting their fee applications. These guidelines were designed, in part, to help U.S. Trustees determine the reasonableness of professional fee applications by assisting their review of whether the time professionals charged for activities was accurately reflected in their bills or whether the staffing of professionals was excessive.

To facilitate the U.S. Trustees' review of professional fee applications, many of the written U.S. Trustee guidelines prescribed format and billing requirements. In addition, some court guidelines have required that other professionals, designated by the fee applicant, certify that fee applications

²For cases filed under other chapters of the bankruptcy code, the U.S. Trustee's responsibilities include appointing private trustees (who are usually attorneys in private practice) to administer the cases. A brief description of the major bankruptcy chapters and the U.S. Trustee Program is found in app. I.

comply with any local court guidelines and that fees and disbursements are billed at rates in accordance with those usually charged by the applicant and generally accepted by the applicant's clients. Finally, the guidelines also were designed to give professionals examples of the types of objections that the U.S. Trustee may raise to fee applications.

U.S. Trustees may have formal written guidance and/or informal guidance for reviewing fee applications. If reasons exist to question all or a portion of a fee application, the U.S. Trustee may file a fee objection with the bankruptcy court seeking a reduction in the fee. However, the bankruptcy judge has final approval of professional fee applications.

Results in Brief

All 97 AUSTS surveyed, or their designees, returned the questionnaire, although some respondents did not answer every question. About one-third (31) of AUSTS said they had written U.S. Trustee guidelines, about one-half (50) had written court directives regarding professional fees (17 had both), and about two-thirds (65) had unwritten guidelines governing professional fee applications.

Of the AUSTS with written guidelines, about one-third (10 of 31) with Trustee guidelines and one-half (26 of 50) with judicial directives indicated they had guidelines specific to chapter 11 cases. About two-fifths (26 of 65) of the AUSTS with unwritten court/judicial guidelines had guidelines applicable to chapter 11 cases.³

The written guidelines or directives used most often by AUSTS in chapter 11 bankruptcy cases addressed the specific format for the submission of professional fee applications and the lodestar formula.⁴ The two unwritten guidelines used most often were those related to holdbacks⁵ and the lodestar formula.

³We defined unwritten or informal guidelines as those known to be used by judges or the courts but which are not formally recorded or published as guidelines. According to one AUST the unwritten guidelines or rules are generally based on case law. For example, one court had an informal rule forbidding approval of chapter 7 fee applications in which administrative expenses exceeded one-third of total distributions from the dissolution of the estate.

⁴The lodestar formula is used to establish a standard for assessing the reasonableness of professional fees. The formula is based on the number of hours the professional expended multiplied by a reasonable hourly rate. The formula is not designed to assess the reasonableness of the hours expended.

⁵Holdbacks refer to the practice whereby only a portion of the requested professional fees are allowed on an interim basis. The remainder of the requested interim fees would be allowed, if at all, at the conclusion of the representation along with the professional's final fee application.

The most common reasons OUSTS objected to chapter 11 fee applications were insufficient description of the work performed and “lumping,” or failing to list separately each task and the time required to complete them. The OUSTS objected most frequently to applications from attorneys for the debtor and least frequently to over-secured creditors and realtors.

OUSTS with all three forms of guidelines—trustee and court written guidelines plus unwritten guidelines—objected to chapter 11 fee applications more frequently, held informal consultations prior to fee hearings less frequently, and devoted a greater percentage of staff time to reviewing fee applications than those offices with no guidelines.

The majority of AUSTS (85) reported that bankruptcy judges awarded private trustees in chapter 7 cases the statutory maximum compensation permitted at least 81 percent of the time; and 27 reported judges awarded the maximum compensation 100 percent of the time. The majority of AUSTS (89) believed private trustee compensation should be increased.⁶ AUSTS reported that excessive paperwork was more important than insufficient compensation as a reason private trustees voluntarily left their positions, while challenging work and a dependable source of income were the most important reasons private trustees remained in their positions.

Objectives, Scope, and Methodology

Our objectives were to obtain information on the (1) types of formal and informal guidelines available to and used by U.S. Trustees to review professional fee applications, (2) the type of objections made to professional fee applications, and (3) the adequacy of compensation to private trustees appointed to administer chapter 7 cases. We mailed questionnaires to survey 97 AUSTS or their designees in the 92 U.S. Trustee field offices between May and July 1993⁷. We received responses from all 97 of those surveyed.⁸ However, some respondents did not answer every question on the questionnaire. We surveyed the AUSTS because they are responsible for overseeing the private trustees—about 2,000 for chapter 7 cases alone—who are directly responsible for the orderly administration

⁶The Bankruptcy Reform Act of 1994 (P.L. 103-394) contains several provisions that provide for increased trustee compensation.

⁷Given our limited resources, We postponed formally reporting the results of the survey while we completed a report for the subcommittee on professional fees in chapter 7 cases.

⁸For nine offices in which the AUST position was either vacant or not designated, the questionnaire was completed by the attorney-in-charge. For two offices, the questionnaire was completed by the U.S. Trustee in whose region the office was located. Both the AUST and attorney-in charge responded for one office. Three field offices had more than one AUST.

of bankrupt estates. We asked the AUSTS for their experiences and views regarding professional fees in bankruptcy cases.

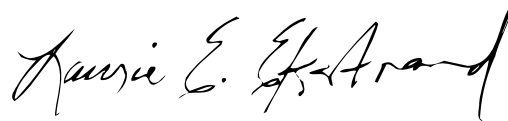
We reviewed the survey responses for any relationships between the number of guidelines applicable to chapter 11 (U.S. Trustee guidelines, judicial district directives, and judges/courts unwritten guidelines or rules) and other factors, such as the frequency of objections, frequency of informal consultations before fee hearings, and the amount of staff's time spent reviewing applications. We also reviewed the questionnaire results for differences in such factors as the frequency of objections and informal consultations between offices with all three forms of guidance and those with no guidance. We did not obtain agency comments because the results of the survey reflect the personal responses of those surveyed, and the fact sheet does not include conclusions or recommendations.

The survey questions are shown in appendix II. Appendix III provides more detailed data on the types of guidelines available to U.S. Trustees, including the bankruptcy chapters to which those guidelines apply. Appendix IV provides data on the use of the guidelines in reviewing professional fee applications in chapter 11 cases. Appendix V includes responses on chapter 7 questions, including the compensation and retention of private trustees.

We are sending copies of this fact sheet to the Chairmen of the House and Senate Judiciary Committees; the Ranking Minority Member of the Senate Judiciary Committee; the Attorney General; the Executive Director of the Executive Office for U.S. Trustees; the Director, Office of Management and Budget; and other interested parties. We will also make copies available to others upon request.

Please contact me on (202) 512-8777 if you have questions concerning this fact sheet. The major contributors to this fact sheet are listed in appendix VI.

Sincerely yours,

A handwritten signature in black ink that reads "Laurie E. Ekstrand". The signature is written in a cursive style with a large, stylized initial 'L'.

Laurie E. Ekstrand
Associate Director, Administration
of Justice Issues

Contents

Letter	1
Appendix I The U.S. Trustee Program	12
Appendix II Survey of U.S. Trustees	14
Appendix III Assistant U.S. Trustees' Responses Regarding Guidelines Available to Assess Professional Fees in Bankruptcy Cases	22
Appendix IV Assistant U.S. Trustees' Responses Regarding the Review of Professional Fee Applications in Chapter 11 Cases, Including the Use of Available Guidelines	31
Overview	31
Differences in Offices With and Without Formal Guidelines	39

<p>Appendix V Assistant U.S. Trustees Responses Regarding Chapter 7 Cases, Including Compensation and Retention of Private Trustees</p>	<p>Compensation and Retention of Private Trustees</p>	<p>41 41</p>
<p>Appendix VI Major Contributors to This Fact Sheet</p>	<p>General Government Division, Washington, D.C. Los Angeles Field Office Detroit Field Office Office of the General Counsel</p>	<p>46 46 46 46 46</p>
<p>Tables</p>	<p>Table III.1: The Number of Assistant U.S. Trustees Who Reported Having Some Type of Guidelines on Fees in Bankruptcy Cases Table III.2: Guidelines on Professional Fees Available Within the Districts Where Assistant U.S. Trustees Have Offices Table III.3: Number of Assistant U.S. Trustees Reporting Different Types of Fee Guidelines Table III.4: The Percentage of Written U.S. Trustee Fee Guidelines That Applied to Each Bankruptcy Chapter Table III.5: Type of Form in Which Written Judicial District Directives on Fees in Bankruptcy Cases Were Published Table III.6: The Percentage of Written Judicial District Directives on Fees That Applied to Each Bankruptcy Chapter Table III.7: The Percentage of Unwritten Rules on Fees That Applied to Each Bankruptcy Chapter Table IV.1: Type of Written Guidelines/Directives Used Within the Past Year in Chapter 11 Cases Table IV.2: Type of Unwritten Guidelines/Rules Used Within the Past Year in Chapter 11 Cases Table IV.3: Percentage of Time Informal Consultations Occurred Before Chapter 11 Fee Hearings Table IV.4: The Percentage of Chapter 11 Fee Applications To Which the Office of U.S. Trustees Filed an Objection Within the Past Year</p>	<p>22 26 28 29 29 29 30 32 33 33 34</p>

Table IV.5: Reasons the Office of U.S. Trustees Formally Objected to Chapter 11 Fee Applications	34
Table IV.6: Professionals Who Were Most Often Objected to in Chapter 11 Cases	35
Table IV.7: Professionals Who Were Least Often Objected to in Chapter 11 Cases	36
Table IV.8: Other Parties Who Objected Most Often to Chapter 11 Fees	36
Table IV.9: Other Parties Who Objected Least Often to Chapter 11 Fees	36
Table IV.10: The Top Five Reasons Other Parties Gave for Objecting to Chapter 11 Fee Applications	37
Table IV.11: Reasons Other Parties Gave for Objecting to Chapter 11 Fee Applications	37
Table IV.12: Professionals With Whom the Assistant U.S. Trustees Experienced the Greatest Problems in Chapter 11 Cases	38
Table IV.13: Professionals With Whom the Assistant U.S. Trustees Experienced the Fewest Problems in Chapter 11 Cases	39
Table IV.14: Activities to Which Assistant U.S. Trustees Gave Highest Priority	39
Table V.1: Frequency of Informal Consultations Prior to Chapter 7 Fee Hearings	41
Table V.2: The Percentage of Chapter 7 Fee Applications To Which the Office of U.S. Trustees Formally Objected	41
Table V.3: The Percentage of Cases That Judges Routinely Awarded Private Trustees the Statutory Maximum on Fees	43
Table V.4: Assistant U.S. Trustees Opinion on Whether Private Trustees Compensation Should Be Increased, Decreased, or Remain About the Same	43
Table V.5: Assistant U.S. Trustee Responses on the Number of Private Trustees Who Voluntarily Left Their Positions in the Past Two Years	43
Table V.6: The Most Important Reasons Cited For Why Private Trustees Voluntarily Left Their Positions	44
Table V.7: Important Reasons Cited for Why Private Trustees Remained in Their Positions	44
Table V.8: Percentage of Private Trustees Who are Attorneys and Retained Themselves or Their Law Firm as Attorne for the Trustee	45

Table V.9: Percentage of Cases in Which Private Trustees Retained Themselves or Their Law Firm as Attorne for the Trustee	45
---	----

Figures

Figure III.1: Percentage of Written U.S. Trustee Guidelines on Professional Fees That Applied to One or More Bankruptcy Chapters or Applied to No Specific Chapter	23
Figure III.2: Type of Guidance Available to 66 Assistant U.S. Trustees Without Written U.S. Trustee Guidelines on Professional Fees in Bankruptcy Cases	24
Figure III.3: Types of Guidance Available to Assistant U.S. Trustees Regarding Professional Fees in Bankruptcy Cases	25

Abbreviations

AUST	Assistant U.S. Trustee
OUST	Office of U.S. Trustee

The U.S. Trustee Program

In 1978, Congress passed the Bankruptcy Reform Act (P.L. 95-598), which established the U.S. Trustee Program as a pilot effort in 18 federal judicial districts. The act thereby shifted administrative and supervisory responsibilities for bankruptcy cases in these 18 districts from the courts to the Department of Justice. The legislation also prescribed maximum compensation levels for the services rendered by private trustees and other professionals in bankruptcy cases. In 1986, Public Law 99-554¹ expanded the program to all 94 judicial districts² and established 21 regions, each administered by a U.S. Trustee appointed by the Attorney General. This law also provides for a self-funding mechanism whereby the program receives, for example, a portion of the fees assessed against those who file bankruptcy cases.

Currently, the program operates 92 U.S. Trustee field offices that oversee the administration of bankruptcy cases filed in the 88 judicial districts. Field offices are typically staffed by one or more Assistant U.S. Trustees (AUST), attorneys, bankruptcy analysts, paralegals, case management specialists, legal clerks, legal data technicians, and administrative support staff. While the field offices can directly administer bankruptcy cases, they more commonly oversee the administration of cases by private trustees in chapter 7, 12, and 13 cases—about 2,000 private trustees for chapter 7 cases alone. The U.S. Trustee field offices supervise the administration of cases filed under four of the five types of bankruptcy proceedings defined under the Bankruptcy Code:

- proceedings under chapter 7 in which the assets of the debtor are liquidated;
- reorganization proceedings under chapter 11 for rehabilitation of the business debtor;
- reorganization proceedings under chapter 12 for the adjustment of debts of a family farmer; and
- adjustment of debts of an individual with regular income under chapter 13, pursuant to which an individual can adopt a plan to discharge certain debts after making payments over a period of time, usually not to exceed 36 months.

¹The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986.

²Congress authorized six bankruptcy districts in the states of North Carolina and Alabama to delay their entry into the U.S. Trustee Program until 1992, subsequently extending the date 10 years to 2002. In these six districts, a separate, parallel program with objectives identical to those of the U.S. Trustee Program was created and operates within the judicial branch. Thus, there are currently 88 districts participating in the U.S. Trustee Program. See Bankruptcy Administration: Justification Lacking for Continuing Two Parallel Programs (GGD-92-133, Sept. 28, 1992).

Appendix I
The U.S. Trustee Program

U.S. Trustees have little role in proceedings under chapter 9, which relates to the adjustment of debts of a municipality.

The U.S. Trustees' specific responsibilities include (1) monitoring applications to employ professionals, (2) appointing private trustees, (3) reviewing the fee applications of professionals, and (4) filing objections with bankruptcy judges to fee applications that the U.S. Trustee considers inappropriate and improper.

Survey of U.S. Trustees

Survey Questions

1. In which judicial district(s) does your office have responsibility?

2. How many years have you held the Assistant U.S. Trustee position?

3. For your region, are there published U.S. Trustee guidelines on professional fees in bankruptcy cases?

No

Yes

4. When did the published U.S. Trustee guidelines go into effect?

5. For which chapter(s) do these guidelines apply?

Chapter 7

Chapter 11

Chapter 12

Chapter 13

Published guidelines apply to no particular chapter

6. Has your district developed and published directives on professional fees in bankruptcy cases?

No

Yes

7. Which of the following forms do the published directives in your district take?

Formal orders

Local rules

Official forms

Other

8. When did your district's directives go into effect?

9. For which chapter(s), if any, do these directives apply?

Chapter 7

Chapter 11

Chapter 12

Chapter 13

Published directives apply to no particular chapter

(continued)

Survey Questions

10. Are there judge/court-specific unwritten guidelines or rules on professional fees in bankruptcy cases?

No

Yes

11. For which of the following chapter(s) do these unwritten guidelines apply?

Chapter 7

Chapter 11

Chapter 12

Chapter 13

Guidelines apply to no particular chapter

12. Regarding professional fees in bankruptcy cases, which of the following have been used in the past year in your district in Chapter 11 cases by the court and the Office of U.S. Trustee?

Ad hoc committees

Fee analyst (outside entity used to examine fees)

Statements of expected services and costs in advance (up-front budgets)

Limiting the number of committees

Limiting the size of committees

Mediation

Specific format for the submission of fee applications

Caps on hourly rates

OUST written response required on fee applications

Court hearing and appearance required on fee applications

Lodestar formula

Holdbacks

Restrictions on locations/participants in committee meetings

Sharing of professionals

Other

(continued)

Survey Questions

13. Is there anything about the court's use of unwritten guidelines/rules that you would like to comment on or give additional information about?

14. In your experience, in the past year, did anyone file an objection to fee applications in Chapter 11 or Chapter 7 cases?

No

Yes

15. In the past year, about what percentage of your staff's time was spent reviewing Chapter 11 fee applications?

16. Currently, for Chapter 11 fee applications, how often, if at all, does informal consultation occur between your office and professionals before fee hearings?

All of the time

81% to 99% of the time

61% to 80% of the time

41% to 60% of the time

21% to 40% of the time

1% to 20% of the time

None of the time

Not sure

No basis to judge

17. In the past year, in what percentage, if any, of Chapter 11 fee applications did your office file an objection?

All of the applications

81% to 99% of the applications

61% to 80% of the applications

41% to 60% of the applications

21% to 40% of the applications

1% go 20% of the applications

None of the applications

Not sure

(continued)

Survey Questions

18. Consider Chapter 11 fee applications in which your office formally objected. How often, if at all, in the past year, did your office formally object for the following reasons?

Lack of showing benefit to the estate

Total amount of fees in relation to total value of estate

Duplication of services/efforts

Excessive hours worked

Excessive hourly rates for the services performed

Excessive hourly rates for the persons performing those services

Charges for fee application preparation

Full hourly rates for travel time

Excessive lodging and travel expenses

Charges for amenities while in travel status, etc.

Charging in excess of the tax deductible amount in mileage

Parking fees while appearing in court

Not complying with formatting requirements for fee applications or requests for reimbursement of expenses

Not keeping time in appropriate increments

Insufficient description of the work done

Not listing separately each task and the time required for that task ("lumping")

Inadequate documentation of expenses for which reimbursement is sought

Use of professionals to perform tasks which a paraprofessional could perform

Computerized research charges in excess of actual costs as billed to the professional

(continued)

Survey Questions

19. Consider Chapter 11 fee applications in which your office filed an objection. How often, if at all, in the past year, did your office make objections to the following professionals?

Attorney for debtor

Attorney for creditor

Attorney for creditors' committee

Investment banker/financial advisor

Accountants

Realtors

Attorney for equity holders' committee

Over-secured creditors

Other

20. In the past year, in Chapter 11 fee applications in which other parties filed an objection, how often, if at all, did each of the following parties object?

Trustee

Debtor

Creditor

Creditors' committee

Judge/court

Attorney for equity holders' committee

Other

21. For each party objecting in Question 20, please describe briefly the reason(s) for objecting.

22. In the past year, about what percentage of staff time was spent reviewing Chapter 7 fee applications?

(continued)

Appendix II
Survey of U.S. Trustees

Survey Questions

23. Currently, for Chapter 7 fee applications, how often does informal consultation occur between your office and professionals before fee hearings?

All of the time

81% to 99% of the time

61% to 80% of the time

41% to 60% of the time

21% to 40% of the time

1% to 20% of the time

None of the time

Not sure

No basis to judge

24. In the past year, in what percentage of Chapter 7 fee applications, if any, did your office formally object?

25. In the past year, of the private trustees in your district who are attorneys, approximately what percentage of them retain themselves or their law firm as attorney(s) for trustee?

26. In the past year, in approximately what percentage of bankruptcy cases do the private trustees retain themselves or their law firm as attorney(s) for trustee?

27. In the past year, in what percentage of bankruptcy cases do judges in your district routinely award, as compensation to private trustees, the statutory maximum on fees?

All of the cases

81% to 99% of the cases

61% to 80% of the cases

41% to 60% of the cases

21% to 40% of the cases

1% to 20% of the cases

None of the cases

Not sure

No basis to judge

(continued)

Survey Questions

28. In the past year, what problems, if any, did your district experience in the Chapter 11 fee application process with the following types of professionals?

Accountants

Attorneys

Investment bankers/financial advisors

Management companies

Other

29. If your district encountered problems in the past year with any of the professionals listed in Question 28 in connection with the Chapter 11 bankruptcy fee application process, briefly describe the problem(s).

30. What do you view as the greatest problem(s) in the bankruptcy fee application process?

31. What would your proposal be to reduce or control professional fees in bankruptcy cases?

32. Consider all the work of your office. In your opinion, how much priority, if any, would you give each of the following activities?

Administrative matters (e.g., quarterly fees, 180-day reports, etc.)

Monitoring private trustees

Investigating fraud and misconduct allegations

Analyzing Chapter 11 disclosure statements

Reviewing Chapter 11 fee applications

Responding to public inquiries

Other

33. Excluding those private trustees who left because they were removed, about how many private trustees voluntarily left their positions in the past two years?

(continued)

Survey Questions

34. Which of the following, if any, were important reasons for those private trustees who have voluntarily left their positions?

Requirements by the Executive Office for U.S. Trustees

The caseload was too heavy

Income after expenses was too low

Too much paperwork involved in being a trustee

Trustees were not paid in a timely manner

Retired

Other

35. For those private trustees who have remained in their positions, how important were the following reasons?

Self-marketing opportunities

Prestige

Interesting/challenging work

Financial rewards

Dependable income for law practice or other professional endeavor

Investment in time and equipment

Other

36. In your opinion, should private trustee compensation be increased, decreased, or remain about the same?

Greatly increased

Somewhat increased

Remain about the same

Somewhat decreased

Greatly decreased

No opinion

Assistant U.S. Trustees' Responses Regarding Guidelines Available to Assess Professional Fees in Bankruptcy Cases

Of the 97 Assistant U.S. Trustees (AUST), or their designees, who responded to our survey on guidelines for professional fees in bankruptcy cases, about one-third reported having written U.S. Trustee guidelines, about one-half had written judicial directives, and about two-thirds had unwritten judge rules or directives (see table III.1). The majority of the 31 AUSTS who reported having written U.S. Trustee guidelines on fees reported having the other two forms of guidance as well—written judicial directives and unwritten judge/court rules or directives. About 52 percent of these 31 AUSTS indicated that their own written guidelines specifically applied to at least one of four chapters (chs. 7, 11, 12 and 13) under which bankruptcies are filed, as shown in figure III.1.

Of the remaining 66 AUSTS without written U.S. Trustee guidelines on professional fees, all but 8 (12 percent) had guidance in the form of judicial district directives or judges/courts unwritten guidelines or rules (see fig. III.2). About one-third (10 of 31) of those with written U.S. Trustee guidelines, one-half (26 of 49) of those with written judicial district directives, and two-fifths (26 of 65) of those with unwritten guidelines/rules had guidelines specifically applicable to chapter 11 cases (see fig. III.3).

Table III.2 lists the types of guidelines that were available within each district where the 97 AUSTS have offices. As the table indicates, more than one type of guideline may have been available in each AUST office. Table III.3 summarizes the different mixes of guidelines that were available to AUSTS at the time of our survey. Tables III.4 through III.7 provide additional information on specific types of guidelines that were available and the bankruptcy chapters to which they applied.

Table III.1: the Number of Assistant U.S. Trustees Who Reported Having Some Type of Guidelines on Fees in Bankruptcy Cases

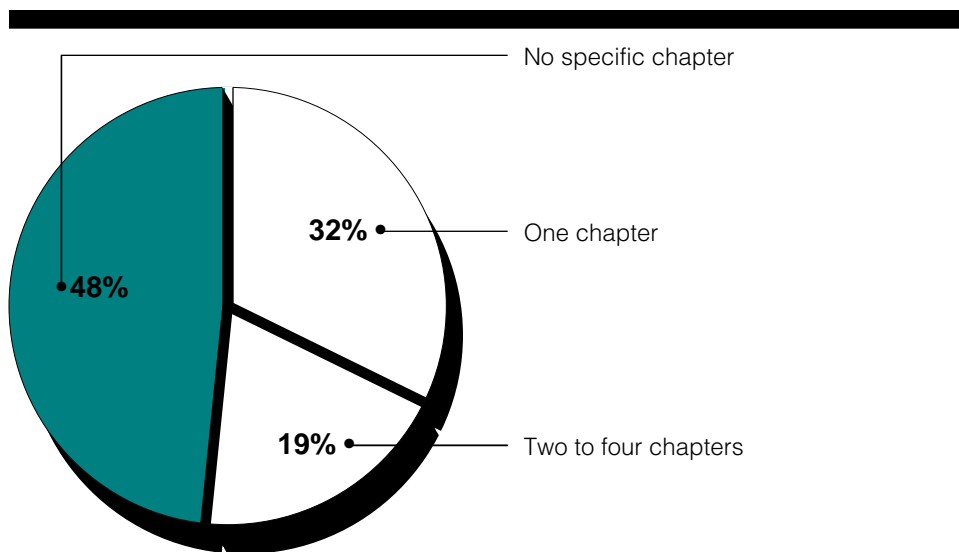
Type of guideline	Number	Percent
Published U.S. Trustee guidelines	31 ^a	32%
Judicial district directives	50	52
Judges/court unwritten rules	65	67

Note: All 97 AUSTS responded to this question.

^aTwenty-five respondents reported that guidelines took effect between May 1988 and July 1993.

**Appendix III
Assistant U.S. Trustees' Responses
Regarding Guidelines Available to Assess
Professional Fees in Bankruptcy Cases**

Figure III.1: Percentage of Written U.S. Trustee Guidelines on Professional Fees That Applied to One or More Bankruptcy Chapters or Applied to No Specific Chapter



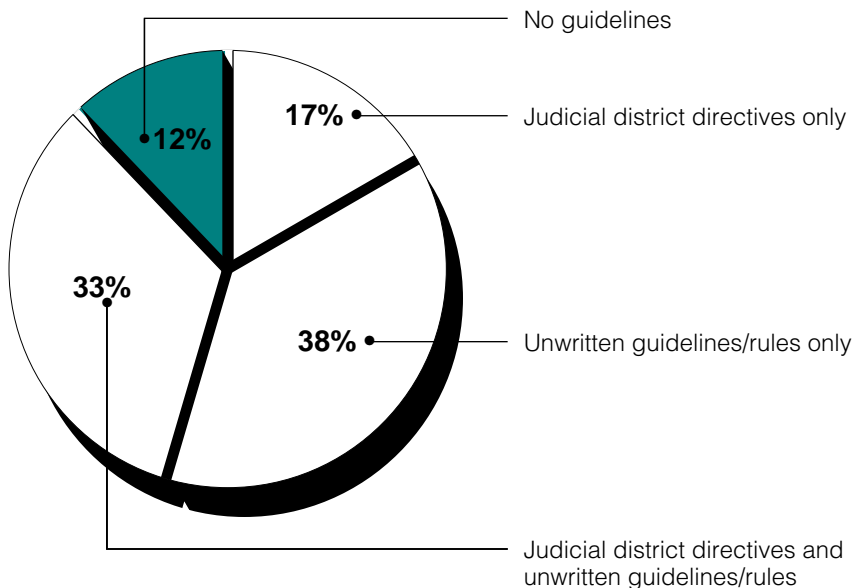
Note 1: Percentages are based on the 31 AUSTs who reported having written, published U.S. Trustee guidelines on professional fees in bankruptcy cases.

Note 2: One respondent checked four bankruptcy chapters in addition to no particular chapter on the questionnaire. This respondent was included in the category of two to four chapters.

Note 3: Numbers do not add to 100 due to rounding.

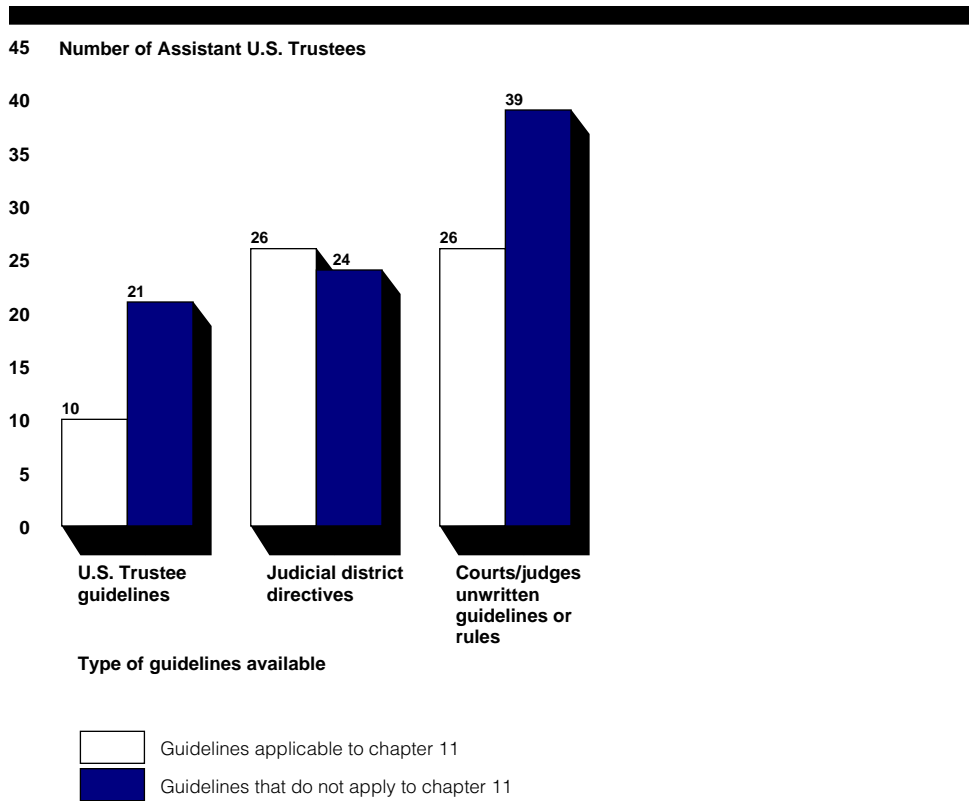
Appendix III
Assistant U.S. Trustees' Responses
Regarding Guidelines Available to Assess
Professional Fees in Bankruptcy Cases

Figure III.2: Type of Guidance Available to 66 Assistant U.S. Trustees Without Written U.S. Trustee Guidelines on Professional Fees in Bankruptcy Cases



**Appendix III
Assistant U.S. Trustees' Responses
Regarding Guidelines Available to Assess
Professional Fees in Bankruptcy Cases**

Figure III.3: Types of Guidance Available to Assistant U.S. Trustees Regarding Professional Fees in Bankruptcy Cases (Guidance Applicable to Chapter 11 Cases Shown Separately)



Note 1: Numbers are based on the responses of all 97 AUSTs surveyed.

Note 2: An AUST may have more than one type of guideline available, as shown in table III.2.

Note 3: Guidelines applicable to chapter 11 may apply to other chapters as well.

Appendix III
Assistant U.S. Trustees' Responses
Regarding Guidelines Available to Assess
Professional Fees in Bankruptcy Cases

Table III.2: Guidelines on Professional Fees Available Within the Districts Where Assistant U.S. Trustees Have Offices

Judicial district Office of U.S. Trustee covers	Published U.S. Trustee guidelines	Published court directives	Unwritten guidelines
Alaska		X	X
Arizona			X
Arkansas, Eastern	X		X
California, Central	X	X	X
California, Central	X	X	X
California, Central	X	X	X
California, Central	X	X	X
California, Central	X	X	X
California, Eastern		X	
California, Eastern		X	X
California, Northern	X	X	
California, Northern	X	X	
California, Northern		X	
California, Southern	X	X	X
California, Southern	X	X	X
Colorado	X	X	X
Connecticut		X	X
Florida, Middle	X		
Florida, Middle	X	X	
Florida, Northern			X
Florida, Northern			X
Georgia, Middle			
Georgia, Northern		X	X
Georgia, Southern			
Guam	X		
Hawaii			X
Idaho			X
Illinois, Central	X	X	
Illinois, Northern			X
Illinois, Northern			X
Indiana, Northern	X		
Indiana, Southern	X		
Iowa, Northern	X	X	
Iowa, Southern	X		
Kansas	X		X
Kentucky, Western			X
Kentucky, Western			X

(continued)

Appendix III
Assistant U.S. Trustees' Responses
Regarding Guidelines Available to Assess
Professional Fees in Bankruptcy Cases

Judicial district Office of U.S. Trustee covers	Published U.S. Trustee guidelines	Published court directives	Unwritten guidelines
Louisiana, Eastern			X
Louisiana, Western		X	X
Maine		X	X
Maryland			X
Maryland	X		X
Massachusetts			X
Massachusetts		X	X
Michigan, Eastern		X	
Michigan, Western		X	X
Minnesota	X	X	
Mississippi, Northern			X
Missouri, Eastern		X	
Missouri, Western	X		X
Montana			X
Nebraska			X
Nevada	X		X
Nevada			
New Hampshire		X	X
New Jersey		X	X
New Mexico			
New York, Eastern			
New York, Northern		X	
New York, Northern		X	
New York, Southern		X	
New York, Western			X
New York, Western			
Ohio, Northern		X	
Ohio, Southern		X	X
Ohio, Southern		X	X
Oklahoma, Northern	X	X	X
Oklahoma, Western			
Oregon		X	
Oregon		X	
Pennsylvania, Eastern			X
Pennsylvania, Middle		X	X
Pennsylvania, Western		X	
Puerto Rico			X
South Carolina	X		

(continued)

Appendix III
Assistant U.S. Trustees' Responses
Regarding Guidelines Available to Assess
Professional Fees in Bankruptcy Cases

Judicial district Office of U.S. Trustee covers	Published U.S. Trustee guidelines	Published court directives	Unwritten guidelines
South Dakota	X		
Tennessee, Eastern			X
Tennessee, Middle			
Tennessee, Western	X		X
Texas, Eastern			X
Texas, Northern			X
Texas, Southern		X	X
Texas, Southern		X	X
Texas, Western		X	X
Texas, Western		X	X
Texas, Western		X	X
Utah			X
Virginia, Eastern	X	X	X
Virginia, Eastern			X
Virginia, Eastern	X		X
Virginia, Western	X	X	X
Washington, Eastern		X	X
Washington, Western		X	X
Wisconsin, Eastern			X
Wisconsin, Western			X
West Virginia, Northern		X	X
Wyoming		X	X

Note: Some judicial districts have more than one AUSTs.

Table III.3: Number of Assistant U.S. Trustees Reporting Different Types of Fee Guidelines

Type of guideline	Number
Judicial district directives only	11
Judge/court unwritten rules only	25
U.S. Trustee guidelines and judicial district directives	6
U.S. Trustee guidelines and judge/court unwritten rules	7
U.S. Trustee guidelines, judicial district directives and judge/court unwritten rules	11
Judicial district directives and judge/court unwritten rules	22
No guidelines	8
Total	97

**Appendix III
Assistant U.S. Trustees' Responses
Regarding Guidelines Available to Assess
Professional Fees in Bankruptcy Cases**

Table III.4: the Percentage of Written U.S. Trustee Fee Guidelines That Applied to Each Bankruptcy Chapter

Chapter	Percent
No particular chapter	52%
Chapter 7	39
Chapter 11	32
Chapter 12	13
Chapter 13	16

Note 1: Percentages based on the 31 AUSTs who reported having written U.S. Trustee guidelines on bankruptcy professional fees.

Note 2: Guidelines may apply to more than one bankruptcy chapter.

Note 3: One respondent checked all the boxes—one for each chapter plus one for no particular chapter.

Table III.5: Type of Form in Which Written Judicial District Directives on Fees in Bankruptcy Cases Were Published

Form directive takes	Percent
Local rules	80%
Formal orders	18
Official forms	12
Other	16

Note: Percentages based on the 50 AUSTs who reported having written judicial directives on bankruptcy professional fees.

Table III.6: the Percentage of Written Judicial District Directives on Fees That Applied to Each Bankruptcy Chapter

Chapter	Percent
No particular chapter	47
Chapter 7	51
Chapter 11	53%
Chapter 12	45
Chapter 13	41

Note: Percentages based on the 49 AUSTs who reported having written judicial directives on bankruptcy professional fees.

Appendix III
Assistant U.S. Trustees' Responses
Regarding Guidelines Available to Assess
Professional Fees in Bankruptcy Cases

Table III.7: the Percentage of Unwritten Rules on Fees That Applied to Each Bankruptcy Chapter

Chapter	Percent
No particular chapter	55%
Chapter 7	34
Chapter 11	40
Chapter 12	14
Chapter 13	37

Note: Percentages based on the 65 AUSTs who reported having unwritten rules or guidelines on bankruptcy professional fees.

Assistant U.S. Trustees' Responses Regarding the Review of Professional Fee Applications in Chapter 11 Cases, Including the Use of Available Guidelines

This appendix provides, for chapter 11 cases, information on the formal and informal guidelines used, the frequency of informal consultations prior to formal fee hearings, the frequency of objections to professional fee applications, the reasons U.S. Trustees and other parties objected to fee applications, the categories of professionals most and least frequently objected to, and the activities to which U.S. Trustees gave highest priority.

Overview

Tables IV.1 and IV.2 show which formal and informal guidelines were used by the courts, the U.S. Trustee, or both. About 90 percent of the Assistant U.S. Trustees (AUST) reported that no more than one-fifth of their staff time was spent reviewing applications; about 60 percent said no more than 10 percent of staff time was expended on this task.

About 60 percent of the AUSTS reported that more than three-fifths of the time the Office of U.S. Trustee (OUST) and professionals held informal consultations on chapter 11 fee applications prior to formal fee hearings (table IV.3). Just over 70 percent of AUSTS reported filing formal objections to professional fees in no more than 40 percent of the chapter 11 fee applications (table IV.4). The two most frequent reasons for objecting were insufficient description of the work done and “lumping,” or failing to list separately each task and the time required to complete it (table IV.5). The category of professional most frequently objected to was attorney for the debtors. Over-secured creditors and realtors were the categories to whom AUSTS least frequently objected. (See tables IV.6 and IV.7.)

Among other parties in bankruptcy cases, judges and creditors objected most frequently to chapter 11 fees (table IV.8) and debtors least frequently (table IV.9). The reasons other parties gave for objecting to chapter 11 fee applications are shown in tables IV.10 (top 5 reasons) and IV.11 (detailed breakdown).

AUSTS reported experiencing the most problems with investment bankers/financial advisors and accountants (table IV.12) and the fewest problems with management companies and attorneys (table IV.13). AUSTS reported giving highest priority to monitoring private trustees, investigating fraud and misconduct allegations, and completing administrative tasks (table IV.14).

**Appendix IV
Assistant U.S. Trustees' Responses
Regarding the Review of Professional Fee
Applications in Chapter 11 Cases, Including
the Use of Available Guidelines**

Table IV.1: Type of Written Guidelines/Directives Used Within the Past Year in Chapter 11 Cases

Written guidelines	Used by			Total	Not used	Total
	Court only	OUST only	Court and OUST			
Specific format for the submission of fee applications	30	7	15	52	25	77
Lodestar formula	15	2	21	38	30	68
Court hearing and appearance required on fee applications		0	13	26	46	72
Limiting the size of committees	0	13	3	16	56	72
Holdbacks	5	2	8	15	42	57
Limiting the number of committees	0	8	5	13	60	73
Ad hoc committees	2	6	4	12	67	79
OUST written response required on fee applications	2	4	5	11	63	74
Statements of expected services and costs in advance (up-front budgets)	4	2	4	10	66	76
Sharing of professionals	0	0	9	9	59	68
Caps on hourly rates	7	0	1	8	61	69
Fee analyst (outside entity used to examine fees)	6	0	2	8	71	79
Mediation	5	1	0	6	70	76
Restrictions on locations/participants in committee meetings	1	1	2	4	71	75

Note: Totals do not add to 97 because some AUSTs did not respond to some questions.

**Appendix IV
Assistant U.S. Trustees' Responses
Regarding the Review of Professional Fee
Applications in Chapter 11 Cases, Including
the Use of Available Guidelines**

Table IV.2: Type of Unwritten Guidelines/Rules Used Within the Past Year in Chapter 11 Cases

Unwritten guidelines	Used by			Total	Not used	Total
	Court only	OUST only	Court and OUST			
Holdbacks	26	4	44	74	14	88
Lodestar formula	15	4	46	65	15	80
Limiting the number of committees	1	33	10	44	37	81
Caps on hourly rates	25	1	15	41	41	82
Limiting the size of committees	0	37	1	38	39	77
Court hearing and appearance required on fee applications	16	4	17	37	41	78
Specific format for the submission of fee applications	14	2	21	37	29	66
Sharing of professionals	9	2	13	24	53	77
Statements of expected services and costs in advance (up-front budgets)	7	6	9	22	55	77
Mediation	10	4	1	15	63	78
OUST written response <u>required</u> on fee applications	1	6	7	14	68	82
Fee analyst (outside entity used to examine fees)	7	0	2	9	71	80
Restrictions on locations/participants in committee meetings	4	3	1	8	70	78
Ad hoc committees	3	1	1	5	72	77

Note: Totals do not add to 97 because some AUSTs did not respond to some questions.

Table IV.3: Percentage of Time Informal Consultations Occurred Before Chapter 11 Fee Hearings

Percent of time	Number of AUSTs
1% to 20%	13
21 to 40	15
41 to 60	13
61 to 80	20
81 to 99	28
100	8

Note: All 97 AUSTS surveyed responded to this question.

**Appendix IV
Assistant U.S. Trustees' Responses
Regarding the Review of Professional Fee
Applications in Chapter 11 Cases, Including
the Use of Available Guidelines**

Table IV.4: the Percentage of Chapter 11 Fee Applications to Which the Office of U.S. Trustees Filed an Objection Within the Past Year

Percent of applications	Number of AUSTs
None	1
1% to 20%	41
21 to 40	27
41 to 60	11
61 to 80	10
81 to 99	5
100	1

Note 1: A total of 96 AUSTs responded to this question.

Note 2: Assistant U.S. Trustees reported on average that 13 percent of staff's time was spent reviewing applications.

Table IV.5: Reasons the Office of U.S. Trustees Formally Objected to Chapter 11 Fee Applications

Reasons for objection	Frequency of objections				Total
	Most of the time	About half the time	Some of the time	Seldom or never	
Insufficient description of the work done	55	15	18	8	96
Not listing separately each task and the time required for that task ("lumping")	47	15	21	13	96
Not keeping time in appropriate increments	30	8	28	30	96
Not complying with formatting requirements for fee applications or requests for reimbursement of expenses	29	16	17	26	88
Overhead or any of the normally accepted components of overhead	26	14	28	28	96
Inadequate documentation of expenses for which reimbursement is sought	25	22	26	24	97
Lack of showing benefit to the estate	21	15	30	31	97
Duplication of services/ efforts	17	20	40	19	96
Fax charges for sending or receiving a fax other than telephone toll charges	15	9	21	51	96
Full hourly rates for travel time	15	17	27	36	95
Word processing charges	14	10	20	50	94
Use of professionals to perform tasks which a paraprofessional could perform	14	16	27	40	97
Total amount of fees in relation to total value of estate	12	9	24	51	96
Charges for amenities while on travel status, etc.	10	2	13	68	93
Unnecessary use of overnight delivery or messenger services	10	2	19	66	97

(continued)

**Appendix IV
Assistant U.S. Trustees' Responses
Regarding the Review of Professional Fee
Applications in Chapter 11 Cases, Including
the Use of Available Guidelines**

Reasons for objection	Frequency of objections				Total
	Most of the time	About half the time	Some of the time	Seldom or never	
Staff overtime	10	4	24	56	94
Excessive hours worked	9	10	42	36	97
Local meals for professionals or staff required to work during lunch or after hours	9	4	11	67	91
Excessive hourly rates for the persons performing those services	8	8	23	57	96
Excessive lodging and travel expenses	7	0	21	67	95
Excessive hourly rates for the services performed	7	10	28	51	96
Computerized research charges in excess of actual cost as billed to the professional	7	1	9	78	95
Charges for fee application preparation	6	9	15	64	94
Reimbursement of creditors' committee out-of-pocket expenses	4	1	5	86	96
Parking fees while appearing in court	4	0	3	83	90
Charging in excess of the tax deductible amount in mileage	4	0	7	79	90

Note: Some totals do not add to 97 because some AUSTs either checked "do not apply" or did not respond.

Table IV.6: Professionals Who Were Most Often Objected to in Chapter 11 Cases

Professional	Number of AUSTs	Percent of AUSTs
Attorney for debtor ^a	65	68%
Accountants ^b	38	40

Note 1: Responses reflected those professionals who AUSTs said were objected to at least half the time.

Note 2: The total number of responses varied as follows:

^aA total of 95 AUSTs responded to this question.

^bA total of 96 AUSTs responded to this question.

**Appendix IV
Assistant U.S. Trustees' Responses
Regarding the Review of Professional Fee
Applications in Chapter 11 Cases, Including
the Use of Available Guidelines**

Table IV.7: Professionals Who Were Least Often Objected to in Chapter 11 Cases

Professional	Number of AUSTs	Percent of AUSTs
Over-secured creditors ^a	71	78%
Realtors ^b	73	77
Attorney for creditor ^c	70	73
Attorney for equity holders' committee ^b	52	55

Note 1: Responses reflect those professionals to whom AUSTs said they seldom or never objected.

Note 2: The total number of responses to each question varied as follows:

^aA total of 91 AUSTs responded to this question.

^bA total of 95 AUSTs responded to this question.

^cA total of 96 AUSTs responded to this question.

Table IV.8: Other Parties Who Objected Most Often to Chapter 11 Fees

Party	Number of AUSTs	Percent of AUSTs
Creditor	27	28%
Judge/court	24	25

Note 1: Responses reflect other parties who AUSTs said objected at least half the time.

Note 2: A total of 95 AUSTs responded to this question.

Table IV.9: Other Parties Who Objected Least Often to Chapter 11 Fees

Party	Number of AUSTs	Percent of AUSTs
Debtor ^a	72	76%
Private trustee ^a	66	69
Attorney for equity holders' committee ^b	51	54

Note 1: Responses reflected other parties who AUSTs said seldom or never objected.

Note 2: The total number of responses varied as follows:

^aA total of 95 AUSTs responded to this question.

^bA total of 94 AUSTs responded to this question.

**Appendix IV
Assistant U.S. Trustees' Responses
Regarding the Review of Professional Fee
Applications in Chapter 11 Cases, Including
the Use of Available Guidelines**

**Table IV.10: the Top Five Reasons
Other Parties Gave for Objecting to
Chapter 11 Fee Applications**

Reasons for objections

- Lack of showing benefit to the estate
- Total amount of fees in relation to total value of estate
- Duplication of services/efforts
- Insufficient description of the work done
- Excessive hours worked

Note: Respondents were given a choice of 26 reasons for objections from which to select. See table IV.11 for a more detailed breakdown.

Table IV.11: Reasons Other Parties Gave for Objecting to Chapter 11 Fee Applications

Reasons for objecting	Objecting parties					
	Trustee	Debtor	Creditor	Creditors' committee	Judge or court	Attorney for equity holders' committee
Lack of showing benefit to the estate	60	49	62	68	43	21
Total amount of fees in relation to value of estate	27	32	29	28	26	14
Duplication of services/efforts	27	26	36	36	23	10
Excessive hours worked	24	29	29	28	24	9
Insufficient description of the work done	24	19	33	31	30	6
Excessive hourly rates for the services performed	16	20	28	30	24	7
Excessive hourly rates for the persons performing those services	13	19	27	25	24	8
Charges for fee application preparation	9	9	15	13	12	3
Full hourly rates for travel time	10	12	20	17	19	4
Excessive lodging and travel expenses	9	8	15	17	13	4
Charges for amenities while on travel status, etc.	10	10	12	14	11	3
Charging in excess of the tax deductible amount in mileage	5	4	6	6	6	2
Parking fees while appearing in court	6	5	8	7	8	3
Not complying with formatting requirements for fee applications or requests for reimbursement of expenses	16	16	21	20	14	7
Not keeping time in appropriate increments	17	14	18	19	17	5
Not listing separately each task and the time required for that task ("lumping")	20	18	26	26	22	6
Inadequate documentation of expenses for which reimbursement is sought	16	13	21	21	18	4

(continued)

**Appendix IV
Assistant U.S. Trustees' Responses
Regarding the Review of Professional Fee
Applications in Chapter 11 Cases, Including
the Use of Available Guidelines**

Reasons for objecting	Objecting parties					Attorney for equity holders' committee
	Trustee	Debtor	Creditor	Creditors' committee	Judge or court	
Use of professionals to perform tasks which a paraprofessional could perform	12	10	11	14	12	4
Computerized research charges in excess of actual cost as billed to the professional	6	5	8	8	9	3
Overhead or any of the normally accepted components of overhead	10	10	17	15	13	3
Staff overtime	8	7	11	11	9	3
Local meals for professionals or staff required to work during lunch or after hours	9	8	11	11	7	3
Word processing charges	6	6	10	11	11	3
Fax charges for sending or receiving a fax other than telephone toll charges	6	5	8	9	13	3
Unnecessary use of overnight delivery or messenger services	6	5	8	9	14	3
Reimbursement of creditors' committee out-of-pocket expenses	6	7	6	7	9	2

Table IV.12: Professionals With Whom the Assistant U.S. Trustees Experienced the Greatest Problems in Chapter 11 Cases

Professional	Number of AUSTs	Percent of AUSTs
Investment bankers/financial advisors ^a	17	18%
Accountants ^b	13	14

Note 1: Responses reflected those professionals with whom the AUSTs said they experienced great or very great problems.

Note 2: The total number of responses varied as follows:

^aA total of 95 AUSTs responded to this question.

^bA total of 96 AUSTs responded to this question.

**Appendix IV
Assistant U.S. Trustees' Responses
Regarding the Review of Professional Fee
Applications in Chapter 11 Cases, Including
the Use of Available Guidelines**

Table IV.13: Professionals With Whom the Assistant U.S. Trustees Experienced the Fewest Problems in Chapter 11 Cases

Professional	Number of AUSTs	Percent of AUSTs
Management companies ^a	55	58%
Attorneys ^b	51	53
Accountants ^b	44	46
Investment bankers/financial advisors ^a	39	41

Note 1: Responses reflected those professionals with whom the AUSTs said they experienced some or no problems.

Note 2: The total number of responses varied as follows:

^aA total of 95 AUSTs responded to this question.

^bA total of 96 AUSTs responded to this question.

Table IV.14: Activities to Which Assistant U.S. Trustees Gave Highest Priority

Activity	Number of AUSTs	Percent of AUSTs
Monitoring private trustees ^a	97	100%
Investigating fraud and misconduct allegations ^a	82	85
Administrative matters ^a	81	84
Responding to public inquiries ^b	74	77
Analyzing Chapter 11 disclosure statements ^a	54	56
Analyzing Chapter 11 fee applications ^a	54	56

Note 1: Responses reflected those activities given high or very high priority.

Note 2: The total number of responses varied as follows:

^aAll 97 AUSTs surveyed responded to this question.

^bA total of 96 AUSTs responded to this question.

Differences in Offices With and Without Formal Guidelines

As requested, we also compared differences in those offices without guidelines and those offices with one or more types of formal guidelines. We found differences in the amount of staff's time spent reviewing applications, the frequency of objections and informal consultations, the professionals with whom AUSTs reported problems, and the priority given selected activities.

Specifically, 69 percent of the AUSTs whose offices had no guidelines reported 10 percent or less of staff's time was spent reviewing Chapter 11 fee applications. In comparison, 22 percent of the AUSTs whose offices had

**Appendix IV
Assistant U.S. Trustees' Responses
Regarding the Review of Professional Fee
Applications in Chapter 11 Cases, Including
the Use of Available Guidelines**

three forms of guidelines reported that 10 percent or less of staff time was spent reviewing applications.

One-third of the offices with all three forms of guidance reported few objections to applications, while 79 percent of those with no guidelines reported few objections. Moreover, 21 percent of respondents with no guidelines reported little informal consultation occurred with professionals before fee hearings compared to 56 percent of those with all three types of guidelines. Offices with no guidelines reported fewer problems with accountants, attorneys, and investment bankers/financial advisors than offices with one or more types of guidelines. The specific problems encountered, according to some AUSTS included lumping and insufficient details regarding services performed.

We also asked the AUSTS about the priority given selected activities. A smaller proportion of those whose offices had no guidelines reportedly gave high or very high priority to investigating fraud and analyzing chapter 11 disclosure statements than those whose offices had one or more types of guidelines. Administrative matters, monitoring private trustees, reviewing chapter 11 fee applications and responding to public inquiries were each given about the same level of priority by AUSTS with and without guidelines.

Assistant U.S. Trustees Responses Regarding Chapter 7 Cases, Including Compensation and Retention of Private Trustees

As shown in table V.1, about 40 percent (44 of 97) of Assistant U.S. Trustees (AUSTS) reported that informal consultations on fee applications occurred more than 80 percent of the time, but there was considerable variation among respondents. Formal objections to fee applications were relatively infrequent, with about three-fourths of AUSTS reporting they had formally objected in the past year to 20 percent or less of professional fee applications (see table V.2).

Table V.1: Frequency of Informal Consultations Prior to Chapter 7 Fee Hearings

Percent of time	Number of AUSTs
1% to 20%	14
21 to 40	11
41 to 60	17
61 to 80	11
81 to 99	30
100	14

Note: All 97 AUSTs surveyed responded to this question.

Table V.2: the Percentage of Chapter 7 Fee Applications to Which the Office of U.S. Trustees Formally Objected

Percent of applications	Number of AUSTs
None	4
1% to 20%	67
21 to 40	12
41 to 60	8
61 to 80	3
81 to 99	1
100	2

Note 1: All 97 AUSTs surveyed responded to this question.

Note 2: AUSTs reported on average that 14 percent of staff time was spent reviewing applications.

Compensation and Retention of Private Trustees

Compensation of private trustees in chapter 7 cases is derived from three basic statutory sources and is subject to certain statutory limitations. First, for each chapter 7 case, private trustees receive a fixed amount of the total bankruptcy filing fee in each case—\$45 at the time of our survey.¹ Second, for work in chapter 7 asset cases—those with assets that can be liquidated

¹Responses were based on the compensation maximums in effect in the summer of 1993. In 1994, legislation was enacted that increased the maximums and raised from \$45 to \$60 the trustee payments from the filing fees in each case.

Appendix V
Assistant U.S. Trustees Responses
Regarding Chapter 7 Cases, Including
Compensation and Retention of Private
Trustees

to pay creditors—the bankruptcy court may allow reasonable compensation for actual and necessary services subject to a statutorily defined maximum of estate receipts. Third, with court authorization, private trustees may receive income from self-retention as attorney or accountant to perform certain duties outside their trustee responsibilities.²

Almost 90 percent of AUSTS reported that in more than 80 percent of chapter 7 cases, judges routinely awarded the statutory maximum compensation to private trustees (table V.3). About 93 percent of them believed that private trustee compensation should at least be increased somewhat (table VI.4). About two-thirds of AUSTS reported that between one and seven private trustees voluntarily left their positions in the past 2 years (table VI.5). About 40 percent of respondents believed that insufficient compensation was of little or no importance as the reason that private trustees voluntarily left their positions, while 31 percent believed it was of great or very great importance (table IV.6). Excessive paperwork was most frequently cited as an important reason for trustee departures; 29 percent of respondents considered it of little or no importance, while 35 percent considered it to be of great or very great importance. For those who remained in their positions, about 45 percent of AUSTS credited this to interesting and challenging work and to bankruptcy work as a dependable source of income. (See table V.7.)

We also asked whether private trustees hired themselves or their law firms as attorney for the trustee. Such self-retentions can be an additional source of income for private trustees. Eighty-percent of AUSTS reported that at least 61 percent of private trustees who are attorneys have retained themselves or their law firm as attorney for the trustee (see table V.8). While a majority of private trustees have at some point retained themselves or their law firm as attorney for the trustee, they did not necessarily do so in the majority of bankruptcy cases. Only 38 percent of AUSTS reported that private trustees retained themselves or their law firm in more than 60 percent of the cases (see table V.9).

²More detailed information on private trustees income from all three sources can be found in our report on professional fees in chapter 7 cases entitled Bankruptcy Administration: Case Receipts Paid to Creditors and Professionals (GAO/GGD-94-173, July 13, 1994).

**Appendix V
Assistant U.S. Trustees Responses
Regarding Chapter 7 Cases, Including
Compensation and Retention of Private
Trustees**

Table V.3: the Percentage of Cases That Judges Routinely Awarded Private Trustees the Statutory Maximum on Fees

Percent of cases	Number of AUSTs^a
None	2
1% to 20%	1
21 to 40	2
41 to 60	0
61 to 80	6
81 to 99	58
100	27

^aThere was one response of "unsure."

Note: All 97 AUSTs surveyed responded to this question.

Table V.4: Assistant U.S. Trustees Opinion on Whether Private Trustees Compensation Should Be Increased, Decreased, or Remain About the Same

Opinion on compensation	Number of AUSTs^a
Greatly increased	28
Somewhat increased	61
Remain about the same	2
Somewhat decreased	2
Greatly decreased	1

^aThere were two responses of "no opinion."

Note: A total of 96 AUSTs responded to this question.

Table V.5: Assistant U.S. Trustee Responses on the Number of Private Trustees Who Voluntarily Left Their Positions in the Past Two Years

Number of trustees leaving	Number of AUSTs
None	31
One	18
Two	27
Three to seven	16
Twenty-two ^a	1

^aBecause the turnover was unusually high, the results for this one respondent are shown separately.

Note: A total of 93 AUSTs responded to this question.

**Appendix V
Assistant U.S. Trustees Responses
Regarding Chapter 7 Cases, Including
Compensation and Retention of Private
Trustees**

Table V.6: the Most Important Reasons Cited for Why Private Trustees Voluntarily Left Their Positions

Reasons for leaving	Number of AUSTs
Requirements by the Executive Office for U.S. Trustees ^a	17
Caseload too heavy ^b	3
Income after expenses too low ^c	20
Too much paperwork ^d	23
Not paid in a timely manner ^e	8
Retired ^f	13

Note: Responses reflected those reasons that were considered to be of great or very great importance.

^aA total of 64 AUSTs responded to this question.

^bA total of 61 AUSTs responded to this question.

^cA total of 65 AUSTs responded to this question.

^dA total of 66 AUSTs responded to this question.

^eA total of 60 AUSTs responded to this question.

^fA total of 51 AUSTs responded to this question.

Table V.7: Important Reasons Cited for Why Private Trustees Remained in Their Positions

Reasons for remaining	Number of AUSTs
Self-marketing opportunities ^a	33
Prestige ^a	22
Interesting/challenging work ^a	44
Financial rewards ^a	37
Dependable income for law practice or other professional endeavor ^b	43
Investment in time and equipment ^c	15

Note: Responses reflected those reasons that were considered to be of great or very great importance.

^aA total of 94 AUSTs responded to this question.

^bA total of 95 AUSTs responded to this question.

^cA total of 93 AUSTs responded to this question.

**Appendix V
Assistant U.S. Trustees Responses
Regarding Chapter 7 Cases, Including
Compensation and Retention of Private
Trustees**

Table V.8: Percentage of Private Trustees Who Are Attorneys and Retained Themselves or Their Law Firm as Attorney(s) for the Trustee

Percent of panel trustees	Number of AUSTs
None	8
0.5% to 20%	3
21 to 40	2
41 to 60	6
61 to 80	14
81 to 99	21
100	43

Note: All 97 AUSTs surveyed responded to this question.

Table V.9: Percentage of Cases in Which Private Trustees Retained Themselves or Their Law Firm as Attorney(s) for the Trustee

Percent of cases	Number of AUSTs
None	9
1% to 20%	43
21 to 40	6
41 to 60	2
61 to 80	15
81 to 99	19
100	3

Note: All 97 AUSTs surveyed responded to this question.

Major Contributors to This Fact Sheet

**General Government
Division, Washington,
D.C.**

William O. Jenkins, Jr., Assistant Director, Administration of
Justice Issues
Robert L. Giusti, Assignment Manager
William J. Sabol, Senior Social Science Analyst

**Los Angeles Field
Office**

Shannon Kessler, Evaluator

Detroit Field Office

Henry L. Malone, Regional Management Representative
Brenda J. Trotter, Evaluator-in-Charge

**Office of the General
Counsel**

Geoffrey R. Hamilton, Attorney/Advisor

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015

or visit:

Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders may also be placed by calling (202) 512-6000 or by using fax number (301) 258-4066, or TDD (301) 413-0006.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (301) 258-4097 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Mail
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested



