

investigation shall be conducted under the supervision of the Assistant Attorney General in charge of the Criminal Division.

(3) If a referral from the Department of Defense is such that both civil and criminal proceedings may be warranted, responsibility for any further investigation may be determined by the Deputy Attorney General.

**§ 57.3 Scope and purpose of investigation; other sources of information.**

(a) The authority granted the Attorney General by section 816(d)(1) of the Act (e.g., authority to inspect books and records) shall not be utilized until an appropriate official has defined, in an appropriate internal memorandum, the scope and purpose of the particular investigation.

(b) There shall be no use, with respect to particular information, of the authority granted by section 816(d)(1) of the Act until an appropriate official has determined that the information in question is not available to the Department of Justice from any other Federal agency or other responsible agency (e.g., a State agency).

(c) For purposes of this section, "appropriate official" means the Assistant Attorney General in charge of the division conducting the investigation, or his delegate.

**§ 57.4 Expiration date.**

This part shall remain in effect until expiration, pursuant to section 816(h) of the Act, of the Attorney General's authority under section 816 of the Act.

**PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACTS OF 1978 AND 1994**

Sec.

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- 58.30 Mandatory duty of approved providers to notify United States Trustees of material changes.
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- 58.32 Continuing requirements for becoming and remaining approved providers.
- 58.33 Minimum qualifications providers shall meet to become and remain approved providers.
- 58.34 Minimum requirements to become and remain approved providers relating to fees.
- 58.35 Minimum requirements to become and remain approved providers relating to certificates.
- 58.36 Procedures for obtaining final provider action on United States Trustees' decisions to deny providers' applications and to remove approved providers from the approved list.

**APPENDIX A TO PART 58—GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. 330**

**AUTHORITY:** 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3), 1202; 1302, 1328(g); 28 U.S.C. 509, 510, 586, 589b.

**SOURCE:** Order No. 921-80, 45 FR 82631, Dec. 16, 1980, unless otherwise noted.

**§ 58.1 Authorization to establish panels of private trustees.**

(a) Each U.S. Trustee is authorized to establish a panel of private trustees (the "panel") pursuant to 28 U.S.C. 586(a)(1).

(b) Each U.S. Trustee is authorized, with the approval of the Director, Executive Office for United States Trustees (the "Director") to increase or decrease the total membership of the panel. In addition, each U.S. Trustee, with the approval of the Director, is authorized to institute a system of rotation of membership or the like to achieve diversity of experience, geographical distribution or other characteristics among the persons on the panel.

[Order No. 921-80, 45 FR 82631, Dec. 16, 1980, as amended at 62 FR 30183, June 2, 1997]

**§ 58.2 Authorization to appoint standing trustees.**

Each U.S. Trustee is authorized, subject to the approval of the Deputy Attorney General, or his delegate, to appoint and remove one or more standing trustees to serve in cases under chapters 12 and 13 of title 11, U.S. Code.

[51 FR 44288, Dec. 9, 1986]

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**§ 58.3 Qualification for membership on panels of private trustees.**

(a) To be eligible for appointment to the panel and to retain eligibility therefor, an individual must possess the qualifications described in paragraph (b) of this section in addition to any other statutory qualifications. A corporation or partnership may qualify as an entity for appointment to the private panel. However, each person who, in the opinion of the U.S. Trustee or of the Director, performs duties as trustee on behalf of a corporation or partnership must individually meet the standards described in paragraph (b) of this section, except that each U.S. Trustee, with the approval of the Director, shall have the discretion to waive the applicability of paragraph (b)(6) of this section as to any individual in a non-supervisory position. No professional corporation, partnership, or similar entity organized for the practice of law or accounting shall be eligible to serve on the panel.

(b) The qualifications for membership on the panel are as follows:

- (1) Possess integrity and good moral character.
- (2) Be physically and mentally able to satisfactorily perform a trustee's duties.
- (3) Be courteous and accessible to all parties with reasonable inquiries or comments about a case for which such individual is serving as private trustee.
- (4) Be free of prejudices against any individual, entity, or group of individuals or entities which would interfere with unbiased performance of a trustee's duties.
- (5) Not be related by affinity or consanguinity within the degree of first cousin to any employee of the Executive Office for United States Trustees of the Department of Justice, or to any employee of the office of the U.S. Trustee for the district in which he or she is applying.

(6)(i) Be a member in good standing of the bar of the highest court of a state or of the District of Columbia; or

(ii) Be a certified public accountant; or

(iii) Hold a bachelor's degree from a full four-year course of study (or the equivalent) of an accredited college or university (accredited as described in

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part II, section III of Handbook X118 promulgated by the U.S. Office of Personnel Management) with a major in a business-related field of study or at least 20 semester-hours of business-related courses; or hold a master's or doctoral degree in a business-related field of study from a college or university of the type described above; or

(iv) Be a senior law student or candidate for a master's degree in business administration recommended by the relevant law school or business school dean and working under the direct supervision of:

(A) A member of a law school faculty; or

(B) A member of the panel of private trustees; or

(C) A member of a program established by the local bar association to provide clinical experience to students; or

(v) Have equivalent experience as deemed acceptable by the U.S. Trustee.

(7) Be willing to provide reports as required by the U.S. Trustee.

(8) Have submitted an application under oath, in the form prescribed by the Director, to the U.S. Trustee for the District in which appointment is sought: *Provided*, That this provision may be waived by the U.S. Trustee on approval of the Director.

### § 58.4 Qualifications for appointment as standing trustee and fiduciary standards.

(a) As used in this section—

(1) The term *standing trustee* means an individual appointed pursuant to 28 U.S.C. 586(b).

(2) The term *relative* means an individual who is related to the standing trustee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or an individual whose close association to the standing trustee is the equivalent of a spousal relationship.

(3) The term *financial or ownership interest* excludes ownership of stock in a publicly-traded company if the ownership interest is not controlling.

(4) The word *region* means the geographical area defined in 28 U.S.C. 581.

(b) To be eligible for appointment as a standing trustee, an individual must have the qualifications for membership on a private panel of trustees set forth in §§ 58.3 (b)(1)–(4), (6)–(8). An individual need not be an attorney to be eligible for appointment as a standing trustee. A corporation or partnership may be appointed as standing trustee only with the approval of the Director.

(c) The United States Trustee shall not appoint as a standing trustee any individuals who, at the time of appointment, is:

(1) A relative of another standing trustee in the region in which the standing trustee is to be appointed;

(2) A relative of a standing trustee (in the region in which the standing trustee is to be appointed), who, within the preceding one-year period, died, resigned, or was removed as a standing trustee from a case;

(3) A relative of a bankruptcy judge or a clerk of the bankruptcy court in the region in which the standing trustee is to be appointed;

(4) An employee of the Department of Justice within the preceding one-year period; or

(5) A relative of a United States Trustee or an Assistant United States Trustee, a relative of an employee in any of the offices of the United States Trustee in the region in which the standing trustee is to be appointed, or a relative of an employee in the Executive Office for United States Trustees.

(d) A standing trustee must, at a minimum, adhere to the following fiduciary standards:

(1) *Employment of relatives.* (i) A standing trustee shall not employ a relative of the standing trustee.

(ii) A standing trustee shall also not employ a relative of the United States Trustee or of an Assistant United States Trustee in the region in which the 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 trustee has been appointed.

(iii)(A) Paragraphs (d)(1) (i) and (ii) of this section shall not apply to a spouse

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of a standing trustee who was employed by the standing trustee as of August 1, 1995.

(B) For all other relatives employed by a standing trustee as of August 1, 1995, paragraphs (d)(1) (i) and (ii) of this section shall be fully implemented by October 1, 1998, unless specifically provided below:

(1) The United States Trustee shall have the discretion to grant a written waiver for a period of time not to exceed 2 years upon a written showing by the standing trustee of compelling circumstances that make the continued employment of a relative necessary for a standing trustee's performance of his or her duties and written evidence that the salary to be paid is at or below market rate.

(2) Additional waivers, not to exceed a period of two years each, may be granted under paragraph (d)(1)(iii)(B)(1) of this section provided the standing trustee makes a similar written showing within 90 days prior to the expiration of a present waiver and the United States Trustee determines that the circumstances for waiver are met.

(3) No waivers will be granted for a relative of the United States Trustee or of an Assistant United States Trustee.

(2) *Related party transactions.* (i) A standing trustee shall not direct debtors or creditors of a bankruptcy case administered by the standing trustee to an individual or entity that provides products or services, such as insurance or financial counseling, if a standing trustee is a relative of that individual or if the standing trustee or relative has a financial or ownership interest in the entity.

(ii) 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.

(iii)(A) The United States Trustee may grant a waiver from compliance with paragraph (d)(2)(ii) of this section for up to three years following the appointment of a standing trustee if the newly-appointed standing trustee can

demonstrate in writing that a waiver is necessary and the cost is at or below market.

(B) The United States Trustee may grant a provisional waiver from compliance with the allocation prohibition contained in paragraph (d)(2)(ii) of this section if one of the following conditions is present:

(1) A standing trustee has insufficient receipts to earn maximum annual compensation as determined by the Director during any one of the last three fiscal years and provides the United States Trustee with an appraisal or other written evidence that the allocation is necessary and the allocated cost is at or below market rate for that good or service, or

(2) A chapter 13 standing trustee also serves as a trustee in chapter 12 cases and provides the United States Trustee with an appraisal or other written evidence that the allocation is necessary and the allocated cost is at or below market rate for that good or service.

(C) Except as otherwise provided in this paragraph, a standing trustee may seek a reasonable extension of time from the United States Trustee to comply with paragraph (d)(2)(ii) of this section. To obtain an extension, a standing trustee must demonstrate by an appraisal or other written evidence, satisfactory to the United States Trustee, that the expense is necessary and at or below market rate. In no event shall an extension be granted for the use and occupation of real estate beyond October 1, 2005. For personal property and personal service contracts, no extension shall be granted beyond October 1, 1998.

(3) *Employment of other standing trustees.* A standing trustee shall not employ or contract with another standing trustee to provide personal services for compensation payable from the fiduciary expense fund. This section does not prohibit the standing trustee from reimbursing the actual, necessary expenses incurred by another standing trustee who provides necessary assistance to the standing trustee provided that the reimbursement has been pre-approved by the United States Trustee.

(e) Paragraph (d) of this section is effective July 2, 1997. As to those standing trustees who are appointed as of

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July 2, 1997, paragraph (d) will be applicable on the first day of their next fiscal year (i.e., October 1, 1997, for chapter 13 trustees and January 1, 1998, for chapter 12 trustees).

[62 FR 30183, June 2, 1997]

### § 58.5 Non-discrimination in appointment.

The U.S. Trustees shall not discriminate on the basis of race, color, religion, sex, national origin or age in appointments to the private panel of trustees or of standing trustees and in this regard shall assure equal opportunity for all appointees and applicants for appointment to the private panel of trustees or as standing trustee. Each U.S. Trustee shall be guided by the policies and requirements of Executive Order 11478 of August 8, 1969, relating to equal employment opportunity in the Federal Government, section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16), section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a), and the regulations of the Office of Personnel Management relating to equal employment opportunity (5 CFR part 713).

[Order No. 921-80, 45 FR 82631, Dec. 16, 1980, as amended by Order No. 960-81, 46 FR 52360, Oct. 27, 1981]

### § 58.6 Procedures for suspension and removal of panel trustees and standing trustees.

(a) A United States Trustee shall notify a panel trustee or a standing trustee in writing of any decision to suspend or terminate the assignment of cases to the trustee including, where applicable, any decision not to renew the trustee's term appointment. The notice shall state the reason(s) for the decision and should refer to, or be accompanied by copies of, pertinent materials upon which the United States Trustee has relied and any prior communications in which the United States Trustee has advised the trustee of the potential action. The notice shall be sent to the office of the trustee by overnight courier, for delivery the next business day. The reasons may include, but are in no way limited to:

(1) Failure to safeguard or to account for estate funds and assets;

(2) Failure to perform duties in a timely and consistently satisfactory manner;

(3) Failure to comply with the provisions of the Code, the Bankruptcy Rules, and local rules of court;

(4) Failure to cooperate and to comply with orders, instructions and policies of the court, the bankruptcy clerk or the United States Trustee;

(5) Substandard performance of general duties and case management in comparison to other members of the chapter 7 panel or other standing trustees;

(6) Failure to display proper temperament in dealing with judges, clerks, attorneys, creditors, debtors, the United States Trustee and the general public;

(7) Failure to adequately monitor the work of professionals or others employed by the trustee to assist in the administration of cases;

(8) Failure to file timely, accurate reports, including interim reports, final reports, and final accounts;

(9) Failure to meet the eligibility requirements of 11 U.S.C. 321 or the qualifications set forth in 28 CFR 58.3 and 58.4 and in 11 U.S.C. 322;

(10) Failure to attend in person or appropriately conduct the 11 U.S.C. 341(a) meeting of creditors;

(11) Action by or pending before a court or state licensing agency which calls the trustee's competence, financial responsibility or trustworthiness into question;

(12) Routine inability to accept assigned cases due to conflicts of interest or to the trustee's unwillingness or incapacity to serve;

(13) Change in the composition of the chapter 7 panel pursuant to a system established by the United States Trustee under 28 CFR 58.1;

(14) A determination by the United States Trustee that the interests of efficient case administration or a decline in the number of cases warrant a reduction in the number of panel trustees or standing trustees.

(b) The notice shall advise the trustee that the decision is final and unreviewable unless the trustee requests in writing a review by the Director, Executive Office for United States Trustees, no later than 20 calendar days from the date of issuance of the

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United States Trustee's notice ("request for review"). In order to be timely, a request for review must be received by the Office of the Director no later than 20 calendar days from the date of the United States Trustee's notice to the trustee.

(c) A decision by a United States Trustee to suspend or terminate the assignment of cases to a trustee shall take effect upon the expiration of a trustee's time to seek review from the Director or, if the trustee timely seeks such review, upon the issuance of a final written decision by the Director.

(d) Notwithstanding paragraph (c) of this section, a United States Trustee's decision to suspend or terminate the assignment of cases to a trustee may include, or may later be supplemented by an interim directive, by which the United States trustee may immediately discontinue assigning cases to a trustee during the review period. A United States Trustee may issue such an interim directive if the United States Trustee specifically finds that:

- (1) A continued assignment of cases to the trustee places the safety of estate assets at risk ;
- (2) The trustee appears to be ineligible to serve under applicable law, rule, or regulation;
- (3) The trustee has engaged in conduct that appears to be dishonest, deceitful, fraudulent, or criminal in nature; or
- (4) The trustee appears to have engaged in other gross misconduct that is unbecoming his or her position as trustee or violates the trustee's duties.

(e) If the United States Trustee issues an interim directive, the trustee may seek a stay of the interim directive from the Director if the trustee has timely filed a request for review under paragraph (b) of this section.

(f) The trustee's written request for review shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials that the trustee wants the Director to consider in reviewing the decision. The trustee shall send a copy of the request for review, and the accompanying documents and materials, to the United States Trustee by overnight courier, for delivery the next business

day. The trustee may request that specific documents in the possession of the United States Trustee be transmitted to the Director for inclusion in the record.

(g) The United States Trustee shall have 15 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee. Both copies shall be sent by overnight courier, for delivery the next business day.

(h) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(i) Unless the trustee and the United States Trustee agree to a longer period of time, the Director shall issue a written decision no later than 30 calendar days from the receipt of the United States Trustee's response to the trustee's request for review. That decision shall determine whether the United States Trustee's decision is supported by the record and the action is an appropriate exercise of the United States Trustee's discretion, and shall adopt, modify or reject the United States Trustee's decision to suspend or terminate the assignment of future cases to the trustee. The Director's decision shall constitute final agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the United States Trustee's decision or a Program employee who is located within the region of the United States Trustee who made the decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) This rule does not authorize a trustee to seek review of any decision to increase the size of the chapter 7 panel or to appoint additional standing trustees in the district or region.

(1) A trustee who files a request for review shall bear his or her own costs and expenses, including counsel fees.

[62 FR 51750, Oct. 2, 1997]

**§ 58.7 Procedures for Completing Uniform Forms of Trustee Final Reports in Cases Filed Under Chapters 7, 12, and 13 of the Bankruptcy Code.**

(a) *UST Form 101-7-TFR, Chapter 7 Trustee's Final Report.* A chapter 7 trustee must complete UST Form 101-7-TFR final report (TFR) in preparation for closing an asset case. This report must be submitted to the United States Trustee after liquidating the estate's assets, but before making distribution to creditors, and before filing it with the United States Bankruptcy Court. The TFR must contain the trustee's certification, under penalty of perjury, that all assets have been liquidated or properly accounted for and that funds of the estate are available for distribution. Pursuant to 28 U.S.C. 589b(d), the TFR must also contain the following:

- (1) Summary of the trustee's case administration;
- (2) Copies of the estate's financial records;
- (3) List of allowed claims;
- (4) Fees and administrative expenses; and
- (5) Proposed dividend distribution to creditors.

(b) *UST Form 101-7-NFR Chapter 7 Trustee's Notice of Trustee's Final Report.* After the TFR has been reviewed by the United States Trustee and filed with the United States Bankruptcy Court, if the net proceeds realized in an estate exceed the amounts specified in Fed. R. Bankr. P. 2002(f)(8), UST Form 101-7-NFR (NFR) must be sent to all creditors as the notice required under Fed. R. Bankr. P. 2002(f). The NFR must show the receipts, approved disbursements, and any balance identified on the TFR, as well as the information required in the TFR's Exhibit D. In addition, the NFR must identify the procedures for objecting to any fee application or to the TFR.

(c) *UST Form 101-7-TDR Chapter 7 Trustee's Final Account, Certification The Estate Has Been Fully Administered and Application of Trustee To Be Discharged.*

After distributing all estate funds, a trustee must submit to the United States Trustee and file with the United States Bankruptcy Court the trustee's final account, UST Form 101-7-TDR (TDR). The TDR must contain the trustee's certification, under penalty of perjury, that the estate has been fully administered and the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the TDR must also include the following:

- (1) The length of time the case was pending;
- (2) Assets abandoned;
- (3) Assets exempted;
- (4) Receipts and disbursements of the estate;
- (5) Claims asserted;
- (6) Claims allowed; and,
- (7) Distributions to claimants and claims discharged without payment, in each case by appropriate category.

(d) *UST Form 101-7-NDR Chapter 7 Trustee's Report of No Distribution.* In cases where there is no distribution of funds the case trustee must submit to the United States Trustee and file with the United States Bankruptcy Court UST Form 101-7-NDR (NDR). The NDR must contain the trustee's certification that the estate has been fully administered, that the trustee has neither received nor disbursed any property or money on account of the estate, and that there is no property available for distribution over and above that exempted by law. In addition, the NDR must set forth the trustee's request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), the NDR must also include the following information:

- (1) The length of time the case was pending;
- (2) Assets abandoned;
- (3) Assets exempted;
- (4) Claims asserted;
- (5) Claims scheduled; and,
- (6) claims scheduled to be discharged without payment.

(e) *UST Form 101-12-FR-S, Chapter 12 Standing Trustee's Final Report and Account and UST Form 101-13-FR-S, Chapter 13 Standing Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a standing trustee has been appointed, a trustee must submit to the United States Trustee and file

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with the United States Bankruptcy Court either UST Form 101-12-FR-S for chapter 12 cases or UST Form 101-13-FR-S for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification that the estate has been fully administered if not converted to another chapter and a request to be discharged as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

- (1) The length of time the case was pending;
- (2) Assets abandoned;
- (3) Assets exempted;
- (4) Receipts and disbursements of the estate;
- (5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;
- (6) Claims asserted;
- (7) Claims allowed;
- (8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;
- (9) Date of confirmation of the plan;
- (10) Date of each modification thereto; and,
- (11) Defaults by the debtor in performance under the plan.

(f) *UST Form 101-12-FR-C, Chapter 12 Case Trustee's Final Report and Account, and UST Form 101-13-FR-C, Chapter 13 Case Trustee's Final Report and Account.* After the final distribution to creditors in a chapter 12 or 13 case in which a case trustee has been appointed, the trustee must submit to the United States Trustee and file with the United States Bankruptcy Court either UST Form 101-12-FR-C for chapter 12 cases, or UST Form 101-13-FR-C for chapter 13 cases, which are the trustee's final report and account. In these forms, a trustee must include a certification, submitted under penalty of perjury, that the estate has been fully administered if not converted to another chapter and the trustee's request to be discharged from further duties as trustee. Pursuant to 28 U.S.C. 589b(d), these forms must also include the following information:

- (1) The length of time the case was pending;
- (2) Assets abandoned;

- (3) Assets exempted;
- (4) Receipts and disbursements of the estate;
- (5) Expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 12 or 13 (as applicable) of title 11;
- (6) Claims asserted;
- (7) Claims allowed;
- (8) Distributions to claimants and claims discharged without payment, in each case by appropriate category;
- (9) Date of confirmation of the plan;
- (10) Date of each modification thereto; and,
- (11) defaults by the debtor in performance under the plan.

(g) *Mandatory Usage of Uniform Forms.* The Uniform Forms associated with this rule must be utilized by trustees when completing their final reports and final accounts. All trustees serving in districts where a United States Trustee is serving must use the Uniform Forms in the administration of their cases, in the same manner, and with the same content, as set forth in this rule:

- (1) All Uniform Forms may be electronically or mechanically reproduced so long as all the content and the form remain consistent with the Uniform Forms as they are posted on EOUST's Web site;
- (2) The Uniform Forms shall be filed via the United States Bankruptcy Courts Case Management/Electronic Case Filing System (CM/ECF) as a "smart form" meaning the forms are data enabled, unless the court offers an automated process that has been approved by EOUST, such as the virtual NDR event through CM/ECF.

[73 FR 58444, Oct. 7, 2008]

**§58.8 Uniform Periodic Reports in Cases Filed Under Chapter 11 of Title 11.**

(a) *Scope.* The requirements of this section apply to all chapter 11 debtors who do not qualify as a "small business debtor" under 11 U.S.C. 101(51D). Nothing in this section shall excuse, supersede, or otherwise modify any applicable nonbankruptcy reporting obligations, including, but not limited to, those set forth in chapters 2a through 2e of title 15 of the United States Code.



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(b) *UST Form 11-MOR, Monthly Operating Report.* Debtors-in-possession (debtor) and chapter 11 trustees (trustee) must file with the court and serve upon the United States Trustee, any official committee appointed under 11 U.S.C. 1102, any governmental unit charged with responsibility for collection or determination of any tax arising out of the estate's operation, and any requesting party in interest monthly operating reports using UST Form 11-MOR (MOR). In jointly administered cases, unless otherwise required by the United States Trustee in the United States Trustee's discretion, each jointly administered debtor is required to file a separate MOR on a non-consolidated basis. The MOR must contain the following:

(1) Information about the industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

(2) Length of time the case has been pending as of the end of the reporting period;

(3) Number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

(4) Cash receipts, cash disbursements, and profitability of the debtor during the reporting period and cumulatively since the date of the order for relief;

(5) Asset and liability status as of the end of the reporting period;

(6) Assets sold or transferred outside the ordinary course of business (with or without court approval) during the reporting period and cumulatively since the date of the order for relief;

(7) Income statement, commonly referred to as a statement of operations, for the reporting period;

(8) All professional fees approved by the court in the case during the reporting period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not);

(9) Information about whether tax returns and tax payments since the date of the order for relief have been timely filed and made;

(10) Payments made on pre-petition debt during the reporting period;

(11) Payments made outside the ordinary course of business without court approval during the reporting period;

(12) Payments made to or on behalf of insiders during the reporting period;

(13) Postpetition borrowing during the reporting period;

(14) Information about insurance, including workers' compensation, casualty/property, and general liability during the reporting period;

(15) Information about whether disclosure statements and plans of reorganization have been filed with the court during the reporting period; and

(16) Information about the payment of quarterly fees to the United States Trustee during the reporting period.

(c) *Individual chapter 11 debtors.* Individual debtors also must complete Part 8 of the MOR, which includes the following:

(1) Total income during the reporting period, including income from salary, wages, self-employment, and any other source;

(2) Total expenses during the reporting period, including expenses related to self-employment, and unusual or significant unanticipated expenses;

(3) Difference between total income in paragraph (c)(1) of this section and total expenses in paragraph (c)(2) of this section;

(4) Debts (that are not related to self-employment) that were incurred since the petition filing date, which are past due; and

(5) Information about whether all required domestic support obligation payments (as that term is defined by 11 U.S.C. 101(14A)) have been paid.

(d) *Supporting MOR documents.* (1) Unless the United States Trustee in the United States Trustee's discretion provides otherwise, any non-individual debtor or trustee must file with the court and serve upon the United States Trustee, any official committee appointed under 11 U.S.C. 1102, any governmental unit charged with responsibility for collection or determination of any tax arising out of the estate's operation, and any requesting party in interest the following documentation:

(i) Statement of cash receipts and disbursements that shows all cash receipts and cash disbursements for all bank and investment accounts;

(ii) Balance sheet containing the summary and detail of the assets, liabilities, and equity (net worth) or deficit of the estate. The estate's prepetition liabilities and retained earnings must be reported separately from the estate's postpetition liabilities and retained earnings; and

(iii) Statement of operations (profit or loss statement) that compares the estate's actual performance with projected performance.

(2) At the discretion of the United States Trustee, an individual debtor may be required to file with the court and serve upon the United States Trustee, any official committee appointed under 11 U.S.C. 1102, any governmental unit charged with responsibility for collection or determination of any tax arising out of the estate's operation, and any requesting party in interest the documentation identified in paragraph (d)(1) of this section.

(3) At the discretion of the United States Trustee, the debtor or trustee may be required to file with the court and serve upon the United States Trustee, any official committee appointed under 11 U.S.C. 1102, any governmental unit charged with responsibility for collection or determination of any tax arising out of the estate's operation, and any requesting party in interest the following documentation:

(i) Accounts receivable aging, which is an aged summary of accounts receivable including total receivables, net of doubtful accounts;

(ii) Postpetition liabilities aging, which is an aged summary schedule of postpetition liabilities segregated by general payables, amounts owed to professionals, taxes, etc.;

(iii) Statement of capital assets that identifies the book value of all capital assets on the petition date, the book value at the beginning of the reporting period, any additions or deletions including depreciation, and the book value at the end of the reporting period;

(iv) Schedule of payments to professionals that identifies all fees and ex-

penses for all professionals employed in the bankruptcy case;

(v) Schedule of payments to insiders that includes all payments made by the debtor to any person or entity considered an insider under 11 U.S.C. 101(31);

(vi) Bank statements and bank reconciliations that reflect all bank accounts and banking transactions;

(vii) Descriptions of assets sold or transferred outside the ordinary course of business during the reporting period, and the terms of such sales or transfers;

(viii) Registers or ledgers documenting the estate's cash disbursements during the reporting period;

(ix) Statement of cash flows during the reporting period;

(x) Other transactional documents, including real estate settlement documents, contracts, or loan documents for the reporting period; and

(xi) Other records.

(e) *Deadlines for filing and submitting MOR.* The MOR must be filed with the court and submitted to the United States Trustee on a monthly basis. Unless otherwise provided by local rule, each MOR must be filed by no later than the 21st day of the month immediately following the reporting period covered by the MOR. The MOR must be filed every month until one of the following occurs:

(1) The effective date of a confirmed plan of reorganization;

(2) The conversion of the case to a case under another chapter; or

(3) The dismissal of the case.

(f) *UST Form 11-PCR, Post-confirmation Report.* Following the effective date of a confirmed plan, reorganized debtors and any other authorized parties who have been charged with administering the confirmed plan must file with the court and serve upon the United States Trustee, any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, and any requesting party in interest quarterly post-confirmation reports using UST Form 11-PCR. In jointly administered cases, unless otherwise required by the United States Trustee in the United States Trustee's discretion, each jointly administered

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debtor, reorganized debtor, or other authorized party who has been charged with administering a confirmed plan is required to file a separate PCR on a nonconsolidated basis. The PCR must contain the following:

(1) Date the petition was filed and the date of plan confirmation;

(2) Summary of all post-confirmation amounts disbursed. This summary must be segregated into disbursements during the most recent reporting period and total disbursements since the date of the confirmation order;

(3) All preconfirmation professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not);

(4) Information regarding the recoveries of holders of claims under confirmed plans. This information must be expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed;

(5) Information on whether a final decree has been entered or is anticipated to be entered; and

(6) Information about the payment of quarterly fees to the United States Trustee during the reporting period.

(g) *Deadlines for filing and submitting PCR.* The PCR must be filed with the court and submitted to the United States Trustee on a quarterly basis. Unless otherwise provided by local rule, each PCR must be filed not later than the 21st day following the last day of the reporting (previous) quarter. The PCR must be filed every quarter until one of the following occurs:

(1) The date of the final decree;

(2) The conversion of the case to a case under another chapter; or

(3) The dismissal of the case.

(h) *Accounting methods.* Generally Accepted Accounting Principles (GAAP) are required to be used when completing the Periodic Reports, except if the debtor used a different set of accounting standards prepetition or if the United States Trustee or an order of the court otherwise modifies the GAAP requirement. If the debtor uses GAAP accounting, supporting docu-

ments must comply with GAAP, such as the Financial Accounting Standards Board's Accounting Standards Codification 852, "Reorganizations."

(i) *Certification of Periodic Reports' accuracy.* The Periodic Reports must be certified under penalty of perjury that they are true and correct by an individual who is authorized under applicable law to certify on behalf of the debtor, trustee, reorganized debtor, or other authorized party who has been charged with administering a confirmed plan. The debtor's, trustee's, reorganized debtor's, or other authorized party's attorney must maintain possession of the Periodic Reports with original holographic signatures for five years, unless otherwise provided by local rule. In addition to the obligations imposed by (1)(2), a pro se debtor must submit the Periodic Reports with original holographic signatures to the office of the United States Trustee in the district in which the bankruptcy case is pending.

(j) *Mandatory usage of Periodic Reports.* The Periodic Reports must be utilized by debtors and trustees when completing their monthly operating reports or post-confirmation reports. The Periodic Reports shall be used without alteration, except as otherwise provided in this rule, in a particular UST Form 11-MOR or UST Form 11-PCR, or in the instructions for UST Form 11-MOR or UST Form 11-PCR. The Periodic Reports may be modified to permit minor changes not affecting wording or the order of presenting information. All debtors and chapter 11 trustees serving in districts where a United States Trustee is serving must use the Periodic Reports in the administration of their cases, in the same manner and with the same content, as set forth in this Rule.

(1) All Periodic Reports may be electronically or mechanically reproduced so long as the content and the form remain consistent with the Periodic Reports as they are posted on EOUST's website; and

(2) The Periodic Reports shall be filed via the United States Bankruptcy Courts' Case Management/Electronic Case Filing System (CM/ECF) as a

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“smart form,” meaning the reports are data-embedded.

[85 FR 82913, Dec. 21, 2020]

§ 58.11 Procedures governing administrative review of a United States Trustee’s decision to deny a Chapter 12 or Chapter 13 standing Trustee’s claim of actual, necessary expenses.

(a) The following definitions apply to this section. These terms shall have these meanings:

(1) The term *claim of actual, necessary expenses* means the request by a chapter 12 or chapter 13 standing trustee for the United States Trustee’s approval of the trustee’s projected expenses for each fiscal year budget, or for an amendment to the current budget when an increase in an individual expense line item is greater than both 10% of the budgeted amount and \$5,000.00. Expenses for certain items require prior United States Trustee approval regardless of amount;

(2) The term *director* means the person designated or acting as the Director of the Executive Office for United States Trustees;

(3) The term *final decision* means the written determination issued by the Director based upon the review of the United States Trustee’s decision to deny all or part of a trustee’s claim of actual, necessary expenses;

(4) The term *notice* means the written communication from the United States Trustee to a trustee that the trustee’s claim of actual, necessary expenses has been denied in whole or in part;

(5) The term *request for review* means the written communication from a trustee to the Director seeking review of the United States Trustee’s decision to deny, in whole or in part, the trustee’s claim of actual, necessary expenses;

(6) The term *trustee* means an individual appointed by the United States Trustee under 28 U.S.C. 586(b) to serve as the standing trustee for chapter 12 or chapter 13 cases in a particular region; and

(7) The term *United States Trustee* means, alternatively:

(i) A United States Trustee appointed under 28 U.S.C. 581; or

(ii) A person acting as a United States Trustee under 28 U.S.C. 585.

(b) The United States Trustee may issue a decision to deny a trustee’s claim of actual, necessary expenses. Reasons for denial include, but are not limited to, finding that the trustee failed to do any of the following:

(1) Provide to the United States Trustee sufficient justification for the expense;

(2) Demonstrate to the United States Trustee that the expense is a cost effective use of funds;

(3) Demonstrate to the United States Trustee that the expense is reasonably related to the duties of the trustee;

(4) Obtain authorization from the United States Trustee prior to making an expenditure that was not provided for in the current budget;

(5) Provide the United States Trustee with documents, materials, or other information pertaining to the expense;

(6) Timely submit to the United States Trustee accurate budgets or requests for amendment of budgets to cover the additional expense; or

(7) Demonstrate to the United States Trustee that the expense is directly related to office operations.

(c) Before issuing a notice of denial, the United States Trustee shall communicate in writing with the trustee in an attempt to resolve any dispute over a claim of actual, necessary expenses:

(1) For disputes involving the trustee’s projected expenses for the upcoming fiscal year budget, the United States Trustee shall either resolve the dispute or issue a notice of denial no later than July 30 of the current calendar year for a chapter 12 standing trustee or October 31 of the current calendar year for a chapter 13 standing trustee, or if the United States Trustee has requested additional information, 30 calendar days from submission of the additional information if such submission is after July 1 for a chapter 12 standing trustee or October 1 for a chapter 13 standing trustee, unless the trustee and United States Trustee agree to a longer period of time. Any projected expenses not specifically disputed shall be approved in the ordinary course and the trustee’s fee shall be set on an interim basis;

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(2) For disputes over amendments to the current year budget, the United States Trustee shall either resolve the dispute or issue a notice of denial no later than 30 calendar days after the trustee's amendment request, or if the United States Trustee has requested additional information, 30 calendar days from submission of the additional information, unless the trustee and the United States Trustee agree to a longer period of time. Any portion of the amendment not specifically disputed shall be approved in the ordinary course;

(3) If the United States Trustee does not resolve the dispute or issue a notice of denial within the time frames identified in (c)(1) or (2) of this section, the trustee's claim of actual, necessary expenses shall be deemed denied on the next business day following expiration of the time frames identified in (c)(1) or (2) of this section.

(d) The United States Trustee shall notify a trustee in writing of any decision denying a trustee's claim of actual, necessary expenses. The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the decision. The United States Trustee shall provide to the trustee copies of any such non-privileged documents that were not supplied to the United States Trustee by the trustee. The notice shall be sent to the trustee by overnight courier, for delivery the next business day.

(e) The notice shall advise the trustee that the decision is final and unreviewable unless the trustee requests in writing a review by the Director no later than 21 calendar days from the date of the notice to the trustee. If the United States Trustee did not issue a notice of denial, and the expenses were deemed denied under (c)(3) of this section, the trustee shall have 21 calendar days from the date on which the expenses were deemed denied to submit a request for review to the Director.

(f) The decision to deny a trustee's claim of actual, necessary expenses shall take effect upon the expiration of a trustee's time to seek review from the Director or, if the trustee timely seeks such review, upon the issuance of a final decision by the Director.

(g) The trustee's request for review shall be in writing and shall fully describe why the trustee disagrees with the United States Trustee's decision, and shall be accompanied by all documents and materials the trustee wants the Director to consider in reviewing the United States Trustee's decision. The trustee shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. In order to be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the trustee or the date the expenses were deemed denied. The trustee shall also send a copy of the request for review to the United States Trustee by overnight courier, for delivery the next business day.

(h) The United States Trustee shall have 21 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee by overnight courier, for delivery the next business day.

(i) The Director may seek additional non-privileged information from any party, in the manner and to the extent the Director deems appropriate.

(j) In reviewing the decision to deny a trustee's claim of actual, necessary expenses, the Director shall determine:

(1) Whether the decision is supported by the record; and

(2) Whether the decision constitutes an appropriate exercise of discretion.

(k) The Director shall issue a final decision no later than 90 calendar days from the receipt of the trustee's request for review, or, if the Director has requested additional information, 30 calendar days from submission of the additional information, unless the trustee agrees to a longer period of time. The Director's final decision on the trustee's request for review shall constitute final agency action.

(l) In reaching a final decision the Director may specify a person to act as a reviewing official. The reviewing official may not be under the supervision

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of the United States Trustee who denied the trustee's claim of actual, necessary expenses. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(m) This rule does not authorize a trustee to seek review of any decision to change maximum annual compensation, to decrease or increase appointments of trustees in a region or district, to change the trustee's percentage fee, or to suspend, terminate, or remove a trustee.

(n) A trustee must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

[76 FR 31228, May 31, 2011]

§ 58.12 Definitions.

(a) The following definitions apply to §§ 58.12 through and including 58.24 of this Part and the applications and other materials agencies submit in an effort to establish they meet the requirements necessary to become an approved nonprofit budget and credit counseling agency.

(b) These terms shall have these meanings: (1) The term "accreditation" means the recognition or endorsement that an accrediting organization bestows upon an agency because the accrediting organization has determined the agency meets or exceeds all the accrediting organization's standards;

(2) The term "accrediting organization" means either an entity that provides accreditation to agencies or provides certification to counselors, provided, however, that an accrediting organization shall:

(i) Not be an agency or affiliate of any agency; and

(ii) Be deemed acceptable by the United States Trustee;

(3) The term "adequate counseling" means the actual receipt by a client from an approved agency of all counseling services, rights, and protections specified in:

(i) 11 U.S.C. 109(h);

(ii) 11 U.S.C. 111; and

(iii) This part;

(4) The term "affiliate of an agency" includes:

(i) Every entity that is an affiliate of the agency, as the term "affiliate" is defined in 11 U.S.C. 101(2), except that the word "agency" shall be substituted for the word "debtor" in 11 U.S.C. 101(2);

(ii) Each of an agency's officers and each of an agency's directors; and

(iii) Every relative of an agency's officers and every relative of an agency's directors;

(5) The term "agency" and the term "budget and credit counseling agency" shall each mean a nonprofit organization that is applying under this part for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved agency;

(6) The term "application" means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST-CC1, *Application for Approval as a Nonprofit Budget and Credit Counseling Agency*, as it shall be amended from time to time;

(7) The term "approved agency" means an agency currently approved by a United States Trustee under 11 U.S.C. 111 as an approved nonprofit budget and credit counseling agency eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(8) The term "approved list" means the list of agencies currently approved by a United States Trustee under 11 U.S.C. 111, as currently published on the United States Trustee Program's Internet site, which is located on the United States Department of Justice's Internet site;

(9) The term "audited financial statements" means financial reports audited by independent certified public accountants in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants;

(10) The term "certificate" means the certificate identified in 11 U.S.C.

521(b)(1) that an approved agency shall provide to a client after the client completes counseling services;

(11) The term “client” means an individual who both seeks and receives (or sought and received) counseling services from an approved agency;

(12) The term “counseling services” means all counseling required by 11 U.S.C. 109(h) and 111, and this part including, without limitation, services that are typically of at least 60 minutes in duration and that shall at a minimum include:

(i) Performing on behalf of, and providing to, each client a written analysis of that client’s current financial condition, which analysis shall include a budget analysis, consideration of all alternatives to resolve a client’s credit problems, discussion of the factors that caused such financial condition, and identification of all methods by which the client can develop a plan to respond to the financial problems without incurring negative amortization of debt; and

(ii) Providing each client the opportunity to have the agency negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k) or, if the client accepts this option and the agency is unable to provide this service, the agency shall refer the client to another approved agency in the appropriate federal judicial district that provides it;

(13) The term “counselor certification” means certification of a counselor by an accrediting organization because the accrediting organization has determined the counselor meets or exceeds all the accrediting organization’s standards for counseling services or related areas, such as personal finance, budgeting, or credit or debt management;

(14) The term “criminal background check” means a report generated by a state law enforcement authority disclosing the entire state criminal history record, if any, of the counselor for whom the criminal background check is sought, for every state where the counselor has resided or worked during any part of the immediately preceding five years. If a criminal background check is not available for, or is not au-

thorized by state law in, each of the states where the counselor has resided or worked during any part of the immediately preceding five years, the agency shall instead obtain at least every five years a sworn statement from each counselor attesting to whether the counselor has been convicted of a felony, or a crime involving fraud, dishonesty, or false statements;

(15) The term “debt repayment plan” means any written document suggested, drafted, or reviewed by an approved agency that either proposes or implements any mechanism by which a client would make payments to any creditor or creditors if, during the time any such payments are being made, that creditor or those creditors would forbear from collecting or otherwise enforcing their claim or claims against the client; provided, however, that any such written document shall not constitute a debt repayment plan if the client would incur a negative amortization of debt under it;

(16) The term “Director” means the person designated or acting as the Director of the Executive Office for United States Trustees;

(17) The term “entity” shall have the meaning given that term in 11 U.S.C. 101(15);

(18) The term “fair share” means payments by a creditor to an approved agency for administering a debt repayment plan;

(19) The terms “fee” and “fee policy” each mean the aggregate of all fees, contributions, and payments an approved agency charges clients for providing counseling services; “fee policy” shall also mean the objective criteria the agency uses in determining whether to waive or reduce any fee, contribution, or payment;

(20) The term “final decision” means the written determination issued by the Director based upon the review of the United States Trustee’s decision either to deny an agency’s application or to remove an agency from the approved list;

(21) The term “financial benefit” means any interest equated with money or its equivalent, including, but not limited to, stocks, bonds, other investments, income, goods, services, or receivables;

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(22) The term “governmental unit” shall have the meaning given that term in 11 U.S.C. 101(27);

(23) The term “independent contractor” means a person or entity who provides any goods or services to an approved agency other than as an employee and as to whom the approved agency does not:

(i) Direct or control the means or methods of delivery of the goods or services being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(24) The term “languages offered” means every language other than English in which an approved agency provides counseling services;

(25) The term “legal advice” shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(26) The term “limited English proficiency” refers to individuals who:

(i) Do not speak English as their primary language; and

(ii) Have a limited ability to read, write, speak, or understand English;

(27) The term “material change” means, alternatively, any change:

(i) In the name, structure, principal contact, management, counselors, physical location, counseling services, fee policy, language services, or method of delivery of an approved agency; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement an agency or approved agency previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(28) The term “method of delivery” means one or more of the three methods by which an approved agency can provide some component of counseling services to its clients, including:

(i) “In person” delivery, which applies when a client primarily receives counseling services at a physical location with a credit counselor physically present in that location, and with the credit counselor providing oral and/or written communication to the client at the facility;

(ii) “Telephone” delivery, which applies when a client primarily receives counseling services by telephone; and

(iii) “Internet” delivery, which applies when a client primarily receives counseling services through an Internet Web site;

(29) The term “nonprofit” means, alternatively:

(i) An entity validly organized as a not-for-profit entity under applicable state or federal law, if that entity operates as a not-for-profit entity in full compliance with all applicable state and federal laws; or

(ii) A qualifying governmental unit;

(30) The term “notice” in § 58.24 means the written communication from the United States Trustee to an agency that its application to become an approved agency has been denied or to an approved agency that it is being removed from the approved list;

(31) The term “potential client” means an individual who seeks, but does not receive, counseling services from an approved agency.

(32) The term “qualifying governmental unit” means any governmental unit that, were it not a governmental unit, would qualify for tax-exempt status under 26 U.S.C. 501(c)(3), or would qualify as a nonprofit entity under applicable state law;

(33) The term “referral fees” means money or any other valuable consideration paid or transferred between an approved agency and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way encouraging any client or potential client to receive counseling services from the approved agency; provided, however, that “referral fees” shall not include fees paid to the agency under a fair share agreement;

(34) The term “relative” shall have the meaning given that term in 11 U.S.C. 101(45);

(35) The term “request for review” means the written communication from an agency to the Director seeking review of the United States Trustee’s decision either to deny the agency’s application or to remove the agency from the approved list;



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(36) The term “state” means state, commonwealth, district, or territory of the United States;

(37) The term “tax waiver” means a document sufficient to permit the Internal Revenue Service to release directly to the United States Trustee information about an agency;

(38) The term “trust account” means an account with a federally insured depository institution that is separated and segregated from operating accounts, which an approved agency shall maintain in its fiduciary capacity for the purpose of receiving and holding client funds entrusted to the approved agency; and

(39) The term “United States Trustee” means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this part.

[78 FR 16150, Mar. 14, 2013]

### **§ 58.13 Procedures all agencies shall follow when applying to become approved agencies.**

(a) An agency applying to become an approved agency shall obtain an application, including appendices, from the United States Trustee.

(b) The agency shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The agency shall submit the original of the completed application, including completed appendices and the required supporting documents, to the United States Trustee at the address specified on the application form.

(d) The application shall be signed by an agency representative who is authorized under applicable law to sign on behalf of the applying agency.

(e) The signed application, completed appendices, and required supporting documents shall be accompanied by a writing, signed by the signatory of the application and executed on behalf of

the signatory and the agency, certifying the application does not:

(1) Falsify, conceal, or cover up by any trick, scheme or device a material fact;

(2) Make any materially false, fictitious, or fraudulent statement or representation; or

(3) Make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

(f) The United States Trustee shall not consider an application, and it may be returned if:

(1) It is incomplete;

(2) It fails to include the completed appendices or all of the required supporting documents; or

(3) It is not accompanied by the certification identified in paragraph (e) of this section.

(g) The United States Trustee shall not consider an application on behalf of an agency, and it shall be returned if:

(1) It is submitted by any entity other than the agency; or

(2) Either the application or the accompanying certification is executed by any entity other than an agency representative who is authorized under applicable law to sign on behalf of the agency.

(h) By the act of submitting an application, an agency consents to the release and disclosure of its name, contact information, and non-confidential business information relating to the services it provides on the approved list should its application be approved.

[78 FR 16150, Mar. 14, 2013]

### **§ 58.14 Automatic expiration of agencies' status as approved agencies.**

(a) Except as provided in § 58.15(c), if an approved agency was not an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an approved agency shall cease to be an approved agency six months from the date on which it was approved unless the United States Trustee approves an additional one year period.

(b) Except as provided in § 58.15(c), if an approved agency was an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an agency shall

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cease to be an approved agency one year from the date on which it was last approved to be an approved agency unless the United States Trustee approves an additional one year period.

[78 FR 16150, Mar. 14, 2013]

**§ 58.15 Procedures all approved agencies shall follow when applying for approval to act as an approved agency for an additional one year period.**

(a) To be considered for approval to act as an approved agency for an additional one year term, an approved agency shall reapply by complying with all the requirements specified for agencies under 11 U.S.C. 109(h) and 111, and under this part.

(b) Such an agency shall apply no later than 45 days prior to the expiration of its six month probationary period or annual period to be considered for approval for an additional one year period, unless a written extension is granted by the United States Trustee.

(c) An approved agency that has complied with all prerequisites for applying to act as an approved agency for an additional one year period may continue to operate as an approved agency while its application is under review by the United States Trustee, so long as either the application for an additional one year period is timely submitted, or an agency receives a written extension from the United States Trustee.

[78 FR 16152, Mar. 14, 2013]

**§ 58.16 Renewal for an additional one year period.**

If an approved agency's application for an additional one year period is approved, such renewal period shall begin to run from the later of:

(a) The day after the expiration date of the immediately preceding approval period; or

(b) The actual date of approval of such renewal by the United States Trustee.

[78 FR 16152, Mar. 14, 2013]

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**§ 58.17 Mandatory duty of approved agencies to notify United States Trustees of material changes.**

(a) An approved agency shall immediately notify the United States Trustee in writing of any material change.

(b) An approved agency shall immediately notify the United States Trustee in writing of any failure by the approved agency to comply with any standard or requirement specified in 11 U.S.C. 109(h) or 111, this part, or the terms under which the United States Trustee approved it to act as an approved agency.

(c) An approved agency shall immediately notify the United States Trustee in writing of any of the following events:

(1) Notification by the Internal Revenue Service or by a state or local taxing authority that the approved agency has been selected for audit or examination regarding its tax-exempt status, or any notification of a compliance check by the Internal Revenue Service or by a state or local taxing authority;

(2) Revocation or termination of the approved agency's tax-exempt status by any governmental unit or by any judicial officer;

(3) Cessation of business by the approved agency or by any office of the agency, or withdrawal from any federal judicial district(s) where the approved agency is approved;

(4) Any investigation of, or any administrative or judicial action brought against, the approved agency by any governmental unit;

(5) Termination or cancellation of any surety bond or fidelity insurance;

(6) Any administrative or judicial action brought by any entity that seeks recovery against a surety bond or fidelity insurance;

(7) Any action by a governmental unit or a court to suspend or revoke the approved agency's articles of incorporation, or any license held by the approved agency, or any authorization necessary to engage in business;

(8) A suspension, or action to suspend, any accreditation held by the approved agency, or any withdrawal by the approved agency of any application for accreditation, or any denial of any application of the approved agency for accreditation;

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(9) A change in the approved agency's nonprofit status under any applicable law;

(10) Any change in the banks or financial institutions used by the agency; and

(11) [Reserved]

(d) An agency shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved agency is pending before the United States Trustee.

(e) An approved agency whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

[78 FR 16152, Mar. 14, 2013]

### **§ 58.18 Mandatory duty of approved agencies to obtain prior consent of the United States Trustee before taking certain actions.**

(a) By accepting the designation to act as an approved agency, an agency agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) Cancellation or change in the amount of the surety bond or employee fidelity bond or insurance;

(2) The engagement of an independent contractor to provide counseling services or to have access to, possession of, or control over client funds;

(3) Any increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's fee policy;

(4) Expansion into additional federal judicial districts;

(5) Any changes to the method of delivery the approved agency employs to provide counseling services; or

(6) Any changes in the approved agency's counseling services.

(b) An agency applying to become an approved agency shall also obtain approval from the United States Trustee before taking any action specified in paragraph (a) of this section. It shall do so by submitting an amended application. The agency's amended application shall be accompanied by a contemporaneously executed writing, signed

by the signatory of the application, that makes the certifications specified in § 58.13(e).

(c) An approved agency shall not transfer or assign its United States Trustee approval to act as an approved agency.

[78 FR 16153, Mar. 14, 2013]

### **§ 58.19 Continuing requirements for becoming and remaining approved agencies.**

(a) To become an approved agency, an agency must affirmatively establish, to the satisfaction of the United States Trustee, that the agency at the time of approval:

(1) Satisfies every requirement of this part; and

(2) Provides adequate counseling to its clients.

(b) To remain an approved agency, an approved agency shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved agency:

(1) Has satisfied every requirement of this part;

(2) Has provided adequate counseling to its clients; and

(3) Would continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

[78 FR 16153, Mar. 14, 2013]

### **§ 58.20 Minimum qualifications agencies shall meet to become and remain approved agencies.**

To meet the minimum qualifications set forth in § 58.19, and in addition to the other requirements set forth in this part, agencies and approved agencies shall comply with paragraphs (a) through (p) of this section on a continuing basis:

(a) *Compliance with all laws.* An agency shall comply with all applicable laws and regulations of the United States and each state in which the agency provides counseling services including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on legal advice.* An agency shall not provide legal advice.

(c) *Structure and organization.* An agency shall:

(1) Be lawfully organized and operated as a nonprofit entity; and

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(2) Have a board of directors, the majority of which:

- (i) Are not relatives;
- (ii) Are not employed by such agency; and
- (iii) Will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency.

(d) *Ethical standards.* An agency shall:
(1) Not engage in any conduct or transaction, other than counseling services, that generates a direct or indirect financial benefit for any member of the board of directors or trustees, officer, supervisor, or any relative thereof;

(2) Ensure no member of the board of directors or trustees, officer, or supervisor receives any commissions, incentives, bonuses, or benefits (monetary or non-monetary) of any kind that are directly or indirectly based on the financial or legal decisions any client makes after requesting counseling services;

(3) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 28 U.S.C. 586(a)(1) or (b) for any federal judicial district where the agency is providing or is applying to provide counseling services, a federal judge in any federal judicial district where the agency is providing or is applying to provide counseling services, a federal court employee in any federal judicial district where the agency is providing or is applying to provide counseling services, or a certified public accountant that audits the agency's trust account;

(4) Not enter into any referral agreement or receive any financial benefit that involves the agency paying to or receiving from any entity or person referral fees for the referral of clients to or by the agency, except payments under a fair share agreement;

(5) Not enter into agreements involving counseling services that create a conflict of interest; and

(6) Not provide counseling services to a client with whom the agency has a lender-borrower relationship.

(e) *Use of credit counselors.* An agency shall have a credit counselor provide the counseling services to each of the agency's clients. The credit counselor

shall interact with the client regarding the accuracy of the information obtained from the client and the alternatives available to the client for dealing with his or her current financial situation, including the plan developed to address such financial situation.

(f) *Credit counselor training, certification and experience.* An agency shall:

(1) Use only counselors who possess adequate experience providing credit counseling, which shall mean that each counselor either:

- (i) Holds a counselor certification and who has complied with all continuing education requirements necessary to maintain his or her counselor certification; or
- (ii) Has successfully completed a course of study and worked a minimum of six months in a related area such as personal finance, budgeting, or credit or debt management.

A course of study shall include training in counseling skills, personal finance, budgeting, or credit or debt management. A counselor shall also receive annual continuing education in the areas of counseling skills, personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing credit counseling, which shall mean that, at a minimum, the agency shall either:

- (i) Have experience in providing credit counseling for the two years immediately preceding the relevant application date; or
- (ii) For each office providing counseling services, employ at least one supervisor who has met the qualifications in paragraph (f)(2)(i) of this section for no fewer than two of the five years preceding the relevant application date;

(3) If offering any component of counseling services by a telephone or Internet method of delivery, use only counselors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such counseling services by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the counseling services is the client, and to determine whether the client has completely received counseling services.

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(g) *No variation in services.* An agency shall ensure that the type and quality of services do not vary based on a client's decision whether to obtain a certificate in lieu of other options that may or may not be suggested by the agency.

(h) *Use of the telephone and the Internet to deliver a component of client services.* An agency shall:

(1) Not provide any client diminished counseling services because the client receives any portion of those counseling services by telephone or Internet;

(2) Confirm the identity of the client before receiving counseling services by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the client and assigning an individual access code, user ID, or password at the time of enrollment; and

(ii) Requiring the client to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the counseling services.

(i) *Services to hearing and hearing-impaired clients and potential clients.* An agency shall furnish toll-free telephone numbers for both hearing and hearing-impaired clients and potential clients whenever telephone communication is required. The agency shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired clients or potential clients.

(j) [Reserved]

(k) *Services to clients and potential clients with special needs.* An agency that provides any portion of its counseling in person shall comply with all federal, state and local laws governing facility accessibility. An agency shall also provide or arrange for communication assistance for clients or potential clients with special needs who have difficulty making their service needs known.

(l) *Mandatory disclosures to clients and potential clients.* Prior to providing any information to or obtaining any information from a client or potential client, and prior to rendering any counseling service, an agency shall disclose:

(1) The agency's fee policy, including any fees associated with generation of the certificate;

(2) The agency's policies enabling clients to obtain counseling services for free or at reduced rates based upon the client's lack of ability to pay. To the extent an agency publishes information concerning its fees on the Internet, such fee information must include the agency's policies enabling clients to obtain counseling for free or at reduced rates based upon the client's lack of ability to pay;

(3) The agency's policy to provide free bilingual counseling services or professional interpreter assistance to any limited English proficient client;

(4) The agency's funding sources;

(5) The counselors' qualifications;

(6) The potential impacts on credit reports of all alternatives the agency may discuss with the client;

(7) The agency's policy prohibiting it from paying or receiving referral fees for the referral of clients, except under a fair share agreement;

(8) The agency's obligation to provide a certificate to the client promptly upon the completion of counseling services;

(9) A statement that the client has the opportunity to negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k), and a statement whether or not the agency will provide this service. If the agency does not provide this service, it shall disclose that it may refer the client to another approved agency, and shall disclose that clients may incur additional fees in connection with such a referral;

(10) The fact that the agency might disclose client information to the United States Trustee in connection with the United States Trustee's oversight of the agency, or during the investigation of complaints, during on-site visits, or during quality of service reviews;

(11) The fact that the United States Trustee has reviewed only the agency's credit counseling services (and, if applicable, its services as a provider of a personal financial management instructional course pursuant to 11 U.S.C. 111(d)), and the fact that the

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United States Trustee has neither reviewed nor approved any other services the agency provides to clients; and

(12) The fact that a client will receive a certificate only if the client completes counseling services.

(m) *Complaint Procedures.* An agency shall employ complaint procedures that adequately respond to clients' concerns.

(n) *Background checks.* An agency shall:

(1) Conduct a criminal background check at least every five years for each person providing credit counseling, and

(2) Not employ anyone as a counselor who has been convicted of any felony, or any crime involving fraud, dishonesty, or false statements, unless the United States Trustee determines circumstances warrant a waiver of this prohibition against employment.

(o) *Agency records.* An agency shall prepare and retain records that enable the United States Trustee to evaluate whether the agency is providing adequate counseling and acting in compliance with all applicable laws and this part. All records, including documents bearing original signatures, shall be maintained in either hard copy form or electronically in a format widely available commercially. Records that the agency shall prepare and retain for a minimum of two years, and permit review by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the agency remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the applicable periods specified in this paragraph;

(3) Annual audited financial statements, including the audited balance sheet, statement of income and re-

tained earnings, and statement of changes in financial condition;

(4) Books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including, without limitation, copies of all correspondence with or on behalf of the client, including the contract between the agency and the client and any amendments thereto;

(5) Records concerning the delivery of services to clients and potential clients with limited English proficiency and special needs, and to hearing-impaired clients and potential clients, including records:

(i) Of the number of such clients and potential clients, and the methods of delivery used with respect to such clients and potential clients;

(ii) Of which languages are offered or requested and the type of language support used or requested by such clients or potential clients (e.g., bilingual instructor, in-person or telephone interpreter, translated web instruction);

(iii) Detailing the agency's provision of services to such clients and potential clients; and

(iv) Supporting any justification if the agency did not provide services to such potential clients, including the number of potential clients not served, the languages involved, and the number of referrals provided;

(6) Records concerning the delivery of counseling services to clients for free or at reduced rates based upon the client's lack of ability to pay, including records of the number of clients for whom the agency waived all of its fees under § 58.21(b)(1)(i), the number of clients for whom the agency waived all or part of its fees under § 58.21(b)(1)(ii), and the number of clients for whom the agency voluntarily waived all or part of its fees under § 58.21(c);

(7) Records of complaints and the agency's responses thereto;

(8) Records that enable the agency to verify the authenticity of certificates their clients file in bankruptcy cases; and

(9) Records that enable the agency to issue replacement certificates.

(p) *Additional minimum requirements.* An agency shall:

(1) Provide records to the United States Trustee upon request;

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(2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the agency's qualifications to be an approved agency;

(3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;

(4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the credit counseling or bankruptcy process;

(5) Not exclude any client or creditor from a debt repayment plan because the creditor declines to make a fair share contribution to the agency;

(6) Take no action that would limit, inhibit, or prevent a client from bringing an action or claim for damages against an agency, as provided in 11 U.S.C. 111(g)(2);

(7) Refer clients and prospective clients for counseling services only to agencies that have been approved by a United States Trustee to provide such services;

(8) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in Appendix A to the application;

(9) Not disclose or provide to a credit reporting agency any information concerning whether a client has received or sought instruction concerning credit counseling or personal financial management from an agency;

(10) Not expose the client to commercial advertising as part of or during the client's receipt of any counseling services, and never market or sell financial products or services during the counseling session provided, however, this provision does not prohibit an agency from generally discussing all available financial products and services;

(11) Not sell information about any client or potential client to any third party without the client or potential client's prior written permission;

(12) If the agency is tax-exempt, submit a completed and signed tax waiver permitting and directing the Internal Revenue Service to provide the United States Trustee with access to the In-

ternal Revenue Service's files relating to the agency;

(13) Comply with the requirements elsewhere in this part concerning fees for credit counseling services and fee waiver policies; and

(14) Comply with the requirements elsewhere in this part concerning certificates.

[78 FR 16153, Mar. 14, 2013]

### **§ 58.21 Minimum requirements to become and remain approved agencies relating to fees.**

(a) If a fee for, or relating to, credit counseling services is charged by an agency, such fee shall be reasonable:

(1) A fee of \$50 or less for credit counseling services is presumed to be reasonable and an agency need not obtain prior approval of the United States Trustee to charge such a fee;

(2) A fee exceeding \$50 for credit counseling services is not presumed to be reasonable and an agency must obtain prior approval from the United States Trustee to charge such a fee. The agency bears the burden of establishing that its proposed fee is reasonable. At a minimum, the agency must demonstrate that its cost for delivering such services justify the fee. An agency that previously received permission to charge a higher fee need not reapply for permission to charge that fee during the agency's annual review. Any new requests for permission to charge more than previously approved, however, must be submitted to EOUST for approval; and

(3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto shall be published in the FEDERAL REGISTER.

(b)(1) An agency shall waive the fee in whole or in part whenever a client

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demonstrates a lack of ability to pay the fee.

(i) A client presumptively lacks the ability to pay the fee if the client's household current income is less than 150 percent of the poverty guidelines updated periodically in the FEDERAL REGISTER by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination.

(ii) The presumption shall be rebutted, and the agency may charge the client a reduced fee, if the agency determines, based on income information the client submits in connection with counseling services, that the client is able to pay the fee in a reduced amount. Nothing in this section requires an agency to charge a fee to clients whose household income exceeds the amount set forth in paragraph (b)(1)(i) of this section, or who are able to demonstrate ability to pay based on income as described in this section.

(iii) An agency shall disclose its fee policy, including the criteria on which it relies in determining a client's eligibility for reduced fees, and the agency's policy for collecting fees pursuant to paragraph (b)(1)(ii) of this section, in accordance with § 58.20(1)(2).

(2) The United States Trustee shall review the basis for the mandatory fee waiver policy set forth in paragraph (b)(1) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the impact of that fee waiver policy on clients and agencies. Any revisions to the mandatory fee waiver policy set forth in paragraph (b)(1) of this section shall be published in the FEDERAL REGISTER.

(c) Notwithstanding the requirements of paragraph (b) of this section, an agency may also waive fees based upon other considerations, including, but not limited to:

(1) The client's net worth;

(2) The percentage of the client's income from government assistance programs;

(3) Whether the client is receiving *pro bono* legal services in connection with a filed or anticipated bankruptcy case; or

(4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the client and his or her spouse, when multiplied times twelve, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) An agency shall not require a client to purchase counseling services in connection with the purchase of any other service offered by the agency.

[78 FR 16153, Mar. 14, 2013]

§ 58.22 Minimum requirements to become and remain approved agencies relating to certificates.

(a) An approved agency shall send a certificate only to the client who took and completed the counseling services, except that an approved agency shall instead send a certificate to the attorney of a client who took and completed counseling services if the client specifically directs the agency to do so. In the case of Internet counseling and automated telephone counseling, counseling is not complete until the client has engaged in interaction with a counselor, whether by electronic mail, live chat, or telephone, following the automated portion of the counseling session.

(b) An approved agency shall attach to the certificate the client's debt repayment plan (if any).

(c) An approved agency shall send a certificate to a client no later than one business day after the client completed counseling services. If a client has completed counseling services, an agency may not withhold certificate issuance for any reason. An agency may not consider counseling services incomplete based solely on the client's failure to pay the fee.

(d) If an approved agency provides other financial counseling in addition to counseling services, and such other financial counseling satisfies the requirements for counseling services specified in 11 U.S.C. 109(h) and 111, and this part, a person completing such other financial counseling is a client and the approved agency shall send a certificate to the client no later than one business day after the client's request. The approved agency shall not charge the client any additional fee except any separate fee charged for the



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issuance of the certificate, in accordance with § 58.20(1)(1).

(e) An approved agency shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee, except under exigent circumstances with notice to the United States Trustee.

(f) An approved agency shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.

(g) An approved agency shall issue a certificate to each client who completes counseling services. Spouses receiving counseling services jointly shall each receive a certificate.

(h) An approved agency shall issue a replacement certificate to a client who requests one.

(i) An approved agency shall not file certificates with the court.

(j) Only an authorized officer, supervisor or employee of an approved agency shall issue a certificate, and an approved agency shall not transfer or delegate authority to issue certificates to any other entity.

(k) An approved agency shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(l) An approved agency shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (j) of this section, which signature shall be either:

(1) An original signature; or

(2) In a format approved for electronic filing with the court (most typically in the form/s/name of counselor).

(m) An approved agency shall affix to the certificate the exact name under which the approved agency is incorporated or organized.

(n) An approved agency shall identify on the certificate:

(1) The specific federal judicial district requested by the client;

(2) Whether counseling services were provided in person, by telephone or via the Internet;

(3) The date and time (including the time zone) on which counseling services were completed by the client; and

(4) The name of the counselor that provided the counseling services.

(o) An approved agency shall affix the client's full, accurate name to the certificate. If the counseling services are obtained by a client through a duly authorized representative, the certificate also shall set forth the name of the legal representative and legal capacity of that representative.

(p) If an individual enters into a debt repayment plan after completing credit counseling, upon the client's request after the completion or termination of the debt repayment plan, the approved agency shall:

(1) Provide such additional credit counseling as is necessary at such time to comply with the requirements specified in 11 U.S.C. 109(h) and 111, and this part, including reviewing the client's current financial condition and counseling the client regarding the alternatives to resolve the client's credit problems;

(2) Send a certificate to the client no later than one business day after the client completed such additional counseling; and

(3) Not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with § 58.20(1)(1).

[78 FR 16153, Mar. 14, 2013]

### **§ 58.23 Minimum financial requirements and bonding and insurance requirements for agencies offering debt repayment plans.**

If an agency offers or has offered debt repayment plans, an agency shall possess adequate financial resources to provide continuing support services for such plans over the life of any debt repayment plan, and provide for the safekeeping of client funds, which shall include:

(a) Depositing all client funds into a deposit account, held in trust, at a federally insured depository institution. Each such trust account shall be established in a fiduciary capacity and shall be in full compliance with federal law such that each client's funds shall be protected by federal deposit insurance

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up to the maximum amount allowable by federal law.

(b) Keeping and maintaining books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including without limitation, all of the following:

(1) Separate files for each client's account that include copies of all correspondence with or on behalf of the client, including:

(i) All agreements with all entities, including the contract between the agency and the client and any amendments thereto;

(ii) The analysis of the client's budget;

(iii) Correspondence between the agency and the client's creditors;

(iv) The notice given to creditors of any debt repayment plan; and

(v) All written statements of account provided to the client and subsidiary ledgers concerning any debt repayment plan;

(2) A trust account general ledger reflecting all deposits to and disbursements from all trust accounts, which shall be kept current at all times;

(3) A reconciliation of the trust accounts, prepared at least once a month; and

(4) An operating account general ledger reflecting all of the agency's financial transactions involving the agency's operating account, which shall be kept current at least on a monthly basis.

(c) Allowing an independent certified public accounting firm to audit the trust accounts annually in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and any Statement of Work prepared by the United States Trustee, which audit shall include:

(1) A report of all trust account activity including:

(i) The balance of each trust account at the beginning and end of the period;

(ii) The total of all receipts from clients and disbursements to creditors during the reporting period;

(iii) The total of all disbursements to the agency; and

(iv) The reconciliation of each trust account;

(2) A report of all exceptions (e.g., discrepancies, irregularities, and errors) found, regardless of materiality; and

(3) An evaluation of the agency's trust account internal controls and its computer operations to determine whether it provides a reasonable assurance that the trust funds are safeguarded against loss from unauthorized use or disposition.

(d) Obtaining a surety bond payable to the United States, as follows:

(1) Subject to the minimum amount of \$5,000, the amount of such surety bond shall be the lesser of:

(i) Two percent of the agency's disbursements made during the twelve months immediately prior to submission of the application from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee; or

(ii) Equal to the average daily balance maintained for the six months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee;

(2) The agency may receive an offset or credit against the surety bond amount determined under paragraph (d)(1) of this section if:

(i) The agency has previously obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit in compliance with the licensing requirements of the state in which the agency seeks approval from the United States Trustee;

(ii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the agency;

(iii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, is written in favor of the state or the appropriate state agency; and

(iv) The amount of the offset or credit shall be the lesser of:

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(A) The principal amount of such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit; or

(B) The surety bond amount determined under paragraph (d)(1) of this section;

(3) If an agency has contracted with an independent contractor to administer any part of its debt repayment plans:

(i) Except as provided in paragraphs (d)(3)(ii) and (d)(3)(iii) of this section, the independent contractor shall:

(A) Be an approved agency; or

(B) If the independent contractor is not an approved agency, then the independent contractor shall:

(1) Be specifically covered under the agency's surety bond required under paragraph (d)(1) of this section; or

(2) Have a surety bond that meets the requirements of paragraph (d)(1) of this section; and

(3) Agree in writing to allow the United States Trustee to audit the independent contractor's trust accounts for the debt repayment plans administered on behalf of the agency and to review the independent contractor's internal controls and administrative procedures;

(ii) If the independent contractor holds funds for transmission for five days or less, then the amount of the required surety bond under paragraph (d)(3)(i)(B) of this section shall be \$500,000;

(iii) If the independent contractor performs only electronic fund transfers on the agency's behalf, then the independent contractor need not satisfy the requirements of paragraph (d)(3)(i) of this section during such time as the independent contractor is authorized by the National Automated Clearing House Association to participate in the Automated Clearing House system.

(e) Obtaining either adequate employee bonding or fidelity insurance, as follows:

(1) Subject to the minimum amount set forth below, the amount of such bonding or fidelity insurance shall be 50 percent of the surety bond amount calculated under paragraph (d)(1) of this section, prior to any offset or credit that the agency may receive under paragraph (d)(2) of this section; pro-

vided, however, that at a minimum, the employee bond or fidelity insurance must be \$5,000;

(2) An agency may receive an offset or credit against the employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section if:

(i) The agency has previously obtained an employee bond or fidelity insurance in compliance with the requirements of a state in which the agency seeks approval from the United States Trustee; and

(ii) The deductible does not exceed a reasonable amount considering the financial resources of the agency; and

(iii) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such employee bond or fidelity insurance; or

(B) The employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section.

(f) An agency that ceases to offer debt repayment plans to individuals who receive counseling from such agency pursuant to 11 U.S.C. 109(h) shall, concerning any debt repayment plans it services that remain in existence with respect to such individuals as of the date it ceases to offer debt repayment plans to new clients, continue to comply with all of the requirements of this section.

(1) The agency may seek a waiver of the bonding and insurance requirements set forth in paragraphs (d) and (e) of this section if:

(i) The agency has in effect, as of the date it ceases to offer debt repayment plans, a written agreement to transfer all such debt repayment plans to another approved agency for servicing, provided that:

(A) Transfers to another approved agency pursuant to such agreements must be completed within 60 days of the date the agency ceases to offer debt repayment plans to individuals who receive counseling from such agency pursuant to 11 U.S.C. §109(h); and

(B) The agency provides written notice to clients whose debt repayment plans it intends to transfer within the time described in paragraph (f)(1)(i)(A) of this section, identifying the approved agency to which the clients' plans will be transferred, any fees associated with servicing by the approved

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agency, and any fees associated with the transfer; or

(ii) In the reasonable determination of the United States Trustee, taking into account the facts and circumstances surrounding the agency's business and the terms of the bond, compliance with the bonding and insurance requirements set forth in paragraphs (d) and (e) of this section would impose an undue hardship on the agency.

[78 FR 16153, Mar. 14, 2013]

**§ 58.24 Procedures for obtaining final agency action on United States Trustees' decisions to deny agencies' applications and to remove approved agencies from the approved list.**

(a) The United States Trustee shall remove an approved agency from the approved list whenever an approved agency requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved agency from the approved list, and thereby terminate the approved agency's authorization to provide counseling services, at any time.

(c) The United States Trustee may issue a decision to deny an agency's application or to remove an agency from the approved list whenever the United States Trustee determines that the agency has failed to comply with the standards or requirements specified in 11 U.S.C. 109(h) or 111, this part, or the terms under which the United States Trustee designated it to act as an approved agency, including, but not limited to, finding any of the following:

(1) The agency is not employing adequate procedures for safekeeping of client funds or paying client funds, which could result in a loss to a client;

(2) The agency's surety bond has been canceled;

(3) Any entity has revoked the agency's nonprofit status, even if that revocation is subject to further administrative or judicial litigation, review or appeal;

(4) Any entity has suspended or revoked the agency's license to do business in any jurisdiction; or

(5) Any United States district court has removed the agency under 11 U.S.C. § 111(e).

(d) If the Internal Revenue Service revokes an agency's tax exempt status, the United States Trustee shall promptly commence an investigation to determine whether any of the factors set forth in paragraphs (c)(1) through (5) of this section exist.

(e) The United States Trustee shall provide to the agency in writing a notice of any decision either to:

(1) Deny the agency's application; or

(2) Remove the agency from the approved list.

(f) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the agency copies of any such documents that were not supplied to the United States Trustee by the agency. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(g) Except as provided in paragraph (i) of this section, the notice shall advise the agency that the denial or removal decision shall become final agency action, and unreviewable, unless the agency submits in writing a request for review by the Director no later than 21 calendar days from the date of the notice to the agency.

(h) Except as provided in paragraph (i) of this section, the decision to deny an agency's application or remove an agency from the approved list shall take effect upon:

(1) The expiration of the agency's time to seek review from the Director, if the agency fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final decision, if the agency timely seeks such review.

(i) The United States Trustee may provide that a decision to remove an agency from the approved list is effective immediately and deny the agency the right to provide counseling services whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) through (5) of this section.

(j) An agency's request for review shall be in writing and shall fully describe why the agency disagrees with the denial or removal decision, and

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shall be accompanied by all documents and materials the agency wants the Director to consider in reviewing the denial or removal decision. The agency shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. To be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the agency.

(k) The United States Trustee shall have 21 calendar days from the date of the agency's request for review to submit to the Director a written response regarding the matters raised in the agency's request for review. The United States Trustee shall provide a copy of this response to the agency by overnight courier, for delivery the next business day.

(l) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(m) In reviewing the decision to deny an agency's application or remove an agency from the approved list, the Director shall determine:

- (1) Whether the denial or removal decision is supported by the record; and
- (2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(n) Except as provided in paragraph (o) of this section, the Director shall issue a final decision no later than 60 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time or the Director extends the deadline. The Director's final decision on the agency's request for review shall constitute final agency action.

(o) Whenever the United States Trustee provides under paragraph (i) of this section that a decision to remove an agency from the approved list is effective immediately, the Director shall issue a written decision no later than 15 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time. The decision shall:

- (1) Be limited to deciding whether the determination that the removal de-

cision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the agency should be removed from the approved list; after issuing the decision, the Director shall issue a final decision by the deadline set forth in paragraph (n) of this section.

(p) In reaching a decision under paragraphs (n) and (o) of this section, the Director may specify a person to act as a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(q) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

(r) When a decision to remove an agency from the approved list takes effect, the agency shall:

(1) Immediately cease providing counseling services to clients and shall not provide counseling services to potential clients;

(2) No later than three business days after the date of removal, send all certificates to all clients who completed counseling services prior to the agency's removal from the approved list;

(3) No later than three business days after the date of removal, return all fees to clients and potential clients who had paid for counseling services, but had not completely received them; and

(4) Transfer any debt repayment plans that the agency is administering to another approved agency.

(s) An agency must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

[78 FR 16153, Mar. 14, 2013]

**§ 58.25 Definitions.**

- (a) The following definitions apply to §§ 58.25 through and including 58.36 of

this part, as well as the applications and other materials providers submit in an effort to establish they meet the requirements necessary to become an approved provider of a personal financial management instructional course.

(b) These terms shall have these meanings:

(1) The term “accreditation” means the recognition or endorsement that an accrediting organization bestows upon a provider because the accrediting organization has determined the provider meets or exceeds all the accrediting organization’s standards;

(2) The term “accrediting organization” means either an entity that provides accreditation to providers or provides certification to instructors, provided, however, that an accrediting organization shall:

(i) Not be a provider or affiliate of any provider; and

(ii) Be deemed acceptable by the United States Trustee;

(3) The term “affiliate” means:

(i) Every entity that is an affiliate of the provider, as the term “affiliate” is defined in 11 U.S.C. 101(2), except that the word “provider” shall be substituted for the word “debtor” in 11 U.S.C. 101(2);

(ii) Each of a provider’s officers and each of a provider’s directors; and

(iii) Every relative of a provider’s officers and every relative of a provider’s directors;

(4) The term “application” means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST-DE1, *Application for Approval as a Provider of a Personal Financial Management Instructional Course*, as it shall be amended from time to time;

(5) The term “approved list” means the list of providers currently approved by a United States Trustee under 11 U.S.C. 111 as currently published on the United States Trustee Program’s Internet site, which is located on the United States Department of Justice’s Internet site;

(6) The term “approved provider” means a provider currently approved by a United States Trustee under 11 U.S.C. 111 as an approved provider of a personal financial management instructional course eligible to be in-

cluded on one or more lists maintained under 11 U.S.C. 111(a)(1);

(7) The term “certificate” means the document an approved provider shall provide to a debtor after the debtor completes an instructional course, if the approved provider does not notify the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure that a debtor has completed the instructional course;

(8) The term “debtor” shall have the meaning given that term in 11 U.S.C. 101(13), to the extent that individual has sought an instructional course from an approved provider;

(9) The term “Director” means the person designated or acting as the Director of the Executive Office for United States Trustees;

(10) The term “effective instruction” means the actual receipt of an instructional course by a debtor from an approved provider, and all other applicable services, rights, and protections specified in:

(i) 11 U.S.C. 111; and

(ii) this part;

(11) The term “entity” shall have the meaning given that term in 11 U.S.C. 101(15);

(12) The terms “fee” and “fee policy” each mean the aggregate of all fees an approved provider charges debtors for providing an instructional course, including the fees for any materials; “fee policy” shall also mean the objective criteria the provider uses in determining whether to waive or reduce any fee, contribution, or payment;

(13) The term “final decision” means the written determination issued by the Director based upon the review of the United States Trustee’s decision either to deny a provider’s application or to remove an approved provider from the approved list;

(14) The term “financial benefit” means any interest equated with money or its equivalent, including, but not limited to, stocks, bonds, other investments, income, goods, services, or receivables;

(15) The term “governmental unit” shall have the meaning given that term in 11 U.S.C. 101(27);

(16) The term “independent contractor” means a person or entity who

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provides any goods or services to an approved provider other than as an employee and as to whom the approved provider does not:

(i) Direct or control the means or methods of delivery of the goods or services being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(17) The term “instructional course” means a course in personal financial management that is approved by the United States Trustee under 11 U.S.C. 111 and this part, including the learning materials and methodologies in § 58.33(f), which is to be taken and completed by the debtor after the filing of a bankruptcy petition and before receiving a discharge under 11 U.S.C. 727(a)(11), 1141(d)(3) or 1328(g)(1);

(18) The term “instructor” means an individual who teaches, presents or explains substantive instructional course materials to debtors, whether provided in person, by telephone, or through the Internet;

(19) The term “languages offered” means every language other than English in which an approved provider offers an instructional course;

(20) The term “legal advice” shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(21) The term “limited English proficiency” refers to individuals who:

(i) Do not speak English as their primary language; and

(ii) Have a limited ability to read, write, speak, or understand English;

(22) The term “material change” means, alternatively, any change:

(i) In the name, structure, principal contact, management, instructors, physical location, instructional course, fee policy, language services, or method of delivery of an approved provider; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement a provider previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(23) The term “method of delivery” means one or more of the three methods by which an approved provider can

provide some component of an instructional course to debtors, including:

(i) “In person” delivery, which applies when a debtor primarily receives an instructional course at a physical location with an instructor physically present in that location, and with the instructor providing oral and/or written communication to the debtor at the facility;

(ii) “Telephone” delivery, which applies when a debtor primarily receives an instructional course by telephone; and

(iii) “Internet” delivery, which applies when a debtor primarily receives an instructional course through an Internet Web site;

(24) The term “notice” in § 58.36 means the written communication from the United States Trustee to a provider that its application to become an approved provider has been denied or to an approved provider that it is being removed from the approved list;

(25) The term “provider” shall mean any entity that is applying under this part for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved provider;

(26) The term “referral fees” means money or any other valuable consideration paid or transferred between an approved provider and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way encouraging any debtor to receive an instructional course from the approved provider;

(27) The term “relative” shall have the meaning given that term in 11 U.S.C. 101(45);

(28) The term “request for review” means the written communication from a provider to the Director seeking review of the United States Trustee’s decision either to deny the provider’s application or to remove the provider from the approved list;

(29) The term “state” means state, commonwealth, district, or territory of the United States;

(30) The term “United States Trustee” means, alternatively:

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- (i) The Executive Office for United States Trustees;
- (ii) A United States Trustee appointed under 28 U.S.C. 581;
- (iii) A person acting as a United States Trustee;
- (iv) An employee of a United States Trustee; or
- (v) Any other entity authorized by the Attorney General to act on behalf of the United States under this part.

[78 FR 16170, Mar. 14, 2013]

**§ 58.26 Procedures all providers shall follow when applying to become approved providers.**

(a) A provider applying to become an approved provider shall obtain an application, including appendices, from the United States Trustee.

(b) The provider shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The provider shall submit the original of the completed application, including completed appendices and the required supporting documents, to the United States Trustee at the address specified on the application form.

(d) The application shall be signed by a representative of the provider who is authorized under applicable law to sign on behalf of the applying provider.

(e) The signed application, completed appendices, and required supporting documents shall be accompanied by a writing, signed by the signatory of the application and executed on behalf of the signatory and the provider, certifying the application does not:

- (1) Falsify, conceal, or cover up by any trick, scheme or device a material fact;
- (2) Make any materially false, fictitious, or fraudulent statement or representation; or
- (3) Make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

(f) The United States Trustee shall not consider an application, and it may be returned if:

- (1) It is incomplete;
- (2) It fails to include the completed appendices or all of the required supporting documents; or

(3) It is not accompanied by the certification identified in the preceding subsection.

(g) The United States Trustee shall not consider an application on behalf of a provider, and it shall be returned if:

- (1) It is submitted by any entity other than the provider; or
- (2) Either the application or the accompanying certification is executed by any entity other than a representative of the provider who is authorized under applicable law to sign on behalf of the provider.

(h) By the act of submitting an application, a provider consents to the release and disclosure of its name, contact information, and non-confidential business information relating to the services it provides on the approved list should its application be approved.

[78 FR 16170, Mar. 14, 2013]

**§ 58.27 Automatic expiration of providers' status as approved providers.**

(a) Except as provided in § 58.28(c), if an approved provider was not an approved provider immediately prior to the date it last obtained approval to be an approved provider, such an approved provider shall cease to be an approved provider six months from the date on which it was approved unless the United States Trustee approves an additional one year period.

(b) Except as provided in § 58.28(c), if an approved provider was an approved provider immediately prior to the date it last obtained approval to be an approved provider, such a provider shall cease to be an approved provider one year from the date on which it was last approved to be an approved provider unless the United States Trustee approves an additional one year period.

[78 FR 16170, Mar. 14, 2013]

**§ 58.28 Procedures all approved providers shall follow when applying for approval to act as an approved provider for an additional one year period.**

(a) To be considered for approval to act as an approved provider for an additional one year term, an approved provider shall reapply by complying with



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all the requirements specified for providers under 11 U.S.C. 111, and under this part.

(b) Such a provider shall apply no later than 45 days prior to the expiration of its six month probationary period or annual period to be considered for approval for an additional one year period, unless a written extension is granted by the United States Trustee.

(c) An approved provider that has complied with all prerequisites for applying to act as an approved provider for an additional one year period may continue to operate as an approved provider while its application is under review by the United States Trustee, so long as either the application for an additional one year period is timely submitted, or a provider receives a written extension from the United States Trustee.

[78 FR 16172, Mar. 14, 2013]

**§ 58.29 Renewal for an additional one year period.**

If an approved provider's application for an additional one year period is approved, such renewal period shall begin to run from the later of:

(a) The day after the expiration date of the immediately preceding approval period; or

(b) The actual date of approval of such renewal by the United States Trustee.

[78 FR 16172, Mar. 14, 2013]

**§ 58.30 Mandatory duty of approved providers to notify United States Trustees of material changes.**

(a) An approved provider shall immediately notify the United States Trustee in writing of any material change.

(b) An approved provider shall immediately notify the United States Trustee in writing of any failure by the approved provider to comply with any standard or requirement specified in 11 U.S.C. 111, this part, or the terms under which the United States Trustee approved it to act as an approved provider.

(c) An approved provider shall immediately notify the United States Trustee in writing of any of the following events:

(1) Cessation of business by the approved provider or by any office of the provider, or withdrawal from any federal judicial district(s) where the approved provider is approved;

(2) Any investigation of, or any administrative or judicial action brought against, the approved provider by any governmental unit;

(3) Any action by a governmental unit or a court to suspend or revoke the approved provider's articles of incorporation, or any license held by the approved provider, or any authorization necessary to engage in business; or

(4) A suspension, or action to suspend, any accreditation held by the approved provider, or any withdrawal by the approved provider of any application for accreditation, or any denial of any application of the approved provider for accreditation; or

(5) [Reserved]

(d) A provider shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved provider is pending before the United States Trustee.

(e) An approved provider whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

[78 FR 16172, Mar. 14, 2013]

**§ 58.31 Mandatory duty of approved providers to obtain prior consent of the United States Trustee before taking certain actions.**

(a) By accepting the designation to act as an approved provider, a provider agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) The engagement of an independent contractor to provide an instructional course;

(2) Any increase in the fees received from debtors for an instructional course or a change in the provider's fee policy;

(3) Expansion into additional federal judicial districts;

(4) Any changes to the method of delivery the approved provider employs to provide an instructional course; or

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(5) Any changes in the approved provider's instructional course.

(b) A provider applying to become an approved provider shall also obtain approval from the United States Trustee before taking any action specified in paragraph (a) of this section. It shall do so by submitting an amended application. The provider's amended application shall be accompanied by a contemporaneously executed writing, signed by the signatory of the application, that makes the certifications specified in § 58.26(e).

(c) An approved provider shall not transfer or assign its United States Trustee approval to act as an approved provider.

[78 FR 16172, Mar. 14, 2013]

**§ 58.32 Continuing requirements for becoming and remaining approved providers.**

(a) To become an approved provider, a provider must affirmatively establish, to the satisfaction of the United States Trustee, that the provider at the time of approval:

(1) Satisfies every requirement of this part; and

(2) Provides effective instruction to its debtors.

(b) To remain an approved provider, an approved provider shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved provider:

(1) Has satisfied every requirement of this part;

(2) Has provided effective instruction to its debtors; and

(3) Will continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

[78 FR 16172, Mar. 14, 2013]

**§ 58.33 Minimum qualifications providers shall meet to become and remain approved providers.**

To meet the minimum qualifications set forth in § 58.32, and in addition to the other requirements set forth in this part, providers and approved providers shall comply with paragraphs (a) through (n) of this section on a continuing basis:

(a) *Compliance with all laws.* A provider shall comply with all applicable laws and regulations of the United

States and each state in which the provider provides an instructional course including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on legal advice.* A provider shall not provide legal advice.

(c) *Ethical standards.* A provider shall:

(1) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 28 U.S.C. 586(a)(1) for any federal judicial district where the provider is providing or is applying to provide an instructional course, a federal judge in any federal judicial district where the provider is providing or is applying to provide an instructional course, or a federal court employee in any federal judicial district where the provider is providing or is applying to provide an instructional course;

(2) Not enter into any referral agreement or receive any financial benefit that involves the provider paying to or receiving from any entity or person referral fees for the referral of debtors to or by the provider; and

(3) Not enter into agreements involving an instructional course that create a conflict of interest; and

(4) Not contact any debtor utilizing the United States Postal Service, or other mail carrier, or electronic mail for the purpose of soliciting debtors to utilize the provider's instructional course, unless:

(i) Any such solicitations include the phrase "This is an advertisement for services" or "This is a solicitation;"

(ii) Prominently displayed at the beginning of each page of the solicitation;

(iii) In a font size larger than or equal to the largest font size otherwise used in the solicitation;

(iv) Any such solicitations include only logos, seals, or similar marks that are substantially dissimilar to the logo, seal, or similar mark of any agency or court of the United States government, including but not limited to the United States Trustee Program.

(d) *Instructor training, certification and experience.* A provider shall:

(1) Use only instructors who possess adequate experience providing an instructional course, which shall mean that each instructor either:

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(i) Holds one of the certifications listed below and who has complied with all continuing education requirements necessary to maintain that certification:

(A) Certified as a Certified Financial Planner;

(B) Certified as a credit counselor by an accrediting organization;

(C) Registered as a Registered Financial Consultant; or

(D) Certified as a Certified Public Accountant; or

(ii) Has successfully completed a course of study or worked a minimum of six months in a related area such as personal finance, budgeting, or credit or debt management. A course of study must include training in personal finance, budgeting, or credit or debt management. An instructor shall also receive annual continuing education in the areas of personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing an instructional course, which shall mean that, at a minimum, the provider shall either:

(i) Have experience in providing an instructional course for the two years immediately preceding the relevant application date; or

(ii) For each office providing an instructional course, employ at least one supervisor who has met the qualifications in paragraph (d)(2)(i) of this section for no fewer than two of the five years preceding the relevant application date; and

(iii) If offering any component of an instructional course by a telephone or Internet method of delivery, use only instructors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such an instructional course by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the instructional course is the debtor, and to determine whether the debtor has completely received an instructional course.

(e) *Use of the telephone and the Internet to deliver a component of an instructional course.* A provider shall:

(1) Not provide any debtor a diminished instructional course because the

debtor receives any portion of the instructional course by telephone or Internet;

(2) Confirm the identity of the debtor before commencing an instructional course by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the debtor and assigning an individual access code, user ID, or password at the time of enrollment;

(ii) Requiring the debtor to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the instructional course; and

(iii) Employing adequate means to measure the time spent by the debtor to complete the instructional course.

(f) *Learning materials and methodologies.* A provider shall provide learning materials to assist debtors in understanding personal financial management and that are consistent with 11 U.S.C. 111, and this part, which include written information and instruction on all of the following topics:

(1) Budget development, which consists of the following:

(i) Setting short-term and long-term financial goals, as well as developing skills to assist in achieving these goals;

(ii) Calculating gross monthly income and net monthly income; and

(iii) Identifying and classifying monthly expenses as fixed, variable, or periodic;

(2) Money management, which consists of the following:

(i) Keeping adequate financial records;

(ii) Developing decision-making skills required to distinguish between wants and needs, and to comparison shop for goods and services;

(iii) Maintaining appropriate levels of insurance coverage, taking into account the types and costs of insurance; and

(iv) Saving for emergencies, for periodic payments, and for financial goals;

(3) Wise use of credit, which consists of the following:

(i) Identifying the types, sources, and costs of credit and loans;

(ii) Identifying debt warning signs;

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(iii) Discussing appropriate use of credit and alternatives to credit use; and

(iv) Checking a credit rating;

(4) Consumer information, which consists of the following:

(i) Identifying public and nonprofit resources for consumer assistance; and

(ii) Identifying applicable consumer protection laws and regulations, such as those governing correction of a credit record and protection against consumer fraud; and

(5) Coping with unexpected financial crisis, which consists of the following:

(i) Identifying alternatives to additional borrowing in times of unanticipated events; and

(ii) Seeking advice from public and private service agencies for assistance.

(g) *Course procedures.* (1) Generally, a provider shall:

(i) Ensure the instructional course contains sufficient learning materials and teaching methodologies so that the debtor receives a minimum of two hours of instruction, regardless of the method of delivery of the course;

(ii) Use its best efforts to collect from each debtor a completed course evaluation at the end of the instructional course. At a minimum, the course evaluation shall include the information contained in Appendix E of the application to evaluate the effectiveness of the instructional course;

(2) For an instructional course delivered in person, the provider shall:

(i) Ensure that an instructor is present to instruct and interact with debtors; and

(ii) Limit class size to ensure an effective presentation of the instructional course materials;

(3) For instructional courses delivered by the telephone, the provider shall:

(i) Ensure an instructor is telephonically present to instruct and interact with debtors;

(ii) Provide learning materials to debtors before the telephone instructional course session;

(iii) Incorporate tests into the curriculum that support the learning materials, ensure completion of the course, and measure comprehension;

(iv) Ensure review of tests prior to the completion of the instructional course; and

(v) Ensure direct oral communication from an instructor by telephone or in person with all debtors who fail to complete the test in a satisfactory manner or who receive less than a 70 percent score;

(4) For instructional courses delivered through the Internet, the provider shall:

(i) Comply with § 58.33(g)(3)(iii), (iv), and (v); provided, however, that to the extent instruction takes place by Internet, the provider may comply with § 58.33(g)(3)(v) by ensuring direct communication from an instructor by electronic mail, live chat, or telephone; and

(ii) Respond to a debtor's questions or comments within one business day.

(h) *Services to hearing and hearing-impaired debtors.* A provider shall furnish toll-free telephone numbers for both hearing and hearing-impaired debtors whenever telephone communication is required. The provider shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired debtors.

(i) [Reserved]

(j) *Services to debtors with special needs.* A provider that provides any portion of its instructional course in person shall comply with all federal, state and local laws governing facility accessibility. A provider shall also provide or arrange for communication assistance for debtors with special needs who have difficulty making their service needs known.

(k) *Mandatory disclosures to debtors.* Prior to providing any information to or obtaining any information from a debtor, and prior to delivering an instructional course, a provider shall disclose:

(1) The provider's fee policy, including any fees associated with generation of the certificate;

(2) The provider's policies enabling debtors to obtain an instructional course for free or at reduced rates based upon the debtor's lack of ability to pay. To the extent an approved provider publishes information concerning its fees on the Internet, such fee information must include the provider's

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policies enabling debtors to obtain an instructional course for free or at reduced rates based upon the debtor's lack of ability to pay;

(3) The provider's policy to provide free bilingual instruction or professional interpreter assistance to any limited English proficient debtor;

(4) The instructors' qualifications;

(5) The provider's policy prohibiting it from paying or receiving referral fees for the referral of debtors;

(6) The provider's obligation to provide a certificate to the debtor promptly upon the completion of an instructional course;

(7) The fact that the provider might disclose debtor information to the United States Trustee in connection with the United States Trustee's oversight of the provider, or during the investigation of complaints, during on-site visits, or during quality of service reviews;

(8) The fact that the United States Trustee has reviewed only the provider's instructional course (and, if applicable, its services as a credit counseling agency pursuant to 11 U.S.C. 111(c)), and the fact that the United States Trustee has neither reviewed nor approved any other services the provider provides to debtors; and

(9) The fact that a debtor will only receive a certificate if the debtor completes an instructional course.

(l) *Complaint Procedures.* A provider shall employ complaint procedures that adequately respond to debtors' concerns.

(m) *Provider records.* A provider shall prepare and retain records that enable the United States Trustee to evaluate whether the provider is providing effective instruction and acting in compliance with all applicable laws and this part. All records, including documents bearing original signatures, shall be maintained in either hard copy form or electronically in a format widely available commercially. Records that the provider shall prepare and retain for a minimum of two years, and permit review of by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to

the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the provider remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the applicable periods specified in this paragraph;

(3) Records concerning the delivery of services to debtors with limited English proficiency and special needs, and to hearing-impaired debtors, including records:

(i) Of the number of such debtors, and the methods of delivery used with respect to such debtors;

(ii) Of which languages are offered or requested, and the type of language support used or requested by such debtors (e.g., bilingual instructor, in-person or telephone interpreter, translated Web instruction);

(iii) Detailing the provider's provision of services to such debtors; and

(iv) Supporting any justification if the provider did not provide services to such debtors, including the number of debtors not served, the languages involved, and the number of referrals provided;

(4) Records concerning the delivery of an instructional course to debtors for free or at reduced rates based upon the debtor's lack of ability to pay, including records of the number of debtors for whom the provider waived all of its fees under § 58.34(b)(1)(i), the number of debtors for whom the provider waived all or part of its fees under § 58.34(b)(1)(ii), and the number of debtors for whom the provider voluntarily waived all or part of its fees under § 58.34(c);

(5) Records of complaints and the provider's responses thereto;

(6) Records that enable the provider to verify the authenticity of certificates their debtors file in bankruptcy cases; and

(7) Records that enable the provider to issue replacement certificates.

(n) *Additional minimum requirements.* A provider shall:

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(1) Provide records to the United States Trustee upon request;

(2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the provider's qualifications to be an approved provider;

(3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;

(4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the instructional course or bankruptcy process;

(5) Take no action that would limit, inhibit, or prevent a debtor from bringing an action or claim for damages against a provider, as provided in 11 U.S.C. 111(g)(2);

(6) Refer debtors seeking an instructional course only to providers that have been approved by a United States Trustee to provide such services;

(7) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in Appendix A to the application;

(8) Not disclose or provide to a credit reporting agency any information concerning whether a debtor has received or sought instruction concerning personal financial management from a provider;

(9) Not expose the debtor to commercial advertising as part of or during the debtor's receipt of an instructional course, and never market or sell financial products or services during the instructional course provided, however, this provision does not prohibit a provider from generally discussing all available financial products and services;

(10) Not sell information about any debtor to any third party without the debtor's prior written permission;

(11) Comply with the requirements elsewhere in this part concerning fees for the instructional course and fee waiver policies; and

(12) Comply with the requirements elsewhere in this part concerning certificates.

[78 FR 16172, Mar. 14, 2013]

**§ 58.34 Minimum requirements to become and remain approved providers relating to fees.**

(a) If a fee for, or relating to, an instructional course is charged by a provider, such fee shall be reasonable:

(1) A fee of \$50 or less for an instructional course is presumed to be reasonable and a provider need not obtain prior approval of the United States Trustee to charge such a fee;

(2) A fee exceeding \$50 for an instructional course is not presumed to be reasonable and a provider must obtain prior approval from the United States Trustee to charge such a fee. The provider bears the burden of establishing that its proposed fee is reasonable. At a minimum, the provider must demonstrate that its cost for delivering the instructional course justifies the fee. A provider that previously received permission to charge a higher fee need not reapply for permission to charge that fee during the provider's annual review. Any new requests for permission to charge more than previously approved, however, must be submitted to EOUST for approval; and

(3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto shall be published in the FEDERAL REGISTER.

(b)(1) A provider shall waive the fee in whole or in part whenever a debtor demonstrates a lack of ability to pay the fee.

(i) A debtor presumptively lacks the ability to pay the fee if the debtor's household current income is less than 150 percent of the poverty guidelines updated periodically in the FEDERAL REGISTER by the U.S. Department of Health and Human Services under the

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authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination.

(ii) The presumption shall be rebutted, and the provider may charge the debtor a reduced fee, if the provider determines, based on income information the debtor submits to the provider, that the debtor is able to pay the fee in a reduced amount. Nothing in this subsection requires an provider to charge a fee to debtors whose household income exceeds the amount set forth in paragraph (b)(1)(i) of this section, or who are able to demonstrate ability to pay based on income as described in this subsection.

(iii) A provider shall disclose its fee policy, including the criteria on which it relies in determining a debtor's eligibility for reduced fees, and the provider's policy for collecting fees pursuant to paragraph (b)(1)(ii) of this section, in accordance with § 58.33(k)(2).

(2) The United States Trustee shall review the basis for the mandatory fee waiver policy set forth in paragraph (b)(1) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the impact of that fee waiver policy on debtors and providers. Any revisions to the mandatory fee waiver policy set forth in paragraph (b)(1) of this section shall be published in the FEDERAL REGISTER.

(c) Notwithstanding the requirements of paragraph (b) of this section, a provider also may waive fees based upon other considerations, including, but not limited to:

- (1) The debtor's net worth;
- (2) The percentage of the debtor's income from government assistance programs;
- (3) Whether the debtor is receiving pro bono legal services in connection with a bankruptcy case; or
- (4) If the combined current monthly income, as defined in 11 U.S.C. 101(10A), of the debtor and his or her spouse, when multiplied times twelve, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) A provider shall not require a debtor to purchase an instructional course in connection with the purchase

of any other service offered by the provider.

(e) A provider who is also a chapter 13 standing trustee may only provide the instructional course to debtors in cases in which the trustee is appointed to serve and may not charge any fee to those debtors for the instructional course. A standing chapter 13 trustee may not require debtors in cases administered by the trustee to obtain the instructional course from the trustee. Employees and affiliates of the standing trustee are also bound by the restrictions in this section.

[78 FR 16172, Mar. 14, 2013]

**§ 58.35 Minimum requirements to become and remain approved providers relating to certificates.**

(a) An approved provider shall send a certificate only to the debtor who took and completed the instructional course, except that an approved provider shall instead send a certificate to the attorney of a debtor who took and completed an instructional course if the debtor specifically directs the provider to do so. In lieu of sending a certificate to the debtor or the debtor's attorney, an approved provider may notify the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure that a debtor has completed the instructional course.

(b) An approved provider shall send a certificate to a debtor, or notify the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure, that a debtor has completed the instructional course no later than three business days after the debtor completed an instructional course and after completion of a debtor course evaluation form that evaluates the effectiveness of the instructional course. The approved provider shall not withhold the issuance of a certificate or notice of course completion to the appropriate bankruptcy court because of a debtor's failure to submit an evaluation form, though the provider should make reasonable effort to ensure that debtors complete and submit course evaluation forms.

(c) If a debtor has completed instruction, a provider may not withhold certificate issuance or notice of course

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completion to the appropriate bankruptcy court for any reason, including, without limitation, a debtor's failure to obtain a passing grade on a quiz, examination, or test. A provider may not consider instructional services incomplete based solely on the debtor's failure to pay the fee. Although a test may be incorporated into the curriculum to evaluate the effectiveness of the course and to ensure that the course has been completed, the approved provider cannot deny a certificate to a debtor or notice of course completion to the appropriate bankruptcy court if the debtor has completed the course as designed.

(d) An approved provider shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee, except under exigent circumstances with notice to the United States Trustee.

(e) An approved provider shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.

(f) An approved provider shall issue a certificate, or provide notice of course completion to the appropriate bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure, with respect to each debtor who completes an instructional course. Spouses receiving an instructional course jointly shall each receive a certificate or notice of course completion to the appropriate bankruptcy court shall be made for both individuals.

(g) An approved provider shall issue a replacement certificate to a debtor who requests one.

(h) Only an authorized officer, supervisor or employee of an approved provider shall issue a certificate, or provide notice of course completion to the appropriate bankruptcy court, and an approved provider shall not transfer or delegate authority to issue a certificate or provide notice of course completion to any other entity.

(i) An approved provider shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(j) An approved provider shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (h) of this section, which signature shall be either:

(1) An original signature; or

(2) In a format approved for electronic filing with the court (most typically in the form /s/ name of instructor).

(k) An approved provider shall affix to the certificate the exact name under which the approved provider is incorporated or organized.

(l) An approved provider shall identify on the certificate:

(1) The specific federal judicial district requested by the debtor;

(2) Whether an instructional course was provided in person, by telephone or via the Internet;

(3) The date and time (including the time zone) when instructional services were completed by the debtor; and

(4) The name of the instructor that provided the instructional course.

(m) An approved provider shall affix the debtor's full, accurate name to the certificate. If the instructional course is obtained by a debtor through a duly authorized representative, the certificate shall also set forth the name of the legal representative and legal capacity of that representative.

[78 FR 16172, Mar. 14, 2013]

**§ 58.36 Procedures for obtaining final provider action on United States Trustees' decisions to deny providers' applications and to remove approved providers from the approved list.**

(a) The United States Trustee shall remove an approved provider from the approved list whenever an approved provider requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved provider from the approved list, and thereby terminate the approved provider's authorization to provide an instructional course, at any time.

(c) The United States Trustee may issue a decision to deny a provider's application or to remove a provider from the approved list whenever the United



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States Trustee determines that the provider has failed to comply with the standards or requirements specified in 11 U.S.C. 111, this part, or the terms under which the United States Trustee designated it to act as an approved provider, including, but not limited to, finding any of the following:

(1) If any entity has suspended or revoked the provider's license to do business in any jurisdiction; or

(2) Any United States district court has removed the provider under 11 U.S.C. 111(e).

(d) The United States Trustee shall provide to the provider in writing a notice of any decision either to:

(1) Deny the provider's application; or

(2) Remove the provider from the approved list.

(e) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the provider copies of any such documents that were not supplied to the United States Trustee by the provider. The notice shall be sent to the provider by overnight courier, for delivery the next business day.

(f) Except as provided in paragraph (h) of this section, the notice shall advise the provider that the denial or removal decision shall become final agency action, and unreviewable, unless the provider submits in writing a request for review by the Director no later than 21 calendar days from the date of the notice to the provider.

(g) Except as provided in paragraph (h) of this section, the decision to deny a provider's application or to remove a provider from the approved list shall take effect upon:

(1) The expiration of the provider's time to seek review from the Director, if the provider fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final decision, if the provider timely seeks such review.

(h) The United States Trustee may provide that a decision to remove a provider from the approved list is effective immediately and deny the pro-

vider the right to provide an instructional course whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) or (2) of this section.

(i) A provider's request for review shall be in writing and shall fully describe why the provider disagrees with the denial or removal decision, and shall be accompanied by all documents and materials the provider wants the Director to consider in reviewing the denial or removal decision. The provider shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. To be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the provider.

(j) The United States Trustee shall have 21 calendar days from the date of the provider's request for review to submit to the Director a written response regarding the matters raised in the provider's request for review. The United States Trustee shall provide a copy of this response to the provider by overnight courier, for delivery the next business day.

(k) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(l) In reviewing the decision to deny a provider's application or to remove a provider from the approved list, the Director shall determine:

(1) Whether the denial or removal decision is supported by the record; and

(2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(m) Except as provided in paragraph (n) of this section, the Director shall issue a final decision no later than 60 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time or the Director extends the deadline. The Director's final decision on the provider's request for review shall constitute final agency action.

(n) Whenever the United States Trustee provides under paragraph (h) of this section that a decision to remove

a provider from the approved list is effective immediately, the Director shall issue a written decision no later than 15 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time. The decision shall:

(1) Be limited to deciding whether the determination that the removal decision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the provider should be removed from the approved list; after issuing the decision, the Director shall issue a final decision by the deadline set forth in paragraph (m) of this section.

(o) In reaching a decision under paragraphs (m) or (n) of this section, the Director may specify a person to act as a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(p) A provider that files a request for review shall bear its own costs and expenses, including counsel fees.

(q) When a decision to remove a provider from the approved list takes effect, the provider shall:

(1) Immediately cease providing an instructional course to debtors;

(2) No later than three business days after the date of removal, send all certificates to all debtors who completed an instructional course prior to the provider's removal from the approved list; and

(3) No later than three business days after the date of removal, return all fees to debtors who had paid for an instructional course, but had not completely received the instructional course.

(r) A provider must exhaust all administrative remedies before seeking

redress in any court of competent jurisdiction.

[78 FR 16172, Mar. 14, 2013]

APPENDIX A TO PART 58—GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FILED UNDER 11 U.S.C. 330

(a) *General Information.* (1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, *et seq.* (“Code”), in accordance with procedural guidelines (“Guidelines”) adopted by the Executive Office for United States Trustees (“Executive Office”). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the

problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) *Contents of Applications for Compensation and Reimbursement of Expenses.* All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. §330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts

of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.

(iv) Any material changes in the status of the case that occur after the filing of the fee application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format. (i) To facilitate effective review of the application, all time

and service entries should be arranged by project categories. The project categories set forth in exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

(iv) Time and service entries are to be reported in chronological order under the appropriate project category.

(v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or "lumped" together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

#### EXHIBIT A—PROJECT CATEGORIES

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The

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application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

*Asset Analysis and Recovery:* Identification and review of potential assets including causes of action and non-litigation recoveries.

*Asset Disposition:* Sales, leases (§365 matters), abandonment and related transaction work.

*Business Operations:* Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

*Case Administration:* Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

*Claims Administration and Objections:* Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

*Employee Benefits/Pensions:* Review issues such as severance, retention, 401K coverage and continuance of pension plan.

*Fee/Employment Applicants:* Preparation of employment and fee applications for self or others; motions to establish interim procedures.

*Fee/Employment Objections:* Review of and objections to the employment and fee applications of others.

*Financing:* Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

*Litigation:* There should be a separate category established for each matter (e.g., XYZ Litigation).

*Meetings of Creditors:* Preparing for and attending the conference of creditors, the §341(a) meeting and other creditors' committee meetings.

*Plan and Disclosure Statement:* Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

*Relief From Stay Proceedings:* Matters relating to termination or continuation of automatic stay under §362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

*Accounting/Auditing:* Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

*Business Analysis:* Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

*Corporate Finance:* Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

*Data Analysis:* Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

*Litigation Consulting:* Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

*Reconstruction Accounting:* Reconstructing books and records from past transactions and bringing accounting current.

*Tax Issues:* Analysis of tax issues and preparation of state and federal tax returns.

*Valuation:* Appraise or review appraisals of assets.

[61 FR 24890, May 17, 1996]

## PART 59—GUIDELINES ON METHODS OF OBTAINING DOCUMENTARY MATERIALS HELD BY THIRD PARTIES

Sec.

59.1 Introduction.

59.2 Definitions.

59.3 Applicability.

59.4 Procedures.

59.5 Functions and authorities of the Deputy Assistant Attorneys General.

59.6 Sanctions.

AUTHORITY: Sec. 201, Pub. L. 96-440, 94 Stat. 1879 (42 U.S.C. 2000aa-11).

SOURCE: Order No. 942-81, 46 FR 22364, Apr. 17, 1981, unless otherwise noted.

### § 59.1 Introduction.

(a) A search for documentary materials necessarily involves intrusions into personal privacy. First, the privacy of a person's home or office may be breached. Second, the execution of such a search may require examination of private papers within the scope of the search warrant, but not themselves subject to seizure. In addition, where such a search involves intrusions into professional, confidential relationships, the privacy interests of other persons are also implicated.

(b) It is the responsibility of federal officers and employees to recognize the importance of these personal privacy