

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

§ 325. Effect of vacancy

A vacancy in the office of trustee during a case does not abate any pending action or proceeding, and the successor trustee shall be substituted as a party in such action or proceeding. (Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2562.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

Section 325, derived from Bankruptcy Act section 46 [section 74 of former title 11] and Bankruptcy Rule 221(b), specifies that a vacancy in the office of trustee during a case does not abate any pending action or proceeding. The successor trustee, when selected and qualified, is substituted as a party in any pending action or proceeding.

§ 326. Limitation on compensation of trustee

(a) In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

(b) In a case under subchapter V of chapter 11 or chapter 12 or 13 of this title, the court may not allow compensation for services or reimbursement of expenses of the United States trustee or of a standing trustee appointed under section 586(b) of title 28, but may allow reasonable compensation under section 330 of this title of a trustee appointed under section 1202(a) or 1302(a) of this title for the trustee's services, payable after the trustee renders such services, not to exceed five percent upon all payments under the plan.

(c) If more than one person serves as trustee in the case, the aggregate compensation of such persons for such service may not exceed the maximum compensation prescribed for a single trustee by subsection (a) or (b) of this section, as the case may be.

(d) The court may deny allowance of compensation for services or reimbursement of expenses of the trustee if the trustee failed to make diligent inquiry into facts that would permit denial of allowance under section 328(c) of this title or, with knowledge of such facts, employed a professional person under section 327 of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2562; Pub. L. 98-353, title III, § 430(a), (b), July 10, 1984, 98 Stat.

369; Pub. L. 99-554, title II, § 209, Oct. 27, 1986, 100 Stat. 3098; Pub. L. 103-394, title I, § 107, Oct. 22, 1994, 108 Stat. 4111; Pub. L. 116-54, § 4(a)(4), Aug. 23, 2019, 133 Stat. 1085.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 326(a) of the House amendment modifies a provision as contained in H.R. 8200 as passed by the House. The percentage limitation on the fees of a trustee contained in the House bill is retained, but no additional percentage is specified for cases in which a trustee operates the business of the debtor. Section 326(b) of the Senate amendment is deleted as an unnecessary restatement of the limitation contained in section 326(a) as modified. The provision contained in section 326(a) of the Senate amendment authorizing a trustee to receive a maximum fee of \$150 regardless of the availability of assets in the estate is deleted. It will not be necessary in view of the increase in section 326(a) and the doubling of the minimum fee as provided in section 330(b).

Section 326(b) of the House amendment derives from section 326(c) of H.R. 8200 as passed by the House. It is a conforming amendment to indicate a change with respect to the selection of a trustee in a chapter 13 case under section 1302(a) of title 11.

SENATE REPORT NO. 95-989

This section is derived in part from section 48c of the Bankruptcy Act [section 76(c) of former title 11]. It must be emphasized that this section does not authorize compensation of trustees. This section simply fixes the maximum compensation of a trustee. Proposed 11 U.S.C. 330 authorizes and fixes the standard of compensation. Under section 48c of current law, the maximum limits have tended to become minimums in many cases. This section is not intended to be so interpreted. The limits in this section, together with the limitations found in section 330, are to be applied as outer limits, and not as grants or entitlements to the maximum fees specified.

The maximum fee schedule is derived from section 48c(1) of the present act [section 76(c)(1) of former title 11], but with a change relating to the bases on which the percentage maxima are computed. The maximum fee schedule is based on decreasing percentages of increasing amounts. The amounts are the amounts of money distributed by the trustee to parties in interest, excluding the debtor, but including secured creditors. These amounts were last amended in 1952. Since then, the cost of living has approximately doubled. Thus, the bases were doubled.

It should be noted that the bases on which the maximum fee is computed includes moneys turned over to secured creditors, to cover the situation where the trustee liquidates property subject to a lien and distributes the proceeds. It does not cover cases in which the trustee simply turns over the property to the secured creditor, nor where the trustee abandons the property and the secured creditor is permitted to foreclose. The provision is also subject to the rights of the secured creditor generally under proposed section 506, especially 506(c). The \$150 discretionary fee provision of current law is retained.

Subsection (b) of this section entitles an operating trustee to a reasonable fee, without any limitation based on the maximum provided for a liquidating trustee as in current law, Bankruptcy Act § 48c(2) [section 76(c)(2) of former title 11].

Subsection (c) [enacted as (b)] permits a maximum fee of five percent on all payments to creditors under a chapter 13 plan to the trustee appointed in the case.

Subsection (d) [enacted as (c)] provides a limitation not found in current law. Even if more than one trustee serves in the case, the maximum fee payable to all trustees does not change. For example, if an interim trustee is appointed and an elected trustee replaces