

New Handbook Provisions for Standing Trustees

April 1996



NEW HANDBOOK PROVISIONS*

1. General Principle Governing Expenses

A standing trustee may make necessary expenditures from fiduciary expense funds to administer the estates efficiently and effectively. Expenses must be reasonable, actual, and necessary; relate to the duties of the trustee; and be supported by proper documentation. The United States Trustees encourage each trustee to determine the most cost-effective method of running the trust operation consistent with fiduciary standards.

2. Major Expenditures

A standing trustee shall obtain a minimum of three price quotes, if available, when requesting the United States Trustee to approve a purchase of \$2,500 or more or a lease of personal property that exceeds \$5,000 over the term of the lease.

COMMENT: This provision is designed to encourage competition among vendors for furnishings, computer equipment, and other major expense items. It also formalizes the practice of most standing trustees to explore the market before making a decision. It is recognized that the lowest bid may not necessarily be the most cost-effective choice for a standing trustee's needs. If fewer than three vendors are able to provide the product needed, a standing trustee should demonstrate to the United States Trustee's satisfaction all efforts to find other sources. This provision modifies the current requirement for a standing trustee to obtain United States Trustee approval for purchases in excess of \$1,000 by raising the threshold amount to \$2,500 and adding the requirement of three price quotes. See *Handbook for Chapter 13 Standing Trustees* (Sept. 1991) at 6 and *Handbook for Chapter 12 Trustees* (June 1992) at 8.

3. Rent and Utilities

Office rent for the standing trustee should be reasonable and at or below the local market rate for comparable space. When moving into new office space or renewing a lease, a standing trustee is to obtain

*Effective for 1997 budget year unless otherwise indicated.

rental rates for comparable space to ensure that the contract rate is at or below market. The amount of leased space also must be reasonable and necessary to carry out the trustee's duties.

COMMENT: Both the rate and the amount of space being leased are important factors in evaluating the overall reasonableness of a lease. In 1995, standing trustees were providing 166 to 1,600 square feet per employee (including conference rooms, libraries, and common areas). While it is difficult to formulate a rule of thumb that applies to all situations and recognizing that there may be variations, it is suggested that standing trustees rent 250 to 350 square feet per employee, excluding space for sec. 341 meeting rooms and off-site storage. See *Handbook for Chapter 13 Standing Trustees* (Sept. 1991) at 6, 14, and 17 and *Handbook for Chapter 12 Trustees* (June 1992) at 17.

4. Facilities and Equipment

A standing trustee shall not lease or sublease to another entity any office space or equipment which has been paid for or acquired with fiduciary expense funds.

If a standing trustee has acquired excess space or equipment that is not necessary for the administration of the cases, the standing trustee should attempt to sell it, to renegotiate the lease, or otherwise to dispose of it in a commercially reasonable manner.

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

5. Employee Salaries

A standing trustee shall develop salary ranges for each employee position and state whether the position is exempt or non-exempt for purposes of overtime. The salary ranges provide the standing trustee and the employee with an established and appropriate entry level and maximum level of compensation for each position. These ranges should be similar to the range in the local market for a position requiring the same or similar skills for the same number of hours. In addition to the job descriptions currently required to be submitted to the United States Trustee, a standing trustee is to submit a proposed pay chart to the United States Trustee upon request.

COMMENT: This provision supplements the provision in the *Handbook for Chapter 13 Standing Trustees* (Sept. 1991) at 13 and the *Handbook for Chapter 12 Standing Trustees* (June 1992) at 16 that requires a standing trustee to establish position descriptions for each employee. The salary ranges are designed to complement the position descriptions.

IMPLEMENTATION: This provision will be fully implemented by October 1, 1998.

6. Employee Benefits

A standing trustee is to develop an overall employee benefits package comparable to that provided in the community in which a standing trustee's operation is located for similarly sized service businesses (i.e. number of employees). A standing trustee should consider common cost-cutting measures such as co-payments for health insurance and HMO's and shall demonstrate in writing, to the satisfaction of the United States Trustee, that the total compensation and benefit package provided to employees is commensurate with compensation and benefit packages provided for the same or similar positions in similarly-sized service businesses in the community. The standing trustee shall provide to the United States Trustee a listing of each benefit and the cost to the fiduciary expense fund of each benefit.

COMMENT: This provision allows a standing trustee to provide employees a total compensation and benefit package that is in keeping with the comparable market in the location in which the standing trustee operates. It enhances a standing trustee's and the employees' discretion in selecting a benefit plan with optimal benefits for meeting employees' needs while keeping trust costs in line with other non-manufacturing businesses in the community in which a standing trustee operates.

IMPLEMENTATION: This provision will be fully implemented by October 1, 1998.

7. Placement Fees/Temporary Help

A standing trustee may hire temporary personnel if authorized by the United States Trustee as part of the budget process; however, the use of temporary personnel as a standard procedure for hiring new permanent employees is not appropriate if it results in significant placement charges and turnover.

8. Travel

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

9. Payment or Reimbursement for Extraordinary Legal Expenses

If a standing trustee is sued (or threatened to be sued) for certain conduct and (1) the conduct complained of appears to have been performed within the scope of the standing trustee's official duties and (2) the United States Trustee determines the use of estate funds to defend the allegations under the facts presented is a necessary expense incurred in the administration of the standing trustee's cases, the United States Trustee may authorize the standing trustee to use fiduciary expense funds to pay for extraordinary legal expenses.

The standing trustee is to submit a written request to the United States Trustee for payment or reimbursement of the legal expenses at the earliest practicable time. Disclosure in the standing trustee's annual budget is not considered a written request for approval for purposes of this provision. The written request should contain the following information: (1) a detailed summary of the facts surrounding the challenged conduct, (2) the amount(s), terms and conditions of any retention agreement for counsel, (3) copies of all relevant documents, including letters, pleadings, and other information the United States Trustee deems appropriate, and (4) a budget describing the legal services to be performed with the anticipated costs and charges of the services.

The request for payment of the legal expenses will be re-evaluated each quarter and conditioned upon the review by the United States Trustee of a written quarterly status report from the standing trustee,

together with additional documents the United States Trustee may request, showing that the legal expenses continue to be actual and necessary expenses of the trust operation.

Legal expenses incurred by a standing trustee in connection with actions initiated by or against the standing trustee by or against the United States Trustee are personal to the trustee and do not constitute actual and necessary expenses of administering a standing trustee's cases.

COMMENT: Under the *Handbook for Chapter 13 Standing Trustees* (Sept. 1991) at 14 and the *Handbook for Chapter 12 Standing Trustees* (June 1992) at 18, a standing trustee may budget a sum of money to pay for anticipated services rendered by attorneys and other professionals in the regular course of administering cases as distinguished from services arising from the appointment of attorneys or other professionals under sec. 327. The handbooks require the United States Trustee's prior approval of any employment or retention of an attorney. The revision requires more affirmative disclosure from a standing trustee to enable the United States Trustee to evaluate the reasonableness of a request for extraordinary legal expenses.

10. Training Expenses

Job-related training of standing trustees and their employees is encouraged. A standing trustee may use up to one percent of the fiscal year operating expense fund or \$5,000, whichever is greater, to provide training for employees and the standing trustee. A standing trustee does not have to receive pre-approval for training expenditures so long as they meet the following conditions: 1) all expenses associated with the training (such as conference registration, textbooks, travel, meals, lodging) are included in the training line item of the budget, 2) courses, seminars, and training sessions for the standing trustee and employees are directly related to the duties of the standing trustee or employee, and 3) the expenses are reasonable and necessary.

A standing trustee is to attach to the annual report for each fiscal year a report listing each seminar, person attending, and cost. Training required by the United States Trustee is not included in the training allowance.

If a standing trustee deems it necessary to spend an amount in excess of the training allowance, the United States Trustee may authorize an additional amount upon a proper showing by the standing trustee. For example, a newly-appointed trustee (within the first three years of appointment), especially one with new staff, may need more job-related training than allowed by the allotment and should submit a training plan with costs to the United States Trustee.

COMMENT: This provision provides a standing trustee with roughly \$600 to \$650 annually per person for training to enhance job skills. It also allows the trustee discretion in choosing training.

IMPLEMENTATION: Effective October 1, 1997, for Chapter 13 standing trustees and January 1, 1998, for Chapter 12 standing trustees.

11. Additional Co-Trustee Operations Prohibited

United States Trustees will not approve the expenses to establish a new co-trustee operation.

COMMENT: The commingling of financial and operational systems does not allow the United States Trustee to hold either standing trustee clearly accountable. In the event of financial or administrative deficiencies, because the conduct of each is indistinguishable in a co-trustee arrangement, one trustee cannot serve as a back-up for the other. In addition, the cost of the second trustee is unnecessary because there is no operational distinction between a co-trustee and a single trustee operation. The provision is prospective only. Co-trustee operations already in existence are not affected by the provision.

12. Miscellaneous Expense Items

Items such as the following are not authorized expenditures: flowers, alcohol, food, party supplies, gifts, dues or membership fees for professional organizations, fines for parking or traffic violations, and tax penalties (e.g., penalty for failing to pay employee taxes timely).

COMMENT: The *Handbook for Chapter 13 Standing Trustees* (Sept. 1991) at 15 and the *Handbook for Chapter 12 Standing Trustees* (June 1992) at 18-19 prohibit the use of fiduciary funds for licensing fees. The addition of dues and membership fees as unauthorized expenditures reinstates a prohibition in the "Guide to Judiciary Policies & Procedures Bankruptcy Manual" published by the Administrative Office of the United States Courts (January 17, 1983), Volume V-A.