LEGAL MANUAL FOR
UNITED STATES TRUSTEES
VOLUME I: GENERAL

PREFACE

This manual sets forth the policy of the United States Trustee system and also provides guidance for the internal operations of the system. The manual does not create any right or benefit, substantive or procedural, enforceable at law, by a party against the United States Trustees. It should not be used as a substitute for legal research and analysis. Circumstances and local customs may vary; thus, while the manual does establish policy, flexibility in the implementation of these guidelines between districts, or even between cases within the same district, is permissible. Accordingly, the use of the word "should" is meant to be hortatory, not mandatory, and is intended to mean that, absent a statutory or regulatory requirement, the United States Trustees may exercise sound discretion depending on the facts and circumstances presented. That discretion does not, however, extend to changing the policies of the system, and must be able to be supported and justified. In addition, any directives included in the appendices to the manual are mandatory as to their requirements.

All references to the United States Trustee apply to either the United States Trustee or the member of the staff who is responsible for the case. All sections refer to sections of the Bankruptcy Code unless otherwise indicated. All references to the masculine include the feminine.

All copies of the manual are property of the United States Government and are not to be removed from the office of the United States Trustee. No portion of the manual, except forms or materials specifically designed for use by debtors, creditors, examiners, or trustees, may be disseminated to the public except upon the direction of the Director, Executive Office for United States Trustees.

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1.1 INTRODUCTION

1.1.1 Purpose of the Manual

This United States Trustee Manual is issued to assist United States Trustee offices in performing their duties and in fulfilling their responsibilities under section 586 of title 28, United States Code. It is intended to be the single repository of all materials relating to the general policies and procedures of the United States Trustee program and its relationship with other components of the Department of Justice and other governmental agencies. The contents of the Manual provide necessary guidance to all appointees and employees in the program in performing their duties and exercising their discretion, under the supervision of the Attorney General.

This Manual provides internal Department of Justice guidance only. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any entity in any matter. See Lojeski v. Boandl, 788 F.2d 196 (3d Cir. 1986) (procedures provided in IRS manual only established internal operating procedures

not constitutional due process standard). It is, instead, intended to help assure consistency and efficiency in the operation of the program. It is designed to accommodate changes in the laws relating to bankruptcy or changes in policy that may occur over time and, accordingly, must be kept current. Your comments are solicited and may be forwarded to the Director and Counsel, Executive Office for United States Trustees (hereinafter referred to as Director).

1.1.2 Organization of Manual

The Legal Manual is divided into five volumes in a multi-binder looseleaf set. Each Volume contains a table of contents and an appendix.

1.1.2-1 List of volumes

Name	Number
General	Volume I
Provisions of General Applicability	Volume II
Cases Filed Under Chapter 7	Volume III
Cases Filed Under Chapter 11	Volume IV
Cases Filed Under Chapter 12 and Chapter 13, and Index to Manual	Volume V

1.1.2-2 Paragraph numbering system

The Manual employs a paragraph numbering system to facilitate the citation, retrieval, and revision of its contents.

Using 1.2.3-4 as an example:

-- The number located in the position of "1" is the Volume.

-- The number located in the position of "2" is the topic within the Volume.

-- The number located in the position of "3" is the subtopic within the topic.

-- The number located in the position of "4" is the paragraph within the topic.

-- Lower case letters, in parentheses and in alphabetical order, are used for subparagraphs.

1.1.3 Distribution and Disclosure

This Manual is United States Government property. It is issued to be used in conjunction with official duties and must be returned to the appropriate administrative officer prior to leaving Department employ.

Any request by a member of the public for material contained in the Manual must be cleared with the

Director, Executive Office for United States Trustees (Executive Office), before it is released.

1.1.4 Revision and Maintenance

This Manual is intended to be similar to commercial looseleaf services and, therefore, transmittals will be forwarded as necessary, composed of additional or replacement Manual pages.

Each holder of a copy of the Manual or any Volume thereof is responsible for inserting the materials received, and is to return the form "Acknowledgement of Receipt and Certification of Filing" to the Executive Office.

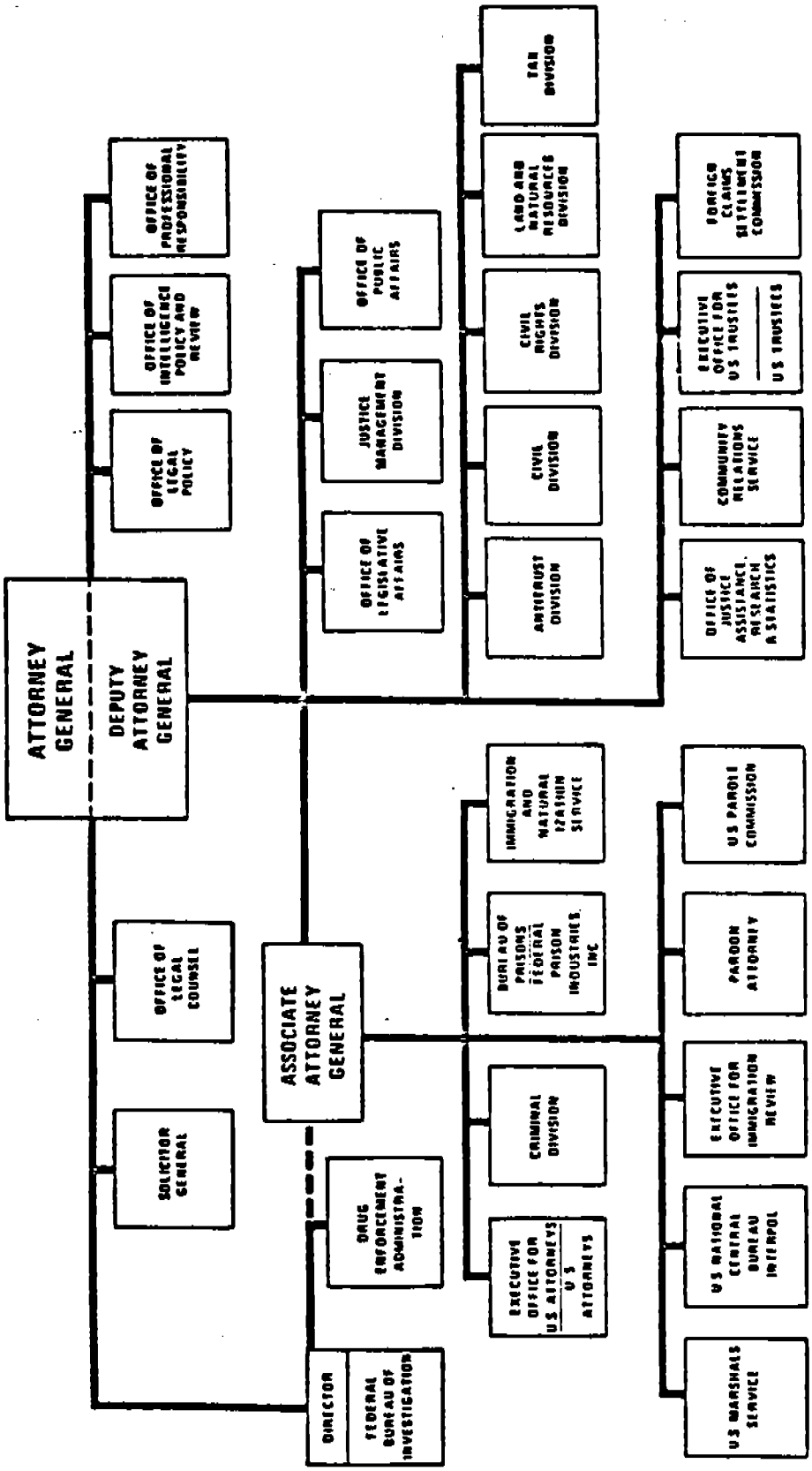
Certain directives from the Executive Office are distributed separately, and may or may not be designated for inclusion in the Manual or an appendix thereto.

Changes to the Manual may be proposed by anyone in the Executive Office or the office of the United States Trustee. They must, however, be submitted through the chain of command. If a superior disagrees on the need for, or the content of a proposed change but the proposer wants the proposal to go forward

notwithstanding the disapproval, the superior should so note and refer it up the chain. All subsequent reviewers will then note their approval or disapproval and the United States Trustee will submit the proposal, with the notations, to the Director for the consideration of the Advisory Committee of United States Trustees. If an actual majority of the committee and the Director agree that the proposal has merit, it will be sent to all United States Trustees for comment by a date certain. The Advisory Committee will review the comments and, if a consensus has been reached in favor of the change, will forward it to the Director for approval and issuance.

1.2 NATIONWIDE UNITED STATES TRUSTEE SYSTEM

1.3 THE DEPARTMENT OF JUSTICE



1.3 THE DEPARTMENT OF JUSTICE

1.3.1 The Attorney General

The Attorney General is the head of the Department of Justice. 28 U.S.C. § 503. The Attorney General supervises the administration of all law enforcement operations of the Department of Justice; represents the United States in legal matters as its chief attorney; furnishes legal advice and opinions to the President, the Cabinet, and the heads of executive departments and agencies; and represents the United States before the Supreme Court, or any other court when appropriate. As a member of the Cabinet, the Attorney General assists in the formulation and implementation of national policy.

The Attorney General, pursuant to 28 U.S.C. § 581(a), as amended by the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Public Law 99-554, 100 Stat. 388 (1986) (the 1986 Act) is to appoint a United States Trustee for a term of five years for each of the following 21 regions consisting of one or more federal judicial districts:

(1) The judicial districts established for the States of Maine, Massachusetts, New Hampshire, and Rhode Island.

(2) The judicial districts established for the States of Connecticut, New York, and Vermont.

(3) The judicial districts established for the States of Delaware, New Jersey, and Pennsylvania.

(4) The judicial districts established for the States of Maryland, North Carolina, South Carolina, Virginia, and West Virginia and for the District of Columbia.

(5) The judicial districts established for the States of Louisiana and Mississippi.

(6) The Northern District of Texas and the Eastern District of Texas.

(7) The Southern District of Texas and the Western District of Texas.

(8) The judicial districts established for the States of Kentucky and Tennessee.

(9) The judicial districts established for the States of Michigan and Ohio.

(10) The Central District of Illinois and the Southern District of Illinois; and the judicial districts established for the State of Indiana.

(11) The Northern District of Illinois; and the judicial districts established for the State of Wisconsin.

(12) The judicial districts established for the States of Minnesota, Iowa, North Dakota, and South Dakota.

(13) The judicial districts established for the States of Arkansas, Nebraska, and Missouri.

(14) The District of Arizona.

(15) The Southern District of California; and the judicial districts established for the State of Hawaii, and for Guam and the Commonwealth of the Northern Mariana Islands.

(16) The Central District of California.

(17) The Eastern District of California and the Northern District of California; and the judicial districts established for the State of Nevada.

(18) The judicial districts established for the States of Alaska, Idaho (exclusive of Yellowstone National Park), Montana (exclusive of Yellowstone National Park), Oregon, and Washington.

(19) The judicial districts established for the States of Colorado, Utah, and Wyoming (including those portions of Yellowstone National park situated in the States of Montana and Idaho).

(20) The judicial districts established for the States of Kansas, New Mexico, and Oklahoma.

(21) The judicial districts established for the States of Alabama, Florida, and Georgia and for the Commonwealth of Puerto Rico and the Virgin Islands of the United States.

The Attorney General also appoints Assistant United States Trustees when the public interest so requires (28 U.S.C. § 582) and provides general coordination

and assistance to the United States Trustees. 28 U.S.C. § 586(c).

1.3.2 The Deputy Attorney General

The Deputy Attorney General is authorized to exercise all the powers and the authority of the Attorney General unless required by law to be exercised by the Attorney General personally or has been specifically and exclusively delegated to another Department official.

The Deputy Attorney General assists in the overall supervision and management of the Department and in the formulation and implementation of major Departmental policies and programs. 28 C.F.R. § 0.15.

1.3.3 The Associate Attorney General

The Associate Attorney General advises and assists the Attorney General and the Deputy Attorney General in formulating and implementing policies and programs of the Department relating to criminal matters and coordinates the program activities of components involved in the enforcement of federal criminal statutes.

1.3.4 The Solicitor General

The primary function of the Solicitor General is to represent the federal government before the Supreme Court. 28 C.F.R. § 0.20.

Except for a few situations in which administrative agencies have statutory authority to take certain of their own cases to the Supreme Court, neither the United States nor its agencies may file a petition for certiorari or take a direct appeal to the Supreme Court unless the Solicitor General authorizes it. 28 U.S.C. §§ 516, 581(a); 28 C.F.R. § 0.20(a).

In all cases where the United States loses in the trial courts, the Solicitor General determines whether the government should appeal to the intermediate appellate courts. The Solicitor General must also approve requests to the courts of appeals for mandamus, prohibition, and other extraordinary writs. 28 C.F.R. § 0.20(b).

The Solicitor General may, in addition, authorize intervention by the government in cases involving the constitutionality of acts of Congress; and assists the Attorney General, the Deputy Attorney General, and

the Associate Attorney General in developing program policy.

1.3.5 The Office of Legal Counsel

The Assistant Attorney General in charge of the office is responsible for preparing the formal opinions of the Attorney General; preparing or revising orders, proclamations, regulations, and similar matters that require the approval of the President or the Attorney General and advising the President and the Attorney General with respect to their form and legality; sending informal opinions and legal advice to the Attorney General, to the heads of the various organizational units of the Department, and to the various governmental agencies; resolving legal disputes between departments in the Executive Branch; and performing special assignments from the Attorney General, Deputy Attorney General, and the Associate Attorney General.

1.3.6 The Office of Legislative Affairs

The office was established on February 2, 1973, by Attorney General Order No. 504-73 to be the

coordinating center for all Department activity relating to legislation and the Congress. On January 24, 1984, by Attorney General Order No. 1054-84, the office's responsibilities were expanded to include intergovernmental affairs.

In the fall, before the beginning of each Congress, the office requests recommendations and comments from each component of the Department concerning legislative initiatives that should be undertaken. Components can provide specific legislative drafts with backup material or merely a description of the particular problem that requires a legislative solution.

The office coordinates the appearances of Department witnesses before congressional committees. If any appointee or employee in the program is contacted directly concerning testimony before the Congress, this office must be consulted immediately.

1.3.7 The Office of Professional Responsibility

The office oversees investigations of allegations of any conduct by Department personnel that may violate the law, Department orders or regulations, or applicable standards of conduct. It also receives and reviews allegations of mismanagement, gross waste of

funds, abuse of authority, conduct that poses a specific and substantial danger to public health and safety, and acts of reprisal against "whistleblowers".

The head of the office is the Counsel on Professional Responsibility, who serves as a special reviewing officer and advisor to the Attorney General, Deputy Attorney General, and Associate Attorney General.

1.3.8 The Executive Office for United States Trustees

The office was established by the Attorney General after the enactment of the Bankruptcy Reform Act of 1978 to provide legal, administrative, and management support to the individual United States Trustees.

The Director provides day-to-day policy, legal direction, and coordination on behalf of the Attorney General to the United States Trustees.

1.3.9 The Civil Division

The Assistant Attorney General in charge of the division, subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, is assigned the following

matters pursuant to 28 C.F.R. § 045: all litigation involving admiralty and shipping, alien property and related matters; the defense of all suits against the United States in the Claims Court and the Court of Appeals for the Federal Circuit (except cases assigned to the Land and Natural Resources Division by 28 C.F.R. § 0.65 or the Tax Division by 28 C.F.R. § 0.70); all civil and criminal litigation and grand jury proceedings arising under federal consumer protection legislation; litigation involving customs; litigation before foreign tribunals and related matters; prosecution of civil claims arising from fraud on the government (other than antitrust, land, and tax frauds); pursuit of all claims and suits for money on behalf of the government not otherwise specially assigned within the Department; and all litigation, not otherwise assigned, by or against the United States, its agencies and officers in all courts.

Among these matters, two are of particular interest. The Civil Division represents the government in asserting its claims in bankruptcy cases. It also provides representation to employees of the Department who are sued in their official capacity or for acts performed within the scope of their employment. See "Representation" infra, at 1.12.

1.3.10 The Criminal Division

The Assistant Attorney General of the Criminal Division, subject to the general supervision of the Attorney General and under the direction of the Associate Attorney General, is responsible for the prosecution of all federal crimes not otherwise specifically assigned. 28 C.F.R. § 0.55(a).

The Criminal Division can provide assistance to the program in the area of bankruptcy crimes. 18 U.S.C. §§ 152-155. That assistance may be crucial when bankruptcy crimes occur interstate or where a pattern of criminal activities is detected as occurring in several states.

Any need for such assistance should be communicated to the Director, Executive Office, who will make the request.

1.3.11 United States Attorneys

The Office of the United States Attorney was created by the Judiciary Act of 1789 which provided for the appointment "in each district of a meet person learned in the law to act as attorney for the United States . . . whose duty it shall be to prosecute in

each district all delinquents for crimes and offenses, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned . . . ." 1 Stat. 92. Initially, United States Attorneys were not supervised by the Attorney General (1 Op. Att'y Gen. 608) but Congress, in the Act of August 2, 1861 (Ch. 37, 12 Stat. 185), charged the Attorney General with the "general superintendence and direction duties . . . " While the precise nature of the superintendence and direction was not defined, the Department of Justice Act of June 22, 1870 (Ch. 150, § 16, 16 Stat. 164) and the Act of June 30, 1906 (Ch. 3935, 34 Stat. 816) clearly established the power of the Attorney General to supervise criminal and civil proceedings in any district. See 22 Op. Att'y Gen. 491; 23 Op. Att'y Gen. 507. Today, as in 1789, the United States Attorney retains, among other responsibilities, the duty to "prosecute for all offenses against the United States." 28 U.S.C. § 547(1). This duty is to be discharged under the supervision of the Attorney General. 28 U.S.C. § 519.

By virtue of this grant of statutory authority and the practical realities of representing the United States throughout the country, United States Attorneys conduct most of the trial work in which the United

States is a party. They are the principal federal law enforcement officers in their judicial districts. They are specifically involved in bankruptcy matters pursuant to 18 U.S.C. § 3057, which requires any judge, receiver, or trustee to report to the United States Attorney all facts and circumstances that gave them reasonable grounds to believe that a bankruptcy crime was committed or that an investigation should be made. The United States Trustees, whenever they consider it to be appropriate, are also to notify the appropriate United States Attorney of matters relating to a possible crime under the laws of the United States, and are authorized to assist the United States Attorney in prosecuting these crimes, upon request of the United States Attorney. 28 U.S.C. § 528(a)(3)(F).

It should also be noted that Section 14d of the former Bankruptcy Act required, upon court request, the United States Attorney or such other attorney as the Attorney General might designate, to "examine into the acts and conduct of the bankrupt and, if satisfied that probable grounds exist for the denial of the discharge and that the public interest so warrants, he shall oppose the discharge . . . ." That requirement was imposed on the United States Trustee by section 727 and the 1986 Act's amendment

to section 727. See H.R. Rep. No. 595, 95th Cong., 1st Sess. 110 (1977) (House Report).

The United States Trustees should make every effort to establish a good working relationship with the United States Attorneys, since they have many areas of mutual concern.

1.3.12 Other Offices

Part O of Title 28, Code of Federal Regulations, should be consulted for further information regarding the organization of the Department of Justice, and for information on the other offices of the Department that are of less immediate concern to the United States Trustees.

1.4 THE UNITED STATES TRUSTEE SYSTEM

1.4.1 Legislative History of the United States Trustee Program

In 1968, the Subcommittee on Bankruptcy of the Senate Committee on the Judiciary held hearings to determine whether a commission to review the bankruptcy laws of the United States should be formed. As a result of those hearings, the

Commission on the Bankruptcy Laws of the United States was appointed in 1970 to study, analyze, evaluate, and recommend changes in the substance and administration of the federal bankruptcy laws. The Commission found that case management under the Bankruptcy Act's referee system was basically inefficient, ineffective, and inconsistent.

The Brookings Institution conducted an independent study extensively cited by the Commission and issued a report [Stanley, Girth, et al., Bankruptcy: Problem, Process, Reform (1971)] which stated that many of the problems of bankruptcy administration were due in large part to the breakdown of the theory of creditor control contemplated under the Bankruptcy Act. The study also identified several problem areas with regard to the role of the case trustee. These included slow and faulty mechanisms for the selection of trustees in individual proceedings; the appearance of political patronage or cronyism in the appointment of trustees; unequal quality and ability among trustees; and actions by trustees which reflected their own economic interests rather than those of the creditors.

To combat these problems, the Commission recommended separation of the administration of bankruptcy cases from the adjudication of controversies, and the creation of an independent federal agency with decentralized day-to-day operations but with national supervision to assure the uniform achievement of goals.

In July 1973, the Commission submitted its report to the President, the Chief Justice, and the Congress. Part I of the report included recommendations for revision of the bankruptcy laws, while Part II consisted of a proposed bill and explanatory notes. The bill was introduced in both Houses of Congress during the 93rd Congress, and a competing bill proposed by the National Conference of Bankruptcy Judges was introduced in the House. Legislative action was suspended, however, due to the pending impeachment proceedings of then President Richard Nixon.

In the 94th Congress, the Commission's bill and the Judges' bill were re-introduced in the House as H.R. 31 and H.R. 32, and in the Senate as S. 236 and S. 235, respectively. Extensive hearings were conducted on the bills. As a result of the hearings and

suggestions solicited from various authorities, a new bill resolving many of the differences between the bills of the Commission and of the Judges was introduced during the 95th Congress as H.R. 6. After more amendment, the bill went to the House Judiciary Committee as H.R. 8200. The Judiciary Committee reported the bill favorably to the full House on September 8, 1977.

In the Report accompanying the bill, the Judiciary Committee supported the design of a United States Trustee program that was modeled on the United States Attorney system. The House proposed that the United States Trustee system would operate in all federal judicial districts. The House passed H.R. 8200 on February 8, 1978, and it was sent to the Senate.

Meanwhile, the Senate Judiciary Committee was considering its version of bankruptcy legislation, S. 2266, the analogue of H.R. 8200 with some substantial differences. After hearings, committee review, and amendments, the Senate took up H.R. 8200. All of the text after the enacting clause was struck out and the text of S. 2266 was inserted. The essential differences involved the court and

administrative systems. The House version established independent Article III bankruptcy courts and entrusted the administration of cases to United States Trustees placed in the Department of Justice. The Senate version allowed the bankruptcy courts to remain as adjuncts to the United States District Courts and did not provide for United States Trustees. The legislative history of the United States Trustee program, accordingly, can only be found in the House Report. See A-1.1.

The Senate version of H.R. 8200 was passed by unanimous consent in the Senate on September 22, 1978. The Senate was insisting on its version of the bill and called for a conference with the House to resolve the differences. Since the compromises to be reached would not fall within the scope of the differences between the two bills, it was agreed that the differences would be resolved without a formal conference.

Subsequent negotiations in the House and Senate produced the final version of the bill that became the Bankruptcy Reform Act of 1978 (hereinafter referred to as BRA). This legislation was signed into law by the President on November 6, 1978. It provided for

Article I bankruptcy judges; bankruptcy courts that were adjuncts to the United States District Courts; and a United States Trustee pilot program that would operate in 18 judicial districts for a period of five years. Joint Statements by Senator DeConcini and Congressman Don Edwards took the place of a Committee Report and are important to an understanding of the compromises made. See A-1.2 for the statement on the United States Trustee program. A more detailed account of the legislative history of the BRA may be found in Klee, "Legislative History of the New Bankruptcy Law", reprinted in Collier on Bankruptcy (MB) app. 2 at V (15th ed. 1979). Title I of the BRA codified and enacted the law relating to bankrtupcy as title 11, United States Code, hereinafter referred to as the Bankruptcy Code.

At the end of the five year term, the Attorney General was to report to the Congress, the President, and the Judicial Conference of the United States, the results of studies conducted to determine the effectiveness of the program, and the desirability and method of extending the program nationwide. That report, submitted to the appropriate officials on January 3, 1984, indicated the success of the program and outlined its expansion to 24 United States Trustee districts.

The United States Trustee pilot program was extended to September 30, 1984, by Public Law No. 98-166, 97 Stat. 1081 (1983), and to September 30, 1986, by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law No. 98-353, 98 Stat. 333 (1984) (hereinafter referred to as BAFJA.). See A-1.3 for a legislative history of BAFJA which, for the most part, had to be reconstructed from prior legislation containing the same or a similar version of the particular BAFJA amendment, accompanied by a committee report or explanatory floor statements, because BAFJA, itself, was the committee report.

1.4.2 Legislative History of the United States Trustee System

During the 99th session of Congress, bills to make the United States Trustee program a permanent and nationwide system were introduced in both Houses. Bills were eventually passed by both the House and the Senate that included not only the nationwide expansion of the program, but also an increase in the authorized number of bankruptcy judges, and a new chapter 12 for family farmers. The two bills went to a conference committee as the sunset date of September 30, 1986, approached. At the last moment,

on September 30, the President signed S. 2888 extending the program once again, this time to November 10, 1986. The Conference Report, H. Rep. 99-958 to Accompany H.R. 5316, was submitted on October 2, 1986. The conference report was agreed to by the House of Representatives on October 2, 1986, and by the Senate on October 3, 1986. It then took several days to enroll the bill for presentment to the President, perhaps due to the length of the Tax Reform Act of 1986, which went to the Government Printing Office before the conference report. The President signed the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, as Public Law No. 99-554, on October 27, 1986, precisely within the ten days after the 99th Congress adjourned sine die on October 17, 1986.

The authorization for additional bankruptcy judges was effective upon the date of enactment. Chapter 12 became effective 30 days later, on November 26, 1986, as did the amendments concerning the United States Trustees in the then existing United States Trustee districts. A two-year period was provided for phasing in the new United States Trustee System nationwide, with an exception for Alabama and North Carolina. Those two states were allowed until

October 1, 1992, to become part of the United States Trustee System.

In order to facilitate the transfer of functions from the office of the bankruptcy court clerks to that of the United States Trustees, a United States Trustee/Judiciary Joint Workshop was held during the first week of December 1986. The workshop was attended by the Director, Executive Office, key members of his staff, and bankruptcy court clerks representing both United States Trustee pilot districts and estate administrator districts. Areas of case processing activity and the relative areas of responsibility were identified so that procedures could be developed for use in conjunction with the establishment of the United States Trustee System in new districts. A draft of proposed interim procedures was circulated to all bankruptcy courts for review and comment, and the draft revised to reflect the comments received. The Joint Interim Guidelines, reproduced below, establish the norm for procedures to be implemented during the nationwide expansion of the United States Trustee System until such time as the Committee on the Administration of the Bankruptcy System of the Administrative Office of the United States Courts can promulgate procedural

standards for all bankruptcy courts, and new Rules of Bankruptcy Procedure can be promulgated.

JOINT INTERIM GUIDELINES BETWEEN
UNITED STATES TRUSTEES AND BANKRUPTCY COURTS

INITIAL ISSUES IN OPENING A CASE

A. Copies of Petition and Supporting Documents

Introduction - The United States trustees require, at a minimum, copies of all basic case file documents to establish their file and to carry out their statutory duties. Collecting extra copies of these documents at the time they are filed will alleviate the need to copy them, en masse, at a later date.

Guideline - Regardless of the timing stage for implementation, it is recommended that each clerk immediately commence collecting an extra copy of the documents and amendments thereto for each of the following types of cases: (i) chapter 7 asset cases filed on or after November 26, 1986; (ii) chapter 11 cased filed on or after November 26, 1986; and (iii) chapter 12 cases filed on or after November 26, 1986. It is also recommended that the clerk collect these documents for any chapter 7 no asset case that is filed within 120 days prior to the United States trustee program becoming effective in the district. If these cases are closed before the United States trustee program becomes effective, these papers should be purged. These procedures may require the promulgation of a local rule or entry of a standing administrative order by the court. Copies need not be collected for chapter 13 cases. The clerk will provide the United States trustee with these documents in a suitable manner, e.g., by placing the documents in a designated intake box located in the clerk's office or by utilizing another appropriate method of distribution. After the United States trustee program is implemented in a district, copies of docket sheets are to be provided to the United States trustee for all cases that were open on or after November 26, 1986. (After the United States trustee program is implemented in a district, Bankruptcy Rule X-1002 will apply).

B. Determination of Asset/No Asset Chapter 7 Cases

Introduction - Although the United States trustee is responsible for the determination of whether a chapter 7

case is an asset or no asset case, uniform guidelines should be developed in each district to allow the clerk to make the initial determination. This will allow the clerk to send out the appropriate § 341 meeting notice without delay, reduce the filing of unnecessary claims, and expedite the processing of cases as they are filed.

Guideline - The clerk and the United States trustee will establish guidelines that will permit the clerk to make an initial determination of whether a chapter 7 case is an asset or no asset case. The clerk will forthwith provide the United States trustee with a copy of petitions schedules, statements, lists, other supporting documents, and amendments thereto that are filed. The United States trustee will inform the court within 48 hours after receipt of these papers, on an exception basis, of any change made by the United States trustee in the initial determination made by the clerk. The § 341 meeting notice will then be mailed as provided for under Bankruptcy Rule 2002(a).

C. Assignment of Interim Trustee in Chapter 7 Cases

Introduction - The United States trustee is responsible for appointing case trustees. A uniform procedure is desired whereby the United States trustee will provide the clerk with case trustee assignments and § 341 meeting dates as quickly as possible. This will insure that timely and appropriate notices are sent and that delays are minimized in the clerk's office.

Guideline - The United States trustee will provide the clerk with a schedule for the appointment of interim chapter 7 case trustees and chapter 13 standing trustees. Any schedule that is developed should discourage "Trustee Shopping". The schedule should specify: (1) an assignment system for selecting who will be appointed the interim trustee or standing trustee; (2) the location set for the § 341 meeting; and (3) the date and time set for the § 341 meeting. This procedure is intended not only to streamline the appointment of interim trustees in chapter 7 cases, but also to expedite the issuance of § 341 meeting notices to all parties in interest. Except in unusual circumstances where the immediate appointment of a trustee is required, the United States trustee will inform the court within 48 hours after receipt of a petition, if a trustee, other than the one selected in the rotation system, is to be appointed to serve in a chapter 7 asset case, the name of the trustee and the date and time for which the § 341 meeting is to be scheduled.

D. Trustee Acceptance

Introduction - This guideline is designed to eliminate unnecessary paperwork.

Guideline - Current Bankruptcy Rule X-1004 requires an interim trustee to notify the court and the United States trustee of the acceptance or rejection of the office within five days. Under the proposed amendment to the Rule, case trustees who are covered by blanket bonds will be deemed to have accepted their office unless they file a written rejection within five days. Subject to approval of proposed Rule X-1004(a), the court will only record chapter 7 case trustee acceptances on an exception basis. The United States trustee will maintain the acceptances in all chapter 7 cases.

E. Noticing

Introduction - The clerk has the responsibility to issue notices of § 341 meetings and other notices, and to assess the cost of noticing as provided by Judicial Conference guidelines.

Guideline - The clerk, or some other person as the court may direct, shall transmit the notice of the § 341 meeting and other required notices to parties in interest. The § 341 meeting should be set and notice mailed as soon as practicable, whether or not the schedules and other support documents in a debtor's case have been filed. When there are assets, the estate will be responsible for the mailing or payment of mailing fees to the court for all notices within the Judicial Conference guidelines.

The notice should include a provision stating that the case may be dismissed after proper notice if the schedules are not filed within 15 days, or if the debtor fails to appear at the § 341 meeting, pursuant to a local rule or standing administrative order of the court.

F. Monitoring the Filing of Schedules and Dismissal Procedures

Introduction - The clerk's office is in the best position to monitor whether schedules and statements are complete, adequate and timely filed. Dismissing cases promptly for failure to comply will foster good case management, reduce unnecessary paperwork and minimize inquiries. For many courts the following guideline is a continuation of current procedure.

Guideline - The clerk will monitor the timely filing of schedules, statements, lists, supporting documents and amendments thereto, in each case. Except in chapter 7

cases, the clerk will process the dismissal of a case if authorized to so do by local rule or standing administrative order of the court. In chapter 7 cases, the clerk should notify the United States trustee that the debtor's petition, schedules, statements, lists or other supporting documents have not been filed or are deficient. The United States trustee will move for dismissal of chapter 7 cases (11 U.S.C. § 707(a), as amended).

G. Additional Pleadings

Introduction - The following guideline is designed to keep the United States trustee informed of all pending matters without requiring the clerk to collect and provide additional copies of pleadings and other documents.

Guideline - The United States trustee should be placed on the mailing matrix in each case filed with the court and receive notices (including notices of appeal) issued by the clerk or other such person as the court may direct. A party initiating any request for relief from the court shall serve the United States trustee with all pleadings and documents unless the United States trustee requests otherwise. (See Rule X-1008).

§ 341 MEETING ISSUES

H. Preparation of § 341 Meeting Calendar

Introduction - § 341 meeting calendars are currently being generated as part of an automated system in many courts. Sharing this resource with the United States trustee enhances communication between the two offices, avoids duplication and best utilizes available resources.

Guideline - The clerk will provide the § 341 meeting calendar to the United States trustee in those districts where the clerk utilizes an automated system capable of producing the calendar. Otherwise, the United States trustee will be responsible for producing the calendar. To the extent practicable, the calendar will conform to the format requested by the United States trustee.

I. Presiding at § 341 Meeting and Recording of Minutes

Introduction - As amended, 11 U.S.C. § 341 and Bankruptcy Rule X-1006(b) provide that the United States trustee or designee will preside at the § 341 meeting. Bankruptcy Rule 2003(c) provides that the presiding officer will record the meeting.

Guideline - The United States trustee or a designee will preside at the § 341 meeting and record and maintain the meeting record. The United States trustee will notify the court whether a § 341 meeting occurred, did not occur or was continued, if requested by the court.

SPECIFIC CHAPTER 11 ISSUES

J. Composition of Creditors' Committees in Chapter 11 Cases

Introduction - As amended, 11 U.S.C. § 1102 provides that the United States trustee appoints creditors' committees. This guideline creates an official record for the court file.

Guideline - The United States trustee will file with the court a list containing the names and addresses of persons appointed to a creditors' committee. If an unsecured creditors' committee is not constituted, a statement of the reasons for not appointing the committee should be filed with the court.

K. Monitoring of Chapter 11 Disclosure Statements and Plans filed with the Court

Introduction - As amended, 28 U.S.C. § 586 provides that the United States trustee monitors chapter 11 cases.

Guideline - The United States trustee is responsible for monitoring the filing of disclosure statements and plans with the court in chapter 11 cases.

L. Transmittal of Chapter 11 Disclosure Statement, Notice of Hearing, Plan and Ballot

Introduction - This guideline recommends that the proponent of a chapter 11 plan be responsible for the preparation and processing of all relevant documents in conjunction with hearings on disclosure statements and plans.

Guideline - The proponent of a chapter 11 plan should be responsible for mailing the disclosure statement, the plan and a notice of hearing on the disclosure statement.

Following the approval of a disclosure statement in a chapter 11 case, the proponent of the plan should be responsible for mailing the plan (or a court approved summary), the disclosure statement, a ballot, a notice of the time for filing acceptances and rejections of the plan, the date set for the confirmation hearing and any other information as the court may require.

M. Receipt and Tabulation of Ballots in Chapter 11 Cases

Introduction - The United States trustee and the clerk of court are not to be designated as parties to process ballots in chapter 11 cases.

Guideline - The United States trustee is not responsible for receiving, tabulating and filing of ballots in chapter 11 cases. Unless otherwise ordered by the court, the clerk should not be responsible for processing ballots.

N. Closing Chapter 11 Cases

Introduction - Chapter 11 cases should be closed as quickly as feasible.

Guideline - The court should be urged to provide, in the order of confirmation of a chapter 11 plan, a deadline for the application for a final decree so that the case may be judicially closed. It is suggested that the case be closed as soon as nothing remains to be done in the case other than the making of any further payments from future revenues.

GENERAL CLOSING ISSUES

O. Timely Filing of Report of No Distribution

Introduction - Chapter 7 no asset reports should be filed promptly to expedite the processing of trustee payment vouchers (TR4's) and the closing of cases.

Guideline - If the case trustee, after examining a debtor at the § 341 meeting, determines there are no non-exempt assets in the estate, the trustee shall submit a report of no distribution to the United States trustee within 30 days, but not later than 60 days, after the § 341 meeting.

P. Payment of Chapter 7 Trustees' Portion of Filing Fee

Introduction - The United States trustee's certification of the case trustee's report and the filing of the report with the clerk signifies the completion of the case trustee's duties and responsibilities. The case trustee should not have to wait until the entry of the order closing the case to receive payment.

Guideline - The clerk should submit trustee payment vouchers to the Administrative Office within 30 days after the United States trustee files the certified report of no distribution in chapter 7 cases.

Q. Review and Certification of Case Trustee Reports for Accuracy

Introduction - The United States trustee is responsible for supervising the performance of case trustees. This guideline provides a certification procedure that the court can rely upon for the accuracy and completeness of the case trustee's work. The court should rely upon the certification and avoid duplicating work of the United States trustee.

Guideline - The United States trustee will certify the accuracy of the case trustee's final report and will file such final report with the clerk.

R. Certification that Estate has been Fully Administered

Introduction - The United States trustee is responsible for supervising the performance of case trustees.

Guideline - The United States trustee will certify that the chapter 7 case trustee has made a distribution, including a final distribution, that a zero balance in all trustee accounts maintained by the trustee in the case has been verified, if applicable, and that the estate has been fully administered. This certification will also include verification of the disposition of any unclaimed monies in the case. The certification should be filed with the clerk. The court will not be responsible for retaining cancelled checks or bank statements.

1.4.3 Organization of the United States Trustee Program

On October 1, 1979, when the BRA took effect, the Department of Justice created an Executive Office for United States Trustees in Washington, D.C. (Executive Office), and ten field offices covering the 18 pilot districts. The 1986 Act established 21 regions, each to be administered by a United States Trustee. Eleven regions include one of the original pilot districts, because Colorado and Kansas, originally one pilot district, were placed in separate

regions. 28 U.S.C. § 581(a). The Executive Office is headed by a Director appointed by the Attorney General. 28 C.F.R. §§ 0.37, 0.38. Each field office is headed by a United States Trustee appointed by the Attorney General. Under the BRA, the United States Trustees were appointed for a seven-year term, but their term was reduced to five years by the 1986 Act. 28 U.S.C. § 581(b). Certain offices also have Assistant United States Trustees, some of whom head branch offices. An Assistant United States Trustee is appointed by the Attorney General when the public interest so requires. 28 U.S.C. § 582(a). Each United States Trustee and Assistant United States Trustee was removable only for cause under the BRA, but that requirement was deleted by the 1986 Act. 28 U.S.C. §§ 581(c), 582(b).

The Executive Office provides policy direction, coordination, legal counsel, and administrative support services to, and supervises the quality of the work of, the United States Trustees. All offices have Attorney-Advisors and Bankruptcy Analysts, who are primarily responsible for supervising panels of private individuals eligible for appointment as trustees in chapter 7 cases, standing chapter 12 and chapter 13 trustees, and the administration of chapter 11

reorganization cases. They also provide substantive guidance to trustees in the more complicated cases. In addition, each field office employs paraprofessionals and other support staff to assist in processing chapters 7, 11, 12, and 13 cases.

1.4.4 Role of the United States Trustee

Section 586 of title 28, United States Code, sets forth the duties of the United States Trustees. Under the BRA a chapter 15 of the Bankruptcy Code contained the substantive provisions of bankruptcy administration that apply in United States Trustee districts, but its provisions were incorporated into the other chapters of the Code, and it was repealed by the 1986 Act. The repeal was effective on November 27, 1986, in the existing United States Trustee districts and becomes effective in every district as it becomes part of a United States Trustee region. According to these statutory provisions, the United States Trustees are charged with supervising the administration of four of the five categories of bankruptcy cases -- those filed under chapters 7, 11, 12 and 13. They have no role in chapter 9 cases, which involve municipalities and other state government entities, except for the appointment of committees. Also, the United States Trustees are charged with the duty to "serve as watch-dogs to prevent fraud, dishonesty,

and overreaching in the bankruptcy arena." House Report at 88. The 1986 Act did not supersede, but rather ratified that part of the legislative history of the creation of the United States Trustee system. The goal of the United States Trustee program is to ensure that the bankruptcy system is administered in such a way that it provides an effective framework for debtors and creditors to determine their own courses of action. The United States Trustee's job is to bring the parties together, promote the full disclosure of relevant information, and watch for instances of impropriety or overreaching. As long as the public interest or the integrity of the system is not compromised, the parties are free to make their own decisions without the intervention of the United States Trustee.

The following list represents the key statutory and critical duties that constitute priority functions of each United States Trustee's office. Each United States Trustee should periodically review office operations and performance standards to ensure that these duties and functions are being performed and are in compliance with the procedures set forth in

applicable sections of the Legal Manual for United States Trustees.

-- Opening and distribution of all mail within the office on a daily basis.

-- Reviewing and processing all case petitions upon receipt.

-- Opening and maintaining files for all chapter 7 asset cases and all chapter 11 and chapter 12 cases.

-- Establishing an accurate and cumulative automated inventory of all cases by chapter including the information required to monitor and collect chapter 11 quarterly fees.

-- Prompt appointment of trustees and of examiners and communication with them as appropriate.

-- Setting of bond amounts in asset cases promptly and monitoring all bonds on at least a quarterly basis.

-- Formation of committees of creditors in chapter 9 and chapter 11 cases on an expedited basis. Note that 28 U.S.C. § 586(a)(3) does not apply

in cases under chapter 9 and, therefore, the United States Trustees are assigned no further duties.

-- Scheduling and arranging for the conduct of section 341 meetings between 20 and 40 days after the filing of the petitions. (Note that, under the new Bankruptcy Rules promulgated by the Supreme Court which went into effect on August 1, 1987, the meeting may be held 60 days after filing if the place designated for the meeting is not regularly staffed.)

-- Reviewing all financial reports, interim, final, and periodic.

-- Meeting with chapter 12 and chapter 13 standing trustees on a regular and occasionally unannounced basis to review the financial and administrative operations of their offices.

-- Reviewing applications for employment of professionals, fee applications, and disclosure statements, and filing appropriate motions; filing motions for trustees and for examiners, motions to convert or dismiss, and motions to dismiss under section 707(b).

-- Meeting and maintaining liaison with bankruptcy court clerks to discuss administration of cases.

-- Establishing and maintaining open lines of communication with the Chief Bankruptcy Judge to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States Trustee system, as authorized in Bankruptcy Rule X-1010.

-- Meeting with the United States Attorneys to establish procedures to refer instances of alleged criminal activities and cooperating in any investigation on request of the United States Attorney.

1.4.4-1 Chapter 7 -- "Liquidation"

In these cases, a debtor's unencumbered assets, except for those which are exempt from the reach of creditors, are reduced to cash and distributed to the creditors after expenses of administration are paid. Absent unusual circumstances, the debtor then obtains a discharge of virtually all pre-bankruptcy

debts, resulting in a financial "fresh start." The United States Trustees maintain and supervise panels of private individuals eligible for appointment as trustees in these cases, appoint interim trustees and successor trustees, serve as trustees when no panel members are willing to serve, may examine debtors, may move for dismissal of cases for "substantial abuse", may object to proposed discharges, monitor awards of compensation to attorneys, examiners, auctioneers, appraisers, and accountants, and review the actions and final reports of panel trustees with respect to the estates they have administered. See 28 U.S.C. § 586; 28 C.F.R. §§ 58.1, 58.3, 58.5. For a more detailed discussion see Volume III.

1.4.4-2 Chapter 11 -- "Reorganization"

The provisions of chapter 11 represent an amalgam of three chapters of the former bankruptcy law and allow for the total restructuring of both the debt and equity of business debtors primarily. Chapter 11 provides an opportunity for the debtor to continue operations while it attempts to develop a reorganization plan with its creditors. If the creditors accept this plan and the court confirms it, the chapter provides a framework within which the

plan can be implemented. Although a debtor may liquidate under a plan in chapter 11, the principal purpose of the chapter is to rehabilitate the business. The United States Trustees appoint committees of creditors and equity security holders, educate committee members as to their roles and responsibilities, may move for the appointment of and may be directed to appoint case trustees or examiners, schedule and preside at meetings where creditors and the United States Trustee may examine the debtor, supervise the administration of estates by debtors in possession and case trustees, monitor applications to employ professionals and requests for compensation, and may object to the adequacy of required disclosure statements. For a more detailed discussion, see Volume IV.

1.4.4-3 Chapter 13 -- "Adjustment of Debts of an Individual with Regular Income"

In these cases, individuals with a regular source of income, such as wages, commissions, pensions, or dividends, or a small business in which the debtor is self-employed, may obtain a discharge of their debts by arranging for the payment of a percentage of their

debts over a period of time not to exceed five years. The chapter replaces Chapter XIII of the former bankruptcy law, which was limited to wage earners.

The consent of unsecured creditors is not required for court approval of a chapter 13 plan, but relief under chapter 13 is available only to individuals with unsecured indebtedness of less than $100,000 and secured indebtedness of less than $350,000. The United States Trustees appoint standing trustees or serve as such, supervise the administration of cases by the standing trustees, and may examine debtors. See 28 U.S.C. § 586(b); section 1302; 28 C.F.R. §§ 58.2, 58.4. For a more detailed discussion, see Volume V.

1.4.4-4 Chapter 12 -- "Adjustment of Debts of a Family Farmer with Regular Annual Income"

Chapter 12 was added to the Code by the 1986 Act with a provision for its repeal on October 1, 1993, except as to cases then pending under chapter 12. It allows family farmers, as defined, with debt not exceeding $1,500,000, and with regular annual income, to propose a plan of repayment, with some

provisions identical to or, in other instances, similar to those of chapter 13. The discharge provisions for an individual under this chapter are, however, those provided in a chapter 7 liquidation, not the liberal ones provided in chapter 13. Certain chapter 11 features are also incorporated, including removal of the family farmer as debtor in possession, and dismissal of the case on the same grounds provided in chapter 11. While the chapter 11 case of a farmer cannot be converted to a chapter 7 case except on request of the debtor, a chapter 12 case can be converted involuntarily for fraud.

The United States Trustees appoint standing trustees, as they do for chapter 13 cases, or may serve as trustee, supervise the standing trustees in their administration of the cases assigned to them, and are given specific authority to object to confirmation of a chapter 12 plan. See 28 U.S.C. § 586(b); section 1202(a); section 1224. For a more detailed discussion, see Volume V.

1.4.5 Standing of the United States Trustee

In supervising the day-to-day administration of bankruptcy cases, the United States Trustees

frequently act "as enforcers of the bankruptcy laws by bringing proceedings in the courts in particular cases in which a particular action taken or proposed to be taken deviates from the standards established by the proposed Bankruptcy Code." House Report at 109. The United States Trustee does not serve as an arm of the court, but has an independent duty to "execute and enforce the bankruptcy laws." Id. at 110. The congressional intent that the United States Trustee shall have an active role in cases under the Bankruptcy Code was given effect in Bankruptcy Rule X-1009. Subsection (a) of Bankruptcy Rule X-1009 gives the United States Trustee standing to "raise and appear and be heard on any issue relating to his responsibilities in a case under the Bankruptcy Code." To enable the United States Trustee to be informed of all developments in a case, the Bankruptcy Rules require that certain notices and pleadings be sent to the United States Trustee, and allow the United States Trustee to require a party in interest to provide to the United States Trustee a copy of any paper filed with the court. Bankruptcy Rules X-1008 and X-1009(b). Bankruptcy Rule X-1009(a) was subsequently ratified by the 1986 Act by its addition of section 307 to the Bankruptcy Code.

Due to the broad provisions of 28 U.S.C. § 586, the standing of the United States Trustee was rarely questioned. However, in two pilot districts, the standing of the United States Trustee to file a motion to convert a chapter 11 case to one under chapter 7 was upheld over the opposition of the debtor. A-1 Trash Pickup, Inc. v. United States Trustee, 802 F.2d 774 (4th Cir. 1986); In re Commercial Finance Corporation of Nevada, 16 B.R. 98 (Bankr. D. D.C. 1981). Most courts in the original pilot districts relied on the "valuable assistance of the United States Trustee." In re Codesco Inc., 15 B.R. 351, 353 (Bankr. S.D.N.Y. 1981), and requested the opinion of the United States Trustee when a matter related to the administration of the case. In re Sun Spec Industries, Inc., 3 B.R. 703, 704 (Bankr. S.D.N.Y. 1980).

Subsequently, the amendments made by the 1986 Act, especially the addition of section 307, the amendment to section 1112(b), authorizing the United States Trustee to request conversion or dismissal of a chapter 11 proceeding, and new 28 U.S.C. § 586(a), mooted the issue of the United States Trustee's standing.

1.5 ETHICS AND PROFESSIONAL STANDARDS

Title IV of the Ethics in Government Act gives the Office of Government Ethics (OGE) responsibility for overall direction of executive branch policies related to preventing conflicts of interest. On the recommendation of OGE, the Designated Agency Ethics Official (DAEO) of the Department implemented a system of a Deputy DAEO for each Office, Board, Division, and Bureau. A Deputy DAEO was appointed in the Executive Office with responsibility for coordinating and managing the Ethics Program in the United States Trustee system with guidance and assistance from DAEO.

The Deputy DAEO is available to everyone in the system for consultation on any matter involving the Department's Standards of Conduct (e.g., conflicts of interest, outside employment, acceptance of gifts, and political activities), financial disclosure reports, or post-employment restrictions.

1.5.1 Conflict of Interest: Acts Affecting a Personal Financial Interest

1.5.1-1 Criminal violations under 18 U.S.C. § 208

Section 208 of title 18, United States Code, provides that an employee of the executive branch may not participate in an official capacity in any matter involving the employee's financial interest. The prohibition extends to any financial interest involving the employee's spouse, minor child, partner, organization in which the employee is serving as officer, director, trustee, partner, or employee, and to any person or organization with whom the employee is negotiating or has any arrangement concerning future employment.

An exception is provided for instances where the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services. The determination that the exception applies must be obtained from the government official responsible for the employee's appointment, in writing, after full disclosure of the facts, and in advance of any participation in the matter by the employee. In

addition, some interests may be defined as too remote or inconsequential to affect the integrity of services pursuant to a general rule or regulation published in the Federal Register and incorporated in the applicable Code of Federal Regulations (C.F.R.).

A violation of section 208 is punishable by a fine of not more than $10,000, or imprisonment for not more than two years, or both. See Manual section 1.5.2-1 for discussion of applicable Department of Justice regulations.

1.5.1-2 Policy of the Executive Office for United States Trustees

Any individual in the office of the United States Trustee who has a financial interest in any party to a bankruptcy case is disqualified from all participation in the case. "Party" is meant to include not only the debtor and each creditor, but also any professional employed to perform services in the case.

If the disqualified individual is the United States Trustee, an Assistant United States Trustee, or an attorney, the bankruptcy court in which the case is

pending must be formally notified, with notice to parties in interest, as appropriate, of the fact that the individual has relieved himself, or has been relieved of any and all administrative and supervisory responsibility or involvement in the case.

If the disqualified individual is any other employee, the bankruptcy case is to be assigned or reassigned in order to prevent any possible involvement of that individual, and a warning placed prominently in all files pertaining to the case that the individual is disqualified from participation.

If any party, as defined above, should seek to contact any disqualified individual in connection with the case, the matter of disqualification must be interposed.

Under no circumstances is it permissible for anyone in the office of the United States Trustee to attempt to avoid a conflict of interest by disposing of, or advising any other person to dispose of, any interest in any party involved in a bankruptcy case once the office of the United States Trustee receives notification that a petition has been, or will be filed.

Note: The Director, Executive Office, and all United States Trustees, including Acting United States Trustees, are required to file annual financial reports on Form SF 278 which are reviewed for possible conflicts of interest. See Title II, Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824.

Although other employees are not required to file these reports, they should, nonetheless, be sensitive to the disclosure requirements embodied therein. All employees must report any financial interest they may have in an entity involved in a bankruptcy case assigned to the office promptly and fully to the United States Trustee.

1.5.2 Department of Justice Standards of Conduct

Part 45 of title 28 of the Code of Federal Regulations prescribes the policies, standards, and instructions that apply to the conduct and behavior of employees and former employees of the Department of Justice. It includes the prohibitions and requirements imposed by the criminal and civil laws of the United States, but should be read with the caveat that it "does not

purport to paraphrase or enumerate all restrictions or requirements imposed by statutes, Executive orders, regulations or otherwise upon Federal employees and former Federal employees." 28 C.F.R. § 45.735-1(b). Attorneys are particularly cautioned to be mindful of the Code of Professional Responsibility of the American Bar Association as an additional regulation of their conduct. Id.

Any violation of a provision of part 45 "shall make the employee involved subject to appropriate disciplinary action which shall be in addition to any penalty which might be prescribed by statute or regulation". 28 C.F.R. § 45.735-1(c).

The basic departmental policy is that a Department of Justice employee must behave in a manner that creates and maintains respect for the Department and the United States Government while complying with the high standards of behavior expected of the employee. Any ethical or professional concerns that the employee cannot resolve personally should be discussed with an immediate supervisor. 28 C.F.R. § 45.735-2(a) and (b). See also the memoranda included at A-1.4 and A-1.5.

The following is a synopsis of some of the more important sections of the Code of Federal Regulations covering specific situations of potential conflict for employees. The full text of each section cited should be consulted for a complete understanding.

1.5.2-1 Disqualification arising from private financial interest, 28 C.F.R. § 45.735-5

This section restates the language of 18 U.S.C. § 208 (see Manual section 1.5.1-1) and provides a specific exemption only for policies with an insurance company, and for stocks and bonds whose value does not exceed 1 percent of the assets of a mutual fund, investment company, or bank involved in a matter to which an employee's services relate.

Sections 45.735-10 and 45.735-11 prohibit the use of nonpublic information obtained by an employee by reason of the employee's status as a Department of Justice employee, for personal financial gain or for financial gain of another person or for any other improper use. In addition, no investment may be made or suggested to another based on that information.

An employee is also prohibited from making any investment in enterprises likely to be involved in decisions to be made by the employee or that would likely lead to a conflict of interest.

1.5.2-2 Activities and compensation of employees in claims against the United States and other matters affecting the Government, 28 C.F.R. § 45.735-6

This section prohibits an employee from acting as an agent or an attorney in any claim against the United States, or participating in any proceeding in which the United States is a party or has a direct and substantial interest. It does not prohibit an employee from acting without compensation as the agent or attorney in a federal personnel administrative proceeding, for a relative, or as a personal fiduciary as long as the representation is not inconsistent with the faithful performance of the employee's duties.

1.5.2-3 Salary of employees payable only by the United States, 28 C.F.R. § 45.735-8

This section prohibits an employee, other than a "special government employee" or an employee serving

without compensation, from receiving any salary, contribution or compensation from any source other than the Department of Justice.

1.5.2-4 Private professional practice and outside employment, 28 C.F.R. § 45.735-9

Professional employees are prohibited from engaging in the private practice of their profession. Public interest professional services, however, are encouraged as long as there is no interference with official responsibility, no fee is received, and the services are provided during off-duty hours or while on leave. To be deemed a "public interest service" the activity must fall into one of the categories listed in subsection (3) of 28 C.F.R. § 45.735-9. These activities include services to an indigent client, to assert or defend individual or public rights which society has a special interest in protecting, to further the organizational purpose of a charitable, religious, civic or educational organization, or to improve the administration of justice.

In order to provide pro bono services, an employee must give notice of the intention to provide such

services in writing to the head of the employee's division. For our purposes, this is the Director of the Executive Office.

1.5.2-5 Speeches, publications, and teaching, 28 C.F.R. § 45.735-12

Although teaching is excluded from "professional practice", it is subject to certain restrictions under the provisions of 28 C.F.R. § 45.735-12. This section prohibits an employee from accepting compensation for any public appearance, speech, lecture, or publication that was a part of the official duties of the employee. The prohibition on compensation also applies to any consultation, lecture, teaching, discussion, writing, or appearance when the subject matter is devoted substantially to the responsibilities, programs, or operations of the Department, or draws from official data or ideas that are not part of the body of public information.

Subsection (c) prohibits an employee from teaching, lecturing, or writing when the activity is dependent on information obtained as a result of Government employment unless the information has been made available to the general public or the Deputy Attorney

General has given written authorization. Other subsections place prohibitions on fundraising activities. As a general rule, an employee may not engage in fundraising activities unless the organization is exempt from taxation under 26 U.S.C. § 501(c)(3). 28 C.F.R. § 45.735-12(c)(3).

1.5.2-6 Gifts, entertainment, and favors, 28 C.F.R. § 45.735-14

With certain exceptions, this provision prohibits the solicitation or acceptance by an employee, either directly or indirectly, of any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who has business or financial relations with the Department, is in some manner regulated by the Department, is engaged in a judicial or administrative proceeding in which the United States is an adverse party, or whose interests may be substantially affected by the performance or nonperformance of the employee's official duty.

It should be noted that it is the policy of the Executive Office that an employee of the United States Trustee program should submit a request in writing to engage in outside employment, speechmaking,

writing for publication, or teaching. The request will be forwarded, if necessary, to the proper person in the Office of the Deputy Attorney General for approval in order to avoid any conflict with regulations.

1.5.2-7 Reimbursement for travel and subsistence; acceptance of awards, 28 C.F.R. § 45.735-14a

Employees are prohibited from accepting reimbursement for travel or expenses incident to travel from any source other than the Federal Government. An exception to this prohibition allows acceptance of reimbursement from certain tax exempt organizations for training or attendance at meetings. Other subsections allow reimbursement for nonofficial travel, defined therein, and for actual expenses of an accompanying spouse, and permit acceptance of awards. See A-1.6 for Office of Government Ethics Memorandum: "Summary of Acceptance and Disclosure of Travel Expenses and Related Gifts."

1.5.2-8 Employee indebtedness, 28 C.F.R. 45.735-15

The failure of an employee to pay the employee's debts (including taxes) without good reason and in a timely manner may be cause for disciplinary action.

1.5.2-9 Post-employment restrictions

Post-employment restrictions regarding potential conflicts of interest are enumerated in 5 C.F.R. Part 737. See A-1.7. The restrictions bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations. 5 C.F.R. § 737.1(c). The intent of the restrictions is not to discourage the movement of skilled professionals between the Government and private industry and institutions, but to protect the public confidence in the Government. 5 C.F.R. § 737.1(c)(5). Part 737 delineates in several substantive provisions the restrictions and exemptions applicable to former Government employees. Memoranda concerning post-employment restrictions from the Executive Office and the Deputy Assistant Attorney General are at Appendix A-1.8, A-1.9, and A-1.10; material from the United States Attorneys' Manual is at A-1.11; a summary at A-1.12. They should all be consulted as well.

1.6 DISCLOSURE OF INFORMATION

1.6.1 Privacy Act of 1974

The Privacy Act of 1974, 5 U.S.C. § 552a (see A-1.13), permits individuals access to federal agency records pertaining to them which are maintained in an agency "system of records". A system of records is defined in 5 U.S.C. § 552a(a)(5) as a group of records from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual. Some records are, however, specifically exempted from disclosure under subsections (j) or (k) of the Act. Department of Justice regulations implementing the Privacy Act are set forth in 28 C.F.R. § 16.40-16.57.

1.6.1-1 United States Trustees system of records

Pursuant to 28 U.S.C. § 586, the United States Trustees maintain the following three nonexempt systems of records: Bankruptcy Case Files and Associated Records (JUSTICE/UST-001); Panel Trustee Application File (JUSTICE/UST-002); and United States Trustee Timekeeping System

(JUSTICE/UST-003). The United States Trustees maintain one exempt system of records: United States Trustee Case Referral System (JUSTICE/UST-004). In accordance with Privacy Act requirements set forth at 5 U.S.C. § 552a(e)(4), notice of the existence of these four record systems, as well as a description of the characteristics of each system, has been published in the Federal Register. The systems are located in the field offices and suboffices of the program. In addition, the Executive Office maintains records described in the JUSTICE/UST-003 and JUSTICE/UST-004 systems and duplicate copies of certain pleadings and materials relating to specific cases which are found in the JUSTICE/UST-001 and 002 record systems.

1.6.1-2 Access to records

Generally, records maintained in bankruptcy case files (JUSTICE/UST-001) are public records and open to examination. An exception exists whenever a bankruptcy court moves to protect an entity with respect to a trade secret, confidential research, development, or commercial information, or to protect a person with respect to a scandalous or defamatory

matter contained in records filed in a case, as authorized by section 107(b). A Privacy Act request for records contained in this system may be made in person at the United States Trustee office for the district in which the case is filed.

Privacy Act requests relating to the JUSTICE/ UST-002 and 003 systems must be made in writing to the United States Trustee office where the records are maintained or to the Executive Office; however, any written request received by a United States Trustee office or suboffice is to be forwarded to the Deputy Director for Legal Services in the Executive Office for response. 28 C.F.R. § 16.41(a). Privacy Act requests relating to the JUSTICE/UST-004 system must be made in writing to the Deputy Director for Legal Services.

All requests for access to records, either in person or by mail, must describe the nature of the records sought and the approximate dates covered by the records. 28 C.F.R. § 16.41(b). In all cases, all individuals who request records concerning themselves must present verification of identification pursuant to the standards set out in 28 C.F.R. § 16.41(d).

1.6.1-3 Fees

Fees may be charged to individuals only for actual copies of materials furnished pursuant to the Privacy Act. 5 U.S.C. § 552a(f)(5), 28 C.F.R. § 16.47(a). Fees will not be charged where they amount, in the aggregate, to less than $3.00. 28 C.F.R. § 16.46(a). Where fees are charged, the rates specified at 28 C.F.R. § 16.47(a) will apply. Any request for a fee waiver shall be referred promptly to the Executive Office.

1.6.1-4 Accounting of disclosures

The Executive Office and each United States Trustee office are responsible for keeping an accounting of all Privacy Act requests and of all disclosures of records made pursuant to the Privacy Act, whether requested in person or in writing. Accounting records shall include the identification of the particular record disclosed, the name and address of the person or agency to which disclosed, and the date of disclosure. 5 U.S.C. § 552a(c), 28 C.F.R. §§ 16.50.

1.6.2 Freedom of Information Act

1.6.2-1 Department of Justice regulations

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended (see A-1.14), provides that any person has a right of access, enforceable in court, to federal agency records unless those records fall into one of nine exempt categories of records. Those exemptions are listed in 5 U.S.C. §§ 552(b)(1)-(9). All records or portions thereof: (1) properly classified pursuant to Executive Order; (2) related solely to the internal personnel rules and practices of an agency; (3) specifically exempted from disclosure by statute; (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential; (5) inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency; (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy; (7) certain investigatory records compiled for law enforcement purposes; (8) contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency

responsible for the regulation or supervision of financial institutions; or (9) geological and geophysical information and data (including maps) concerning wells, are exempt.

Department of Justice regulations implementing the FOIA are set forth in 28 C.F.R. §§ 16.1.10.

The FOIA requires that an agency respond promptly to any request for access to records which has reasonably described the records sought and has been made in accordance with an agency's published procedural regulations. 5 U.S.C. § 552(a)(3)(A), (B). Department of Justice regulations require that all FOIA requests must be made in writing and clearly marked as a "Freedom of Information" or "Information Request". 28 C.F.R. § 16.3(a).

An agency in receipt of a proper FOIA request is required to inform the requester of its decision to grant or deny access to the requested records within 10 working days, and access to records should be made promptly thereafter. 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.5(a).

1.6.2-2 Executive Office Policy

All FOIA requests for access to records maintained by the United States Trustees, including any portion of the Manual, should be addressed to the Deputy Director for Legal Services, Executive Office. A request which has been improperly addressed to a United States Trustee field office or suboffice, or other component or agency, should be forwarded promptly to the Executive Office for processing. The Executive Office, after consultation with the field office, will notify the requester of the referral and make the determination whether to grant or deny access. 28 C.F.R. § 16.3(a). The Director is responsible for any denials of requests for information. 28 C.F.R. § 16.5(b).

Fees of ten cents per page are to be charged pursuant to 28 C.F.R. § 16.9. No fees will be charged where they amount, in the aggregate, to less than $3.00 for a request or series of related requests. 28 C.F.R. § 16.9(a).

1.6.2-3 Public nature of program records

As a general matter, most of the records contained in the United States Trustee offices consist of public

information or material that may be obtained from court records. An oral request made at a United States Trustee's office for access to these records (which would include tape recordings) will not be considered a FOIA request. The United States Trustee has discretion to decide whether to grant access or to refer the requesting party to the bankruptcy court.

Any request for internally generated records of the United States Trustee's office will be considered a FOIA request and appropriate for referral to the Executive Office. As noted above, all such requests must be made in writing.

1.6.3 Disclosure of information upon demand

The procedures to be followed with respect to the production or disclosure of information by United States Trustees and members of their staffs in connection with any court proceeding are subject to the requirements of 28 C.F.R. §§ 16.21-16.29.

Upon receipt of a demand, the United States Trustees should:

-- notify the Executive Office as soon as possible that a demand for information has been made, and of the circumstances surrounding the demand, in all cases in which the United States is not a party. This notification will allow the Executive Office to make a determination regarding the appropriateness of the disclosure or production of the requested information. 28 C.F.R. §§ 16.22, 16.24, 16.26. In instances where the United States is a party, the Executive Office should be notified when any of the factors specified in 28 C.F.R. § 16.26(b) exist.

-- notify the United States Attorney for the district from which the demand originated in all cases in which the United States is not a party (28 C.F.R. § 16.22(b));

-- if the demand for information is in the form of a request for oral testimony in a case or matter in which the United States is not a party, the United States Attorney must receive an affidavit

or, if an affidavit is not feasible, a statement from the party, or from the party's attorney, setting forth a summary of the testimony sought and its relevance to the proceeding. The testimony sought must then be limited to the scope of the summary. Similarly, where information other than oral testimony is sought, a summary of the information sought and its relevance to the proceeding must be received by the United States Attorney. In a case where the United States is a party, the summary regarding oral testimony must be provided to the Department attorney handling the case or matter (28 C.F.R. §§ 16.22(c) and (d); 16.23(c));

-- if a demand is made and there is inadequate time to comply with the above-prescribed procedure, a "responsible official" (see 28 C.F.R. § 16.24) or other Department attorney designated for the purpose, is to appear, apprise the court of the regulations, and respectfully request a stay of the demand until instructions have been received.

The regulations apply to <u>any</u> request or demand for information. This includes interrogatories, depositions, subpoenas to testify in a federal or state

court proceeding and Bankruptcy Rule 2004 examinations. The policy of the Department of Justice and of the Executive Office is not to inhibit the access to information in a proceeding, but to be mindful of what information may legitimately be protected.

1.7 POLITICAL ACTIVITIES

1.7.1 Statutory Provisions

The Hatch Act, now codified as sections 7324 to 7327 of title 5, United States Code (see A-1.15), prohibits federal employees from taking an active part in political management or campaigns. Indeed, the Department of Justice has maintained a long-standing policy requiring compliance with the Hatch Act by all of its employees, including appointees who are exempt from coverage by the statute. For a memorandum to all Offices, Boards, Divisions, and Bureaus from Attorney General William French Smith (July 9, 1982), see A-1.16. It also prohibits them from using their official authority or influence to interfere with or affect the result of an election. See also chapter 29 of title 18, United States Code, for criminal statutes relating to elections.

An employee does, of course, retain the right to vote and to express opinions on political subjects and candidates. Moreover, certain non-partisan political activities are permitted pursuant to 5 U.S.C. § 7326 -- i.e., local elections where the candidates are not identified with a national party, such as elections to a school board, or questions not specifically identified with a party, such as constitutional amendments, referendums, approval of municipal ordinances, etc....

Section 7325 of title 5 provides that an employee who violates 5 U.S.C. § 7324 is to be removed from his position and may not be paid from funds appropriated for that position. The only exception provided is for cases where the Merit System Protection Board finds, by unanimous vote, that removal is not warranted. In that event, a penalty of not less that 30 days' suspension without pay is to be imposed.

1.7.2 Regulatory Provisions

Department of Justice Regulations concerning partisan political activities are set forth at 28 C.F.R. § 45.735-19. For procedures applicable to disciplinary actions, see Administrative Manual -- Personnel.

1.8 OTHER RESTRICTIONS ON CONDUCT

The discussion below represents a summary of the various provisions that may regulate government employees' conduct. Careful reference should be made to the relevant regulations to determine the propriety of particular actions.

1.8.1 Relations With Media

The Department of Justice has promulgated various guidelines that govern relations with the news media. These guidelines regulate, inter alia, the issuance of subpoenas to representatives of the news media, the interrogation, indictment, and arrest of such representatives, and the circumstances under which a government attorney may move for or consent to closure of a judicial proceeding. In addition, certain guidelines govern the availability of information to the news media in criminal and civil matters.

1.8.1-1 Legal actions against members of the media

The provisions of 28 C.F.R. § 50.10 address the issuance of subpoenas to members of the news media, subpoenas for telephone toll records of members of

the news media, and the interrogation, indictment, or arrest of members of the news media. The thrust of the guidelines is to provide protection for the news media from forms of compulsory process, civil or criminal, which might impair the news gathering function. There exists a balancing of the concern for the work of the news media and the Department's obligation to the fair administration of justice. The guidelines set forth in section 50.10 require members of the Department to make all reasonable attempts to obtain information from alternative sources and to pursue negotiations with the media. No subpoena may be issued to any member of the news media or for the telephone toll records of any member of the news media without the express authorization of the Attorney General. The guidelines for requesting authorization for the issuance of a subpoena are enumerated in sections 50.10(f)(1) through (6), and 50.10(g)(1) through (4).

1.8.1-2 Closure of judicial proceedings

The provisions of 28 C.F.R. § 50.9 recognize the vital public interest in open judicial proceedings and foresee very few cases in which closure would be warranted. Department policy dictates that a position

should be taken by the government on any motion to close a judicial proceeding, ordinarily opposing closure. Specific guidelines are set forth in sections 50.9(c) and (d) and should be adhered to by all attorneys for the United States confronted with an issue of closure of judicial proceedings.

1.8.1-3 Release of information in criminal matters

The guidelines attempt to strike a fair balance between protection of individuals involved in proceedings with the Government, and the public's need for information to understand the problems of administering the Government. This balance is most successfully achieved when those responsible for administering the law and those representing the press and other media exercise sound judgment. 28 C.F.R. § 50.2.

Section 50.2(b) offers specific guidelines for the release of information when the subject concerns a criminal action. The guidelines concerning the release of information in criminal actions apply from the time a person is the subject of an investigation until the proceeding resulting from the investigation is terminated by trial or otherwise. No statement or

information should be given for the purpose of influencing the outcome of a defendant's trial or that may be reasonably expected to influence its outcome. Subsection (3) of 28 C.F.R. § 50.2 lists particular information that may be disseminated, including the defendant's name, age, residence, employment, marital status and similar background information. The overall focus of the guidelines in criminal actions is to avoid the "particular danger of prejudice" that may result from statements or disclosures that "ought strenuously to be avoided." 28 C.F.R. § 50.2(b)(5).

1.8.1-4 Release of information in civil matters

Section 50.2(c) limits personnel of the Department of Justice who are associated with a civil action from making or participating in making extrajudicial statements during the investigation or litigation of the action if a reasonable person would expect public dissemination of the statement to interfere with a fair trial and if the statement relates to certain matters enumerated in subsection (c). An exception to this limitation permits quotation from or reference to public records.

1.8.1-5 Media inquiries

The Department of Justice policy regarding responses to inquiries from members of the media is long settled. Factual questions concerning a particular case may usually be answered by the attorney or other individual primarily responsible for that case. When questions concern a program as a whole, policy matters, or issues that transcend individual cases and affect an aggregate of cases, they should usually be answered only by the United States Trustee, the Assistant United States Trustee, or the attorney in charge of a suboffice.

All other personnel are to notify the United States Trustee, Assistant United States Trustee, or attorney in charge, of any media inquiries they receive, the content of any answers they provide, and whether they referred the media representative to another individual.

1.8.1-6 Speeches, statements, and articles

The Office of Public Affairs of the Department reviews all speeches, statements, and articles by officials of the Department prior to their being made

available to the media. The review is not for the purpose of censorship, but to prevent inadvertent misstatements of Department policy and misinformation as to its views or intentions.

Whenever a speech, statement, or article dealing with Department policy is written by anyone in the United States Trustee System and it appears likely to receive more than local attention, it should be submitted to the Director, Executive Office. The submission should be made in time for the Director to approve it or to seek review by the Office of Public Affairs prior to its publication should that review appear appropriate.

1.9 LEGAL ACTIVITIES

1.9.1 Litigation Authority

The legislative history of the BRA made clear that the United States Trustees have the authority to litigate questions relating to their responsibilities and to the proper implementation of the provisions of the Bankruptcy Code. That legislative intent was reflected in Bankruptcy Rule X-1009 of the Federal Rules of Bankruptcy Procedure, and was ratified by

the 1986 Act by its addition of section 307 to the Bankruptcy Code.

1.9.2 Qualification

United States Trustees and attorneys in the offices need not be admitted to a particular state bar as a prerequisite to practice in the federal court since they are appointed officers of the Department of Justice. See 28 U.S.C. §§ 515-518 and 28 C.F.R. § 0.13. They must, however, be admitted to practice in the bar of some state, the District of Columbia, or Puerto Rico, and must be conducting federal business to qualify to practice law in federal court under these provisions. Note that a United States Trustee or an attorney can also be appointed a "special attorney" by the Attorney General pursuant to 28 U.S.C. § 515. The United States Trustee or attorney should, however, check with the court in the district or circuit to ensure that local practices are observed.

1.9.3 Certification of Constitutional Challenge

In the event that neither the United States Trustee nor any other component of the United States is involved in an action in which the constitutionality

of a provision of an act of Congress affecting the public interest is challenged, the court is required to certify that such an act of Congress has been challenged to the Attorney General. 28 U.S.C. § 2403. The United States Trustee should ensure that the court is aware of the certification requirements should a challenge to the Bankruptcy Code or, arguably, to the Rules of Bankruptcy Procedure promulgated pursuant to 28 U.S.C. § 2075 be mounted.

1.9.4 Authorization

1.9.4-1 Intervention

Authorization for the United States Trustee to intervene in a case in which a constitutional issue is raised must be obtained from the Solicitor General. 28 C.F.R. § 0.21. Any request for authorization will be made by the Director to the Solicitor General on behalf of the United States Trustee, if the Director deems intervention by the United States Trustee appropriate.

1.9.4-2 Appeals

The Office of the Solicitor General is responsible for determining all aspects of appeals. 28 U.S.C. § 518; 28 C.F.R. § 0.20. The Solicitor General may conduct, or assign and supervise all Supreme Court cases, including appeals, petitions for and in opposition to certiorari, briefs, and arguments, as well as the acceptance or reduction of compromise offers. 28 C.F.R. §§ 0.20(a), 0.160-0.163. The Solicitor General determines whether and to what extent appeals will be taken by the Government in all appellate courts, including petitions for rehearing en banc and extraordinary writs. 28 C.F.R. § 0.20(b). The determination whether a brief amicus curiae will be filed by the United States or whether and to what extent the United States will intervene in any appellate court, is also subject to the approval of the Solicitor General. 28 C.F.R. § 0.20(c).

A United States Trustee 1) must first apprise the Executive Office by phone of the case, and then 2) must submit a written request to the Director, with the specific facts that support the need for authorization by the Solicitor General and all documentation needed for proper review of the

request (transcripts of testimony should not be specially ordered for this purpose unless requested by the Director), in order to appeal or to participate as intervenor or amicus curiae in any appellate court. If authorization is sought to appeal an order of the district court, the written request must be sent promptly (preferably within two days after receipt of an adverse decision in the district court or after the opposing party has filed its notice of appeal).

A district court is not an "appellate" court for the purpose of this guideline, but prior approval of the Director must be obtained before any appeal of a bankruptcy court decision is filed. The request for approval may be made by phone if time is of the essence. Appropriate information and documentation should, however, be provided the Director as soon as practicable. In addition, an Appeal Authorization Form (see form at A-1.21) must be completed and the original forwarded to the Executive Office. A copy of the form should be retained by the field office for its records. This form serves to memorialize any oral contact regarding appeal requests.

A copy of the brief to be filed is to be submitted to the Director in time to allow review prior to filing the brief with the district court.

A request for approval of an appeal to a United States Circuit Court should be in the following format:

-- The first heading should give the name of the case, the designation of the court entering the ruling, e.g., U.S.D.C. S.D.N.Y., the court number of the case, the date of the order, and the date the opposing party filed a notice of appeal, if applicable.

-- Time limit: The initial sentence should be in capital letters indicating when the time expires for seeking appropriate review.

-- Recommendation: This paragraph should state why review is necessary and the name of the court to which the review should go.

-- Questions presented: A clear and succinct statement of the issues presented for review should be provided.

-- Statement: This paragraph should summarize as briefly as possible the facts necessary for resolution of the question presented.

-- Discussion: This should state the arguments for or against seeking review and should include citations to relevant authorities.

Once the Executive Office has determined the merits of pursuing a particular course of action, the Executive Office will submit the request together with its recommendation to the Solicitor General. You should be aware that each request is then sent to any component with a possible interest in the issue or issues presented and, in our case, always to the Appellate Branch of the Civil Division which could decide to litigate the issue itself. The Appellate Branch, in turn, sends a written recommendation in support of or against authorization, also in the nature of a memorandum of law. The office of the Solicitor General then reviews all the recommendations and provides the same sort of written memorandum with its recommendation to the Solicitor General for decision. If the opposing party has filed a notice of appeal, the Executive Office should be notified so

that it may be determined if the issue(s) on appeal conflict with Executive Office or Department of Justice policy.

Note that these requirements do not apply to a prophylactic motion for leave to file a brief amicus, a notice of appeal, or a motion to extend the time for filing a notice of appeal. Under the constraints of Bankruptcy Rule 8002, prompt action is obviously necessary in order to preserve the right to file a brief, or to appeal, pending approval. Should approval be withheld, the notice can be withdrawn pursuant to Bankruptcy Rule 8001(c) and, in the case of a motion for leave to file a brief or for an extension of time, the court should be advised that a brief, or a notice of appeal, will not be filed due to lack of authorization by the Solicitor General.

1.9.4-3 Steps to be taken in courts of appeals

1.9.4-3 (a) Preparation and transmission of record on appeal

Preparation and the transmission of the record on appeal should be made by the clerk of the district court to the court of appeals, in accordance with the provisions of Rule 10 and

Rule 11 of the Federal Rules of Appellate Procedure.

The United States Trustee should order from the reporter the necessary portions of the transcript to be included in the record on appeal, in accordance with Rule 10(b) of the Federal Rules of Appellate Procedure. The United States Trustee should also prepare, file, and serve any necessary designation of the parts of the record to be transmitted on appeal, and a statement of the issues to be presented on appeal, in accordance with any applicable rule of the particular district court or court of appeals, and should perform all other acts necessary to cause the record on appeal to be prepared and transmitted by the clerk of the district court to the court of appeals, in keeping with the provisions of Rule 10(a) and (b) and Rule 11(a) and (b) of the Federal Rules of Appellate Procedure.

If the United States Trustee is the appellee, the United States Trustee should file and serve any necessary counter-designation of additional portions of the transcript of trial proceedings to

be included in the record on appeal, or any necessary counter-designation of other parts of the record to be included in the record on appeal.

1.9.4-3 (b) Reproduction of record on appeal

After the record has been transmitted to, and filed in, the court of appeals, the necessary steps should be taken to bring about the preparation of the record appendix in compliance with the Federal Rules of Appellate Procedure and with any applicable local circuit rules, except in the Ninth Circuit where the entire record on appeal is generally reproduced under direct supervision of the clerk of the court of appeals.

1.9.4-3 (c) Preparation of briefs and oral arguments

Briefs should be prepared in accordance with the Fed.R.App.P. and with applicable local circuit rules.

In cases where the United States Trustee has the appellate responsibility in the court of

appeals, the Executive Office will from time to time advise the United States Trustee with respect to positions that should be taken in the court of appeals, as well as any cases that may not have been cited in the United States Trustee's briefs that the Executive Office believes to be of such importance as to be brought to the attention of the court of appeals.

A copy of all briefs filed by either side should be forwarded to the Executive Office, as promptly as possible after receipt.

Oral argument, if any, should be presented in accordance with applicable local circuit rules.

1.9.4-4 Motion for recusal or disqualification

The determination to seek, for any reason, the recusal or disqualification of a judge involves an extremely significant and sensitive decision, especially for Government attorneys.

The determination is, accordingly, subject to uniform procedures set forth at 28 C.F.R. § 50.19. The requirements are:

-- The recommendation of the United States Attorney for the district in which the matter is pending must be sought and forwarded with the necessary request for approval.

-- A request for approval must be made to the Assistant Attorney General for the Civil Division by the Director, in the absence of delegation of approval authority to the Director.

1.9.4-5 Approval of fees for expert witnesses

The Assistant Attorney General for Administration must approve the employment of expert witnesses before expenses are incurred. DOJ Order OBD 2110.13. See A-1.17. A schedule of rates normally paid to expert witnesses is included in the order; however, each attorney is expected to negotiate the best fee possible for the Department.

A request for authorization need only estimate the expenses and should be submitted on Form OBD-47.

(A copy is attached to the order.) The form is to be submitted to the Recommending Official in the Executive Office (Deputy Director for Administration) as soon as the need for expert testimony becomes apparent. The Executive Office will contact the requesting office when authorization is approved.

1.10 CRIMINAL REFERRALS

The United States Trustee should report to the appropriate United States Attorney information in cases in which there are reasonable grounds for believing that violations under chapter 9 of title 18 have been committed. 18 U.S.C. § 3057(a). A written report must include all of the facts and circumstances of the case, the names of any witnesses and the offense or offenses believed to have been committed. See A-1.18 for referral form. The principal criminal violations with regard to bankruptcy proceedings are set forth in 18 U.S.C. § 152 as: the concealment of property of the debtor's estate; the making of false oaths or accounts in a bankruptcy proceeding; the making of false declarations, certificates, verifications, or statements; the making of false claims against the estate; the fraudulent receipt of property from the debtor; bribery and

extortion in connection with the bankruptcy proceedings; transfer or concealment or destruction of documents; concealment of property in contemplation of bankruptcy; and the withholding of documents concerning the debtor's property and financial affairs from officers of the court. While section 152 is applicable to any party which commits the proscribed acts, 18 U.S.C. §§ 153 and 154 are only applicable to officers of the court. It is a felony under 18 U.S.C. § 153 for any trustee, custodian, marshal, or other officer of the court fraudulently to convert, embezzle, spend, or transfer property belonging to the debtor's estate, or to hide or destroy any document belonging to the estate. Under 18 U.S.C. § 154, any trustee, custodian, marshal, or other court officer who purchases property from an estate in his charge, or refuses to obey a court order allowing the documents and accounts of an estate to be inspected, is to be fined and immediately forfeit his office. Finally, 18 U.S.C. § 155 prohibits any fee arrangements between parties in interest in a case.

In addition to the foregoing "bankruptcy crimes", United States Trustees should be familiar with related criminal fraud statutes such as 18 U.S.C. §§ 1341 and 1342 (mail fraud), 18 U.S.C. § 1343 (wire fraud), 18

U.S.C. §§ 2312 and 2314 (interstate transportation of stolen property), and 18 U.S.C. § 1962 (RICO statute). While these crimes can arise in a variety of contexts, United States Trustees should be particularly aware of one particular fraud scheme known as the "bustout" since it often leads to a planned bankruptcy, or a series of apparently unrelated bankruptcies. Bustouts typically have inordinately high liabilities compared to assets, but the loss is spread over such a large number of creditors that each individual creditor often elects to absorb its loss rather than "throw good money after bad". The United States Trustee and the case trustee are in a position to detect the overall fraudulent scheme and to collect and organize the evidence first-hand for a strong criminal referral.

A copy of all referrals should be furnished to the Executive Office. In addition, the United States Trustee is responsible for informing all panel trustees of this procedure inasmuch as 18 U.S.C. § 3057(a) mandates that trustees in a bankruptcy case make reports of criminal violations to the United States Attorneys. See A-1.19 for United States Attorney's Manual, Title 9, Chapter 41 et seq. "Bankruptcy

Frauds." The United States Attorney will determine whether an FBI investigation should be conducted. In some jurisdictions, it may be expedient to contact the FBI directly. Based upon the outcome of an investigation, the United States Attorney will also decide whether criminal action is warranted.

1.11 COMPLAINTS AGAINST JUDGES

1.11.1 Complaint by a United States Trustee

If a decision to seek recusal or disqualification of a judge is "extremely significant and sensitive" (see Manual section 1.9.4-4 supra), a complaint against a bankruptcy judge by a United States Trustee is even more significant and sensitive.

If a United States Trustee should decide that a complaint must be lodged under 28 U.S.C. § 372 and no other person is willing to do so, the Director must be consulted immediately. If the Director agrees that a complaint is unavoidable, the same procedures will be followed as for a motion to recuse or disqualify, before referral of the complaint to the Director of the Administrative Office of the United States Courts, as provided in 28 U.S.C. § 153(b).

1.11.2 Complaint by others

1.11.2 (a) If the complaint is directly related to the merits of a decision or procedural ruling, the complainant should be advised that the proper avenue for obtaining redress is by way of appeal or other court proceeding. Any complaint going to the merits of decisions or rulings would be dismissed by the Chief Judge of the circuit, as would a frivolous one. See 28 U.S.C. § 372(c)(3)(A).

1.11.2 (b) If the complaint is in conformity with paragraph (1) of section 372(c), then the complainant can be advised of his right under section 372(c) to file a written complaint with the clerk of the court of appeals for the circuit, which must include a brief statement of the facts constituting the conduct underlying the complaint. The complainant should also be made aware of the procedures mandated by 28 U.S.C. § 372(c), and that neither the United States Trustee nor any other person is allowed to intervene or appear as amicus curiae in Judicial Council or Judicial Conference proceedings. 28 U.S.C. § 372(c)(13).

1.11.2 (c) Any written inquiry by a Congressman on behalf of a constituent involving the conduct of a member of the judiciary should be forwarded to the Director for transmittal to the Director of the Administrative Office for response. The Congressman should be advised that the matter has been referred to the Director.

1.12 REPRESENTATION

The Department of Justice regulations pertaining to representation in civil proceedings are set forth in 28 C.F.R. §§ 50.15 and 50.16. Representation is not available in federal criminal proceedings. It may be provided in state criminal proceedings under the conditions and provisions set forth in 28 C.F.R. §§ 50.15(a)(4)-(6), 50.15(b). Note also that the United States is not liable for any money judgment rendered against United States Trustees or other employees individually, nor for punitive damages. 28 C.F.R. § 50.15(a)(7)(iii). The Department of Justice may, however, indemnify an employee if the Attorney General or his designee determines that indemnification is in the interest of the United States. 28 C.F.R. § 50.15(c).

In accordance with the regulations, when an employee of the system wishes to be represented by the Department, the Director should be advised, through the Deputy Director for Legal Services, of the employee's involvement as a defendant, and provided copies of the summons and of all pleadings. A detailed review of the facts and circumstances of the case, including the facts surrounding any allegations, should also be provided. In addition, all possible defenses and arguments that may reasonably be raised should be included. This information will be used as a basis for determining whether the case warrants an endorsement to the Civil Division and will also be used by the Civil Division in determining whether to take the case. Note that no special form of request is required when it is clear from the pleadings that an employee is being sued solely in an official capacity and only equitable relief is sought. 28 C.F.R. § 50.15(a).

In addition to the foregoing, a separate formal request signed by the employee is required to obtain representation by the Civil Division. This request should accompany the submission of the pleadings and summons and should state the following: (1) the employee was named as a party defendant in a civil

action; (2) the employee was acting within the scope of employment; and (3) representation is requested.

Upon receipt of all the pertinent materials, the Executive Office will review the case and determine whether representation appears appropriate. Upon a favorable evaluation by the Executive Office, which must include a determination that the employee was acting within the scope of employment and that representation is in the best interests of the United States, the Director will endorse the request and forward it to the Assistant Director of the Torts Branch, Civil Division, Department of Justice. The Civil Division will in turn evaluate the request and the pleadings, and make an independent determination whether representation is appropriate. If it is determined that representation will be provided, the case will be assigned to the United States Attorney in the district in which the case was filed. If the request is denied, the Civil Division will notify the Executive Office in writing that it declines to provide representation. If timely processed, a negative determination should not affect the ability of private counsel to raise any defenses the United States Trustee or the employee might otherwise have raised.

In instances where the need for representation is immediate or within too short a time to allow for completion of the foregoing procedures, the Executive Office will initiate an emergency phone request to the Civil Division or local United States Attorney's Office. The United States Attorney's Office is, however, authorized to provide representation without prior Civil Division approval for the limited purpose of requesting an extension of time in which to answer the complaint until formal representation approval is obtained. See Torts Branch Represenation Monograph I at A-1.20.

In such situations, representation will be conditional, and the formal request and documentation described above must still be provided. Where claims are filed in state courts, notice should be given by telephone to expedite the request for representation in light of the usually short amount of time in which to answer. Prompt notice will assist the Civil Division in removing the state claims to federal court.

It is essential that the United States Trustee or the employee act promptly when served with a summons and complaint in either an official or individual capacity. If a United States Trustee or an employee

is sued in United States District Court in an official capacity, the defendant will usually receive 60 days in which to answer the complaint. When sued as an individual, however, as few as 20 days may be available in which to respond. The sooner notice is given to the Civil Division, the better able the Division will be to prepare adequate representation and raise all appropriate defenses. If the request for representation should be denied, the sooner the Executive Office is notified, the more time there will be to prepare the case with private counsel. Note that, under certain circumstances, private counsel may be retained at government expense. See 28 C.F.R. §§ 50.15(a)(6), (a)(9), (a)(10); 50.16.

For the proper procedure to follow with respect to the production or disclosure of information in connection with federal and state proceedings, see Manual section 1.6.3.