

commissions or fees for the referral of debtors to debtor schools, to credit counselors or for providing debtor education.

The standing trustee and the employees of the office of the standing trustee shall sign and submit to the United States Trustee an annual certification of compliance with this section.

#### **G. PROHIBITION OF ADVERTISING**

The standing trustee may not advertise in newspapers or other public information media, or take any other action that could reasonably be interpreted as encouraging debtors to file petitions under chapter 13 of the Bankruptcy Code. A standing trustee may disseminate information to interested persons about chapter 13, and may participate in meetings, educational seminars, or institutes concerning chapter 13.

#### **H. DUTY TO COMPLY WITH APPLICABLE EMPLOYMENT RELATED LAWS**

The standing trustee must comply with all applicable federal, state and local employment related laws. The following federal laws may apply:

1. **Equal Opportunity Laws:** The standing trustee must maintain a workplace free of discrimination. The standing trustee must comply with all applicable equal opportunity laws and must not discriminate against employees or job applicants on the basis of race, color, religion, sex, national origin, age or disability.
2. **Sexual Harassment:** The standing trustee must be provide a work environment that is free of discrimination and unlawful harassment. A complaint procedure should be established and included in the operation's personnel manual. Employees should be made aware of complaint procedures.
3. **Fair Labor Standards Act:** The standing trustee must comply with the Fair Labor Standards Act and any applicable state or local employment laws.
4. **Immigration Laws:** The standing trustee must comply with the Immigration Reform and Control Act of 1986 and must employ only United States citizens and aliens who are authorized to work in the United States. The standing trustee must not unlawfully discriminate on the basis of citizenship or national origin.
5. **Americans with Disabilities Act:** The standing trustee must comply with the Americans with Disabilities Act to the extent applicable.

## **C. ACCOUNTING REPORTS**

### **1. Final Reports**

Subject to FRBP 1019, a final report and account must be filed promptly for each chapter 13 case after final distribution and after all checks relating to the case, including checks tendering funds to the court, have cleared the bank. The trustee should not file a final report and account until the debtor's account balance is zero. The final account must show all receipts from the debtor and all disbursements made to each creditor by the standing trustee during the reporting period.

### **2. Periodic Debtor Reports**

Periodic debtor reports should be mailed by the standing trustee, at least annually, to the debtor and the debtor's attorney. The report will show all receipts from the debtor and disbursements made by the standing trustee during the reporting period. Additionally, the report must indicate the debtor's undistributed funds on hand. The standing trustee must maintain a copy of these reports or certify to the United States Trustee that the reports have been sent to the debtor.

See Appendix I for sample periodic debtor reports.

### **3. Monthly Reports**

Monthly reports are required to monitor actual expenses against approved budgeted expenses, monitor the amount of a standing trustee's bond, monitor disbursements to creditors, and monitor collateralization of funds pursuant to 11 U.S.C. § 345, as well as to determine any necessary adjustment to the standing trustee's percentage fee. The report to the United States Trustee must be sent within thirty (30) days after the end of the month unless otherwise stated by the United States Trustee.

See Appendix J for a sample monthly report.

### **4. Annual Reports**

The standing trustee must submit an Annual Report in the format prescribed by the Executive Office for United States Trustees for the period covering October 1 to September 30, or for the portion of the fiscal year during which the standing trustee serves. Annual reports are to be submitted to the United States Trustee no later than November 15 following the end of the fiscal year, or if the standing trustee does not serve through the end of the fiscal year, within 45 days from the end of the period in which the standing trustee served.

The report states the gross amount received by the standing trustee, the amounts disbursed under plans, the amounts disbursed to the operating expense trust account for compensation and expenses, the amount of interest earned, the

If the service provider processes financial transactions on behalf of the trust, the standing trustee should consider whether the service provider should have an independent audit of its internal controls over transaction processing. See Statement of Accounting Standards No. 70. Software utilized by the standing trustee for accounting processes should have internal controls.

## **2. Accounting Manual and Systems Documentation**

The uniform recording of transactions is essential to the production of reliable reports. Accordingly, it is essential that instructions be established for processing routine transactions.

Where the records are automated, systems documentation should be maintained. Systems documentation is comprehensive written information about a software system which explains what it does, how it works and how it operates. It enables design problems to be identified and corrected and provides instructions for new users on how to operate the system. A computer user list should be maintained. There are other computer security issues involved. The standing trustee should be familiar with the security issues and implement appropriate controls.

## **3. Security**

The integrity and accuracy of the computerized systems are critical to the administration of cases. Consequently, there are special internal control considerations that arise in a computerized environment. The standing trustee must ensure that the computer system used for chapter 13 case administration, financial reporting, and accounting contains the following security and internal control measures, at a minimum:

- a. The standing trustee should establish unique user passwords. User passwords should be changed at least every 90 days or upon termination of a user. Additional password controls are appropriate for certain functions, such as initiating bank account transfers or generating disbursement checks. Software should be capable of identifying the user.
- b. Access to change data fields, such as a creditor's name, address and distribution amounts should be further limited by password or data entry controls to those employees who have a need for access to these fields.
- c. In systems which access bank accounts via modem, the ability to access or to transfer funds should be limited to the standing trustee and one authorized employee.

- d. The software should contain a tamper-proof feature that consecutively numbers checks as they are printed. The software should prohibit the reuse of the check numbers of voided checks. The number sequence on manual checks should not duplicate the computer-generated numbers.
- e. The blank checks should also contain a control number. The standing trustee should maintain a log of these control numbers and account for every check that is used.
- f. The software should prevent the deletion of transactions.
- g. There are other computer security issues involved. The standing trustee should be familiar with the security issues and implement appropriate controls.
- h. "Exception reports ... .. kick out reports," "trace reports" or "error reports" generated by the computer system must be reviewed timely to ensure the integrity of data processed.
- i. Trace reports, which record all entries by user code and transaction types, are to be maintained in electronic data format for a period of not less than seven years. Hard copies or imaged hard copies are not an acceptable substitute. Trace files may be maintained on tape or CD format to avoid computer memory problems.
- j. The computer should be safeguarded from unauthorized access and use. Computer hardware and software should be in a secure, limited access area. Only authorized users should be able to gain access to the chapter 13 computer programs and data via the terminal network or modem.
- k. The computer program should include automatic edit checks to detect data entry, computer program and other errors.
- l. Data files should be backed-up daily. A copy of the backup should be stored offsite weekly. The backup diskette, tape, or other media should be tested or rotated periodically to ensure its continued reliability.
- m. The system should be backed up at least weekly.
- n. The standing trustee should review user profiles at least annually. This is necessary in order to insure that user profiles are consistent with user duties and are not incompatible with internal controls.

**F. INTERNAL CONTROL FEATURES**

The standing trustee must establish and maintain a system of internal controls to safeguard trust funds and property, to ensure the integrity of financial record keeping and reporting, and to discourage employee theft.

A strong internal control environment includes, but is not limited to, the components described below:

## **1. Personnel Management**

- a. The previous employment references of prospective employees should be checked by the standing trustee.
- b. The standing trustee must be actively involved in the entire standing trustee operation and must actively supervise employees in the performance of their cash management and accounting duties. Employee fraud indicators are provided at Appendix L.
- c. Documenting routine staff procedures and developing written job descriptions help the standing trustee ensure consistent staff performance.
- d. Unannounced rotation of duties is an important principle of internal control. The rotation should be of sufficient duration to be effective. Rotation of personnel also can be a valuable aid in the standing trustee's overall training program.
- e. Personnel policies should include effective training of employees before assignment to more responsible positions and evaluating and reviewing job performance with each employee. Records of employees' time and attendance should be maintained and reviewed by the standing trustee. Records should also be maintained to document overtime worked for which staff are paid.
- f. The standing trustee should implement a vacation policy which provides that active employees be absent from their duties for an uninterrupted period of not less than one week. In order for this policy to provide an effective internal control, it is imperative that another employee assume the duties performed by the absent individual.
- g. All information associated with employee background checks should be handled in a confidential manner by the trustee, and maintained in a secure location.

## **2. Segregation of Duties**

The participation of two or more persons in a transaction causes the work of one to serve as proof for the accuracy of the other. Ideally, duties should be arranged so that no one person is responsible for any transaction from inception to termination.

- a. The standing trustee must be actively involved in the process of issuing all checks, authorizing stop payments, and reviewing the monthly reconciliation of the bank statements.

- b. Wherever possible, cash handling duties should be separated from the record keeping functions. Internal controls are strengthened when the following duties are divided among the standing trustee and several employees: receiving and logging receipts in the cash receipts log; restrictively endorsing checks; preparing deposit slips; making deposits; reconciling bank statements; reconciling the cash receipts log to bank statements; and having custody of

attached the necessary information (i.e. debtor name, case number or debtor address) to identify where the funds are to be applied. Therefore, when the standing trustee is requested by an employer to accept electronic fund transfers, the standing trustee should set up procedures to ensure that the standing trustee receives sufficient information about a transfer to post it to a particular case at the time that the payment is received by the standing trustee.

- b. Transfers Initiated by the Standing Trustee at the Debtor's Request:** The standing trustee may initiate the transfer of funds electronically from the debtor pursuant to a prior agreement with the debtor. The standing trustee controls the timing of the transfer. To accomplish this transfer, the standing trustee provides the standing trustee's bank with prescribed information that will cause the funds to be drawn from the debtor's account and credited to the standing trustee's account. The standing trustee should consider the fact that payments can be returned for insufficient funds, lack of account or lack of authorization. The debtor has sixty (60) days from the time when the transfer first appears on the bank statement to dispute the transfer. In the meantime, the standing trustee may have received additional electronic fund transfers from that debtor. The standing trustee must then determine whether the other payments which have been received in the interim are authorized.

If a standing trustee is required by law to participate in electronic transfers of funds, the standing trustee must advise the United States Trustee. If the standing trustee elects to participate in this form of fund transfer, the standing trustee must seek authority from the United States Trustee to do so. In either event, it is imperative that the standing trustee evaluate and/or institute internal controls to compensate for any effect on the audit trail of monetary transactions.

## **7. Positive Pay**

A positive pay arrangement for the trust accounts provides significant protection to chapter 13 trust funds. To determine its feasibility the standing trustee should evaluate positive pay in terms of availability and cost, and any other unique factors. Positive pay for expense accounts should be evaluated on a case-by-case basis.

With a positive pay arrangement, the chapter 13 standing trustee generates and electronically transmits a check file to the bank daily or whenever a check is issued. That file contains the account number, check number, dollar amount and date issued. Although the name of the payee cannot be transmitted electronically, the bank contacts the standing trustee for this information whenever a discrepancy is detected. Specifically, the bank maintains the file of outstanding checks forwarded from the standing trustee and when checks are presented to the bank for payment, the bank performs a "positive" match on the check before paying funds. If a check presented to the bank for payment does not match the standing trustee's file, the bank places a hold on the check and contacts the standing trustee. For security purposes, the standing trustee should designate and notify the financial institution of an emergency contact in the standing trustee's office should the standing trustee not be available. Although a discrepancy may result from an innocent mistake (e.g., the standing trustee did not send an updated file to the bank), it may also indicate a check forgery.



## **8. Disbursements**

- a. Cashiers' checks may only be used under extraordinary circumstances, upon approval of the United States Trustee. A copy of the cashier's check and related documentation must be maintained in the case file. Counter checks may never be used.
- b. All checks must state that the check will be void if not cashed within 90 days. Stale outstanding checks must be canceled and reissued within 120 days.
- c. Debtor refund, conversion and dismissal payments must be made promptly by check.
- d. Procedures for electronic fund transfers should be discussed with the United States Trustee.

## **9. Maintaining Case Records**

- a. All cases, files, paper and computer accounting records, as well as the computer, should be stored in secure facilities, and not accessible to the public.
- b. The standing trustee should develop and maintain a written office disaster recovery plan for the financial and administrative records, as well as for the computer system and data. Off-site storage of backup files for all critical records should be maintained in the event of natural disaster or physical damage to the premises.
- c. Depending on the type of automated data processing software used, the standing trustee should request that the case records be made available in an ASCII format. If this is not possible, the standing trustee should find out if the vendor will provide an electronic copy of the standing trustee's case records. Either of these features enables standing trustees to transfer data more easily to another software product should the need arise.

## **10. Maintaining Debtor Accounts**

- a. The standing trustee should periodically monitor debtor accounts to identify and resolve negative balances on hand in a case. Action to cure negative balances shall be commenced by the standing trustee within 60 days.
- b. If funds are received in a closed case, the standing trustee may not post them to the case. Such funds shall be posted to the suspense account and promptly resolved.

## **11. Suspense Accounts**

- a. The standing trustee may use a suspense account for the deposit of unidentified cash receipts. If after twelve months, the source of the receipts remains unidentified, the standing trustee must request written approval from the United States Trustee to transfer these receipts to the expense fund. The written request should include a description of the steps the standing trustee has taken to try to identify the source of the funds and an acknowledgment that expense funds may have to be transferred to the trust account if the source is later determined. The standing trustee is required to monitor this type of receipt into the suspense account on a monthly basis.
- b. The standing trustee must also use the suspense account to post funds received in identified closed cases.

- c. Other uses of the suspense account should be rare and may include, for example, if two standing trustees are located in the same city, checks related to cases assigned to one standing trustee may be sent to another standing trustee in error. In that event, however, the funds should be transferred to the other standing trustee within 48 hours. Again, the standing trustee is required to monitor the suspense account on a monthly basis.
- d. Returned disbursement checks should not be deposited in the suspense account but must be deposited into the trust account and recorded into the individual debtor's case. The standing trustee should have procedures in place to turn these funds over to the registry of the Court if the correct recipient cannot be found. The check to the Court registry must clear the account before the case can be closed and a final report submitted, subject to FRBP 1019.

## **12. Credit Card Usage**

The standing trustee may obtain a credit card to be used for purchases that are actual and necessary to the trust operation provided that the standing trustee maintains documentation that will provide the auditor, and the United States Trustee upon request, with the detail for each purchase. A minimal annual fee may be authorized by the United States Trustee. Any benefits that accrue from the usage of the card will be applied to trust operations or forfeited. Additionally, any checks received from the credit card company are to be destroyed and no cash advances obtained. All credit card bills are to be paid in total each billing cycle unless there is an item in dispute or prior written approval from the United States Trustee is received. Incurring late fees and penalties will result in forfeiture of the credit card.

## **G. TAXES**

The tax obligations applicable to the standing trustee are generally discussed in this section. The standing trustee should consult with an attorney or accountant specializing in tax issues on any questions relating to tax returns or tax obligations of debtors and/or the standing trustee operation. Payment of such consultants from the expense fund requires prior approval of the United States Trustee.

### **1. Chapter 13 Debtors**

The standing trustee has no obligation to prepare or file tax returns for chapter 13 debtors. Sections 6012(b)(4) and 1398(a) of the Internal Revenue Code (IRC) only applies to a trustee in chapter 7 or to a chapter 11 case involving an individual. Under IRC §1398, when an individual files a chapter 7 or a chapter 11 case, a separate taxable entity known as the bankruptcy estate is

created. In these cases, the trustee is required to file tax returns for the bankruptcy estate. Since the chapter 13 debtor is not subject to the separate entity rules of IRC § 1398, the standing trustee has no obligation to prepare or file tax returns for the chapter 13 debtor.

However, if the debtor's case is dismissed prior to confirmation and the standing trustee has maintained the funds in an interest bearing account and more than

- g. **Noticing:** Charges incurred in providing noticing to interested parties, including postage, supplies and processing costs.
- h. **Telephone:** Charges for phone service.
- i. **Postage:** All postal charges and rental of post office boxes, except those related to noticing.
- j. **Office Supplies:** Charges incurred for consumable supplies and other property of little monetary value, such as hand-held calculators, except those related to noticing.
- k. **Bond Premiums:** Fees for premiums on surety bonds, including any premiums paid to bond an employee.
- l. **Clerk Fees:** Does not include any filing fees or other court costs that are provided to be paid under the plan.
- m. **Publications and On-Line Services:** Charges for subscriptions to and copies (paper or on-line) of journals and periodicals, books and directories as pertinent to the duties of the standing trustee. Includes charges related to on-line research services, including PACER and Internet. Standing trustees should consider the necessity of obtaining both hard copy and electronic versions of the same document.
- n. **Insurance, other than Employment Related:** Charges for premises liability insurance for the office of the standing trustee (such as fire, theft, accidental injury to property or third persons), workers' compensation insurance, errors and omissions insurance, and employment practices insurance. The standing trustee must maintain adequate insurance on the physical assets that are property of the office of the standing trustee. Policies for errors and omissions insurance and employment practices insurance must meet the minimum requirements established by the United States Trustee system. Costs of different types of insurance are to be identified separately. See Appendix N for minimum guidelines for errors and omissions insurance and Appendix O for requirements of employment practices liability insurance.
- o. **Training Expenses:** Job-related training of standing trustees and their employees is encouraged.
  - (1) **Training not Sponsored by the United States Trustee:** A standing trustee may use up to one percent of the fiscal year operating expense fund or \$6,500, whichever is greater, to provide training for employees and the standing trustee. A standing trustee does not have to receive preapproval for

organizations, fines for parking or traffic violations, and tax penalties (e.g., penalty for failing to pay employee taxes timely).

Another expense not otherwise classified is the charge for conducting background checks on prospective employees. Although it is standard procedure during the employee recruitment process to contact former employers, if approved through the budget process, standing trustees also may use an outside agency to conduct additional background checks on employee applicants. A background check by an outside agency may include such items as employee reference checks, credit checks, and public record searches. However, any background check should be conducted only with the written consent of the applicant and must, at all times, be in compliance with applicable state and federal laws.

## **2. Major Expenditures**

The standing trustee must obtain approval of the United States Trustee for a purchase of over \$2500 or more.

The standing trustee shall obtain a minimum of three price quotes, if available, when requesting the United States Trustee to approve a purchase of \$2,500 or more or a lease of personal property that exceeds \$5,000 over the term of the lease. Similarly, consulting contracts, other than for legal services, in the amount of \$2,500 or more require three or more price quotes. Pages 9-21 and 9-22.

This provision is designed to encourage competition among vendors of furnishings, computer equipment, other major expense items and among consultants. It is recognized that the lowest bid may not necessarily be the most cost-effective choice for a standing trustee's needs. If fewer than three vendors or consultants are able to provide the product needed, a standing trustee should demonstrate to the United States Trustee's satisfaction all efforts to find other sources.

## **3. Operating Reserve**

The standing trustee, with approval of the United States Trustee, may carry over from one year to the next up to seventeen percent (17%) of the authorized expense fund, less standing trustee compensation. For purposes of § 586, the operating reserve is considered an actual, necessary expense and part of the standing trustee's budget. Because the standing trustee is on a cash basis of accounting, an operating reserve provides for funds to meet ongoing obligations in the first part of the new year.

The operating reserve also may be used to pay creditors the amount of any misdisbursement. The standing trustee must receive authorization from the United States Trustee and must have documented reasonable efforts to recover a disbursement paid to the wrong party. Before requesting to use funds from the operating reserve, the standing trustee should look to the operation's errors and omissions insurance policy to determine if the misdisbursement exceeds the deductible.



Finally, the operating reserve may be used in extraordinary circumstances, all of which require prior approval by the United States Trustee. For example, when a determination has been made to create an additional standing trustee operation, the United States Trustee has several options, including dividing the current operation and appointing an additional standing trustee in the district. In such a situation, the existing standing trustee operation may increase its operating reserve in the expectation that a portion of the reserve will be transferred to help fund the new standing trustee operation during the start-up period.

Any amount over the 17% limit must be paid to the United States Trustee System Fund ("Fund") pursuant to 28 U.S.C. § 586(e)(2). The standing trustee should monitor receipts and disbursements on a monthly basis. When funds on hand are estimated to approach or exceed the 17% limit, the standing trustee must contact the United States Trustee and request a reduction in the percentage fee.

#### **4. Co-Trustee Operations**

The United States Trustee will not approve expenses to establish a new co-trustee operation. The commingling of financial and operational systems does not allow the United States Trustee to hold either standing trustee clearly accountable. In the event of financial or administrative deficiencies, the conduct of one trustee is indistinguishable from the other trustee in a co-trustee arrangement. In addition, the cost of the second trustee is unnecessary because there is no operational distinction between a co-trustee and a single trustee operation. Co-trustee operations in existence as of October 1, 1996, are not affected by this prohibition.

#### **5. Facilities and Equipment**

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

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

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

### **I. INFORMAL BUDGET DISPUTE RESOLUTION**

In the event that the standing trustee and the United States Trustee have a budget dispute that they are unable to resolve by negotiation, either party may utilize the Informal Budget Dispute Resolution Procedure. The procedure and forms are set forth in Appendix P. The procedure may apply to annual and amended budget disputes.



standing trustee will be advised approximately two weeks in advance of when the review will be conducted. The standing trustee will receive a letter from the United States Trustee discussing the review findings and must provide a written response. The standing trustee must have all records available and make every effort to ensure that all appropriate employees are on hand.

### **C. RETENTION OF RECORDS**

Individual case cash receipts and disbursement ledgers must be retained for not less than seven years from the date of filing of the case. The standing trustee's general ledger supporting each year's Annual Report must be retained for a period of not less than seven years.

The standing trustee must maintain all bank records, including bank statements, monthly bank reconciliations, canceled checks, and deposit slips, separate from individual case files and in chronological order, for a period of not less than seven years.

Trace reports must be maintained in electronic data format for a period of not less than seven years. Retention of paper copies is not required. Trace files may be maintained on tape or CD format to avoid computer memory problems.

Individual case cash receipts and disbursement ledgers, general ledgers, and the cash receipts and disbursement journal may be transferred to computer disk storage, diskette, or any other similar computerized form of record two years after the annual report covering those transactions has been submitted. Bank records also may be transferred five years after the report is submitted.

Individual case files must be retained for at least two years after an order closing the case and discharging the standing trustee is entered by the court. The decision whether to maintain case files more than two years after closing should be based on the standing trustee's individual need to refer to the file for subsequent inquiries from creditors or debtors. If the standing trustee has possession of original court documents, such as proofs of claim, the disposition of these should be in accordance with the guidelines or directives from the court or the clerk.

The United States Trustee maintains the § 341(a) meeting tapes unless the United States Trustee delegates in writing that responsibility to the standing trustee. If so delegated, the standing trustee shall maintain the tapes for a period of not less than two years from the date of the § 341(a) meeting. The tapes will be stored in a secure cabinet in chronological order. The standing trustee must make copies of the tapes available to any party in interest requesting a copy of the tape and the original tape of any meeting must be turned over to the United States Trustee or the court upon request.