

The Year in Review: Accomplishments in 2011

By

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Introduction

As I write this article, we are approaching the end of another year and once again we are amazed at the passage of time. Calendar year 2011 has been one of significant accomplishments that affected standing trustees. In this article, we will review various developments in the standing trustee area.

Final Rule on Review of Denial of Expenses

On June 30, 2011, a new rule took effect that governs the procedures for a standing trustee to obtain administrative review of a United States Trustee's decision to deny the trustee's claim of an actual, necessary expense.

The Bankruptcy Code requires that trustees exhaust all available administrative remedies before obtaining judicial review of an expense denial. The Code requires the Attorney General to develop implementation procedures for administrative review. The Attorney General delegated that duty to the United States Trustee Program (USTP or Program), and the Executive Office for U.S. Trustees (EOUST) published a proposed rule in 2009.

The final rule, codified in the Code of Federal Regulations (C.F.R.) at 28 C.F.R. § 58.11, ensures that the process for administratively reviewing a denial of trustee expenses is fair and has clear deadlines. The Program appreciates the NACTT's input into the development of the rule.

Trustee Security Issues

The security of standing trustees and their employees is of critical importance. Over the years, the Program has approved expenditures for office alarm systems, cameras, security guards at section 341 meetings of creditors and other reasonable office security measures.

The NACTT approached the USTP in 2011 with a proposal to hire a consultant to provide security services to trustees, including onsite evaluations, training on security issues, and the development of related policies and procedures. After discussing the proposed scope of the services, the Program approved the expenditure. The NACTT expects to roll out the security service shortly.

Trustee Benefits Review

Three years ago, the Program committed to review, periodically, the cash value of benefits provided to standing trustees to ensure that amount remained at an appropriate level. The standard set forth in 28 U.S.C. § 586(e)(1) is “the cash value of employment benefits comparable to the employment benefits provided by the United States to individuals who are employed by the United States at the same rate of basic pay to perform similar services....”

The commitment was met, with the assistance of the NACTT. After conducting an internal review and analyzing two proposals submitted by NACTT, the Program determined that the benefits valuation required an upward adjustment to reflect current benefits costs. This conclusion mirrored the findings of one of the proposals submitted by the NACTT. The USTP is grateful to the NACTT for its detailed analysis of this complex issue.

NACTT/IRS Liaison Committee

The NACTT/IRS Liaison Committee was established in 2010 to address issues of interest to the standing trustee community and the Internal Revenue Service (IRS). Through periodic meetings and conference calls, communications between the standing trustees and the IRS have improved at the national level. Trustees raise issues to their committee members, who work with the IRS representatives to resolve those concerns. Likewise, the IRS representatives can bring their concerns to the attention of the trustee committee members.

Among other issues, the committee has addressed IRS claims in bankruptcy cases, distributions to the IRS by electronic funds transfer, refunds by the IRS and concerns regarding forms. A special thank you is extended to standing trustee Albert Russo for leading this valuable liaison committee.

Document Production Best Practices

In 2010 the NACTT, the National Association of Bankruptcy Trustees and the National Association of Consumer Bankruptcy Attorneys began discussing how to reduce unnecessary document production. The EOUST and these three organizations formed a working group to examine trustee document request practices and identify those most cost-efficient.

The goal of the group was to develop a set of best practices that distinguished documents that should be routinely requested from those documents that are needed only in certain circumstances. The group met its self-imposed goal of delivering a recommendation within one year, which will be considered by the EOUST.

Trustee Transitions Best Practices

Best practices for trustee transitions were also addressed in 2011. During the last two fiscal years, eleven chapter 13 standing trustees resigned and one passed away. Transitioning to a new trustee can be time-consuming and unsettling for the trust operation staff and for the bankruptcy community as a whole.

While the Program uses various checklists, in conversations with the NACTT, it was agreed that the development of best practices would be helpful for trust operations in transition. The EOUST and the NACTT recently formed a joint working group to develop updated checklists and other tools that will help trustee offices quickly work through the steps necessary for a smooth transition.

Upcoming Efforts

This year, the USTP expects to publish in the Federal Register a proposed rule on procedures governing administrative review of a United States Trustee's decision to suspend or terminate a panel trustee or standing trustee. This rule will augment the October 1997 rule published at 28 C.F.R. § 58.6. With the publication of the proposed rule, the USTP will have completed all trustee-related rules required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

The USTP anticipates working closely with the NACTT on issues arising from the implementation of Bankruptcy Rules 3001(c) and 3002.1, which address enhanced creditor disclosures and required standing trustee noticing for claims secured by a security interest in a debtor's principal residence.

Each year brings new challenges that cannot be foreseen. The Program looks forward to working with the new NACTT leadership and has every expectation that the excellent working relationship between the two organizations will continue.