

## **EOUST Issues Updates to *Handbook for Chapter 13 Standing Trustees***

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### Introduction

In February 2014, the U.S. Trustee Program (USTP or Program) issued updates to the *Handbook for Chapter 13 Standing Trustees (Handbook)*. Some of these updates merely incorporated existing policy; others were new policy. This article discusses some of these changes.

### Conducting Meetings of Creditors Remotely

Program policy already permits standing trustees to conduct meetings of creditors remotely when extenuating circumstances in a particular situation prohibit the debtor from appearing at the meeting. Examples include a debtor's military service, a terminal illness, disability or incarceration. In these circumstances, meetings may be conducted either telephonically or by video conference.

Standing trustees are also authorized, with United States Trustee approval, to conduct meetings of creditors remotely on a regular basis. For example, such an arrangement may be authorized when the 341 meeting site is situated a great distance away from the trustee's office location. This arrangement reduces travel costs and saves travel time; standing trustees suggest it may also increase participation by interested parties such as creditors who could not otherwise take part in the meeting.

We have added guidance to the *Handbook* on conducting meetings remotely on a regular basis. The guidance includes procedures by which standing trustees may request authorization to use expense funds to purchase needed equipment to conduct the meetings; rent remote office space if government-provided space is not available; and, to the extent necessary, hire third parties located at the remote location to provide other needed services. We have also worked with the NACTT to develop protocols for conducting remote meetings by video conference. These protocols will address compliance with requirements such as administering oaths to the debtor and any interpreter, as well as verifying the debtor's identity and Social Security number. We hope to issue the protocols later this year.

### Training

The Program is committed to providing training opportunities for all staff members. We believe training is critical to develop and maintain professional standards, ensure the proper administration of cases and safeguard trust assets in accordance with fiduciary principles. To that end, almost 20 years ago we developed a training allowance for standing trustee operations. The allowance was initially tied to operating expenses but was later revised to track personnel costs

as we determined that payroll was a better indicator of training need than total expenses. The larger the payroll, the more funds were allowed for training. The training allowance functioned as a safe harbor – as long as training expenses were within the formula and the subject matter of the training course was directly related to the duties of the standing trustee or employee, the expenses were allowed.

Over the years we have adjusted the allowance upward. When we first created the safe harbor in 1996, the maximum training allowance was 1 percent of operating expenses, or \$5,000, whichever was greater. There were several subsequent adjustments, including the change from operating expenses to salaries as the basis for the calculation.

In 2006, we modified the training allowance to its current level – 4.5 percent of the standing trustee’s compensation amount plus 2 percent of total salary expense (employee salaries, overtime and bonuses), or \$10,000, whichever is greater. The \$10,000 minimum was designed to provide adequate training resources, even to very small operations, to the extent funds were available.

At the request of the NACTT, we recently reviewed our policy to ensure that the formula continues to provide a reasonable approach to funding necessary training. After review it was concluded the \$10,000 minimum training allowance should be increased to \$15,000. Instruction and transportation costs have increased over the last eight years. While increases in salaries for larger operations result in greater training funds that offset increased costs, very small operations with low payrolls were limited by the fixed \$10,000 allowance. In addition, very small offices tend to be in more remote areas where the cost of transportation to training sites is higher. We hope the additional funding will enable standing trustees to increase training opportunities for their employees. This change is included in the recent *Handbook* updates effective March 1, 2014.

#### Payment of Filing Fees and Unclaimed Funds

Program policy prohibits third parties from electronically accessing and debiting the trust account. The standing trustee’s bank can place a complete block on these types of transactions, ensuring that any withdrawals from the trust account are made only by paper check or by electronic transfer initiated by the standing trustee.

In 2013, several bankruptcy courts advised standing trustees they would no longer accept filing fees and unclaimed funds payments by check. Instead, the standing trustee was directed to use a court-provided software application that would allow the court to transfer funds out of the trust account electronically. We issued waivers of Program policy for those standing trustees affected by this change.

We anticipate this practice will spread to other bankruptcy courts as the use of paper checks decreases. Accordingly, we revised the *Handbook* to allow an exception for the bankruptcy court electronically to debit the trust account for the payment of court fees and unclaimed funds. The prohibition against debiting will remain in effect for all other third parties.

## Professional Organization Membership Fees

Until the fall of 2009, the use of expense funds for the payment of professional dues or membership fees was not allowed. At the request of the NACTT, we reconsidered this prohibition and allowed the use of expense funds for dues or membership fees for professional organizations directly related to job duties, but not to exceed \$1,000 in total. This authorization did not include expenses for mandatory bar membership dues, which remain a prohibited trust expense.

This year, the NACTT asked us to consider whether the \$1,000 limit was still appropriate. After review, we agreed that a higher limit was appropriate to allow greater participation in local organizations whose activities are related to chapter 13 job responsibilities. Consequently, we modified the *Handbook* to increase the allowance from \$1,000 to \$1,500 effective March 1, 2014.

## Credit Card Policy

As a general rule, the Program does not allow trust expenses to be charged to credit cards also used for personal expenses of the standing trustee or employees. It is a far better business practice to have a credit card that is used solely for trust expenses. This allows for more accurate accounting and greater transparency, and eliminates the appearance of personal gain that arises through the accrual of points or other rewards offered by the credit card issuer.

However, we are reconsidering this prohibition as it applies to travel-related expenses. For example, the use of a single trust credit card is often not practical when multiple employees attend a single training conference. In addition, we will clarify language in this section of the *Handbook* to eliminate confusion about our intent. We anticipate issuing a revision by the end of the year.

## Conclusion

The *Handbook* reflects current Program policy on chapter 13 case administration and financial oversight. As such, it is regularly updated to reflect new policies and changed circumstances. While we communicate these changes to the standing trustees, it is also important that the general bankruptcy community have access to them. The updated *Handbook* and the List of Changes and Updates are available on the Program's Web site at [http://www.justice.gov/ust/eo/private\\_trustee/library/chapter13/index.htm](http://www.justice.gov/ust/eo/private_trustee/library/chapter13/index.htm).