

**§ 58.36****28 CFR Ch. I (7-1-14 Edition)**

that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (h) of this section, which signature shall be either:

- (1) An original signature; or
- (2) In a format approved for electronic filing with the court (most typically in the form /s/ name of instructor).
- (k) An approved provider shall affix to the certificate the exact name under which the approved provider is incorporated or organized.
- (l) An approved provider shall identify on the certificate:

  - (1) The specific federal judicial district requested by the debtor;
  - (2) Whether an instructional course was provided in person, by telephone or via the Internet;
  - (3) The date and time (including the time zone) when instructional services were completed by the debtor; and
  - (4) The name of the instructor that provided the instructional course.

- (m) An approved provider shall affix the debtor's full, accurate name to the certificate. If the instructional course is obtained by a debtor through a duly authorized representative, the certificate shall also set forth the name of the legal representative and legal capacity of that representative.

[78 FR 16172, Mar. 14, 2013]

**§ 58.36 Procedures for obtaining final provider action on United States Trustees' decisions to deny providers' applications and to remove approved providers from the approved list.**

- (a) The United States Trustee shall remove an approved provider from the approved list whenever an approved provider requests its removal in writing.
- (b) The United States Trustee may issue a decision to remove an approved provider from the approved list, and thereby terminate the approved provider's authorization to provide an instructional course, at any time.
- (c) The United States Trustee may issue a decision to deny a provider's application or to remove a provider from the approved list whenever the United States Trustee determines that the provider has failed to comply with the

standards or requirements specified in 11 U.S.C. 111, this part, or the terms under which the United States Trustee designated it to act as an approved provider, including, but not limited to, finding any of the following:

- (1) If any entity has suspended or revoked the provider's license to do business in any jurisdiction; or
- (2) Any United States district court has removed the provider under 11 U.S.C. 111(e).
- (d) The United States Trustee shall provide to the provider in writing a notice of any decision either to:
  - (1) Deny the provider's application; or
  - (2) Remove the provider from the approved list.
- (e) The notice shall state the reason(s) for the decision and shall reference any documents or communications relied upon in reaching the denial or removal decision. To the extent authorized by law, the United States Trustee shall provide to the provider copies of any such documents that were not supplied to the United States Trustee by the provider. The notice shall be sent to the provider by overnight courier, for delivery the next business day.
- (f) Except as provided in paragraph (h) of this section, the notice shall advise the provider that the denial or removal decision shall become final agency action, and unreviewable, unless the provider submits in writing a request for review by the Director no later than 21 calendar days from the date of the notice to the provider.
- (g) Except as provided in paragraph (h) of this section, the decision to deny a provider's application or to remove a provider from the approved list shall take effect upon:
  - (1) The expiration of the provider's time to seek review from the Director, if the provider fails to timely seek review of a denial or removal decision; or
  - (2) The issuance by the Director of a final decision, if the provider timely seeks such review.
- (h) The United States Trustee may provide that a decision to remove a provider from the approved list is effective immediately and deny the provider the right to provide an instructional course whenever the United

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States Trustee finds any of the factors set forth in paragraphs (c)(1) or (2) of this section.

(i) A provider's request for review shall be in writing and shall fully describe why the provider disagrees with the denial or removal decision, and shall be accompanied by all documents and materials the provider wants the Director to consider in reviewing the denial or removal decision. The provider shall send the original and one copy of the request for review, including all accompanying documents and materials, to the Office of the Director by overnight courier, for delivery the next business day. To be timely, a request for review shall be received at the Office of the Director no later than 21 calendar days from the date of the notice to the provider.

(j) The United States Trustee shall have 21 calendar days from the date of the provider's request for review to submit to the Director a written response regarding the matters raised in the provider's request for review. The United States Trustee shall provide a copy of this response to the provider by overnight courier, for delivery the next business day.

(k) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(l) In reviewing the decision to deny a provider's application or to remove a provider from the approved list, the Director shall determine:

(1) Whether the denial or removal decision is supported by the record; and

(2) Whether the denial or removal decision constitutes an appropriate exercise of discretion.

(m) Except as provided in paragraph (n) of this section, the Director shall issue a final decision no later than 60 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time or the Director extends the deadline. The Director's final decision on the provider's request for review shall constitute final agency action.

(n) Whenever the United States Trustee provides under paragraph (h) of this section that a decision to remove a provider from the approved list is effective immediately, the Director shall

issue a written decision no later than 15 calendar days from the receipt of the provider's request for review, unless the provider agrees to a longer period of time. The decision shall:

(1) Be limited to deciding whether the determination that the removal decision should take effect immediately was supported by the record and an appropriate exercise of discretion;

(2) Constitute final agency action only on the issue of whether the removal decision should take effect immediately; and

(3) Not constitute final agency action on the ultimate issue of whether the provider should be removed from the approved list; after issuing the decision, the Director shall issue a final decision by the deadline set forth in paragraph (m) of this section.

(o) In reaching a decision under paragraphs (m) or (n) of this section, the Director may specify a person to act as a reviewing official. The reviewing official's duties shall be specified by the Director on a case-by-case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, and such other duties as the Director shall prescribe in a particular case.

(p) A provider that files a request for review shall bear its own costs and expenses, including counsel fees.

(q) When a decision to remove a provider from the approved list takes effect, the provider shall:

(1) Immediately cease providing an instructional course to debtors;

(2) No later than three business days after the date of removal, send all certificates to all debtors who completed an instructional course prior to the provider's removal from the approved list; and

(3) No later than three business days after the date of removal, return all fees to debtors who had paid for an instructional course, but had not completely received the instructional course.

(r) A provider must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

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