

Department of Justice

§ 58.4

part II, section III of Handbook X118 promulgated by the U.S. Office of Personnel Management) with a major in a business-related field of study or at least 20 semester-hours of business-related courses; or hold a master's or doctoral degree in a business-related field of study from a college or university of the type described above; or

(iv) Be a senior law student or candidate for a master's degree in business administration recommended by the relevant law school or business school dean and working under the direct supervision of:

(A) A member of a law school faculty; or

(B) A member of the panel of private trustees; or

(C) A member of a program established by the local bar association to provide clinical experience to students; or

(v) Have equivalent experience as deemed acceptable by the U.S. Trustee.

(7) Be willing to provide reports as required by the U.S. Trustee.

(8) Have submitted an application under oath, in the form prescribed by the Director, to the U.S. Trustee for the District in which appointment is sought: *Provided*, That this provision may be waived by the U.S. Trustee on approval of the Director.

§ 58.4 Qualifications for appointment as standing trustee and fiduciary standards.

(a) As used in this section—

(1) The term *standing trustee* means an individual appointed pursuant to 28 U.S.C. 586(b).

(2) The term *relative* means an individual who is related to the standing trustee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or an individual whose close association to the standing trustee is the equivalent of a spousal relationship.

(3) The term *financial or ownership interest* excludes ownership of stock in a publicly-traded company if the ownership interest is not controlling.

(4) The word *region* means the geographical area defined in 28 U.S.C. 581.

(b) To be eligible for appointment as a standing trustee, an individual must have the qualifications for membership on a private panel of trustees set forth in §§ 58.3 (b)(1)–(4), (6)–(8). An individual need not be an attorney to be eligible for appointment as a standing trustee. A corporation or partnership may be appointed as standing trustee only with the approval of the Director.

(c) The United States Trustee shall not appoint as a standing trustee any individuals who, at the time of appointment, is:

(1) A relative of another standing trustee in the region in which the standing trustee is to be appointed;

(2) A relative of a standing trustee (in the region in which the standing trustee is to be appointed), who, within the preceding one-year period, died, resigned, or was removed as a standing trustee from a case;

(3) A relative of a bankruptcy judge or a clerk of the bankruptcy court in the region in which the standing trustee is to be appointed;

(4) An employee of the Department of Justice within the preceding one-year period; or

(5) A relative of a United States Trustee or an Assistant United States Trustee, a relative of an employee in any of the offices of the United States Trustee in the region in which the standing trustee is to be appointed, or a relative of an employee in the Executive Office for United States Trustees.

(d) A standing trustee must, at a minimum, adhere to the following fiduciary standards:

(1) *Employment of relatives.* (i) A standing trustee shall not employ a relative of the standing trustee.

(ii) A standing trustee shall also not employ a relative of the United States Trustee or of an Assistant United States Trustee in the region in which the trustee has been appointed or a relative of a bankruptcy court judge or of the clerk of the bankruptcy court in the judicial district in which the trustee has been appointed.

(iii)(A) Paragraphs (d)(1) (i) and (ii) of this section shall not apply to a spouse

§ 58.4

28 CFR Ch. I (7-1-16 Edition)

of a standing trustee who was employed by the standing trustee as of August 1, 1995.

(B) For all other relatives employed by a standing trustee as of August 1, 1995, paragraphs (d)(1)(i) and (ii) of this section shall be fully implemented by October 1, 1998, unless specifically provided below:

(1) The United States Trustee shall have the discretion to grant a written waiver for a period of time not to exceed 2 years upon a written showing by the standing trustee of compelling circumstances that make the continued employment of a relative necessary for a standing trustee's performance of his or her duties and written evidence that the salary to be paid is at or below market rate.

(2) Additional waivers, not to exceed a period of two years each, may be granted under paragraph (d)(1)(iii)(B)(1) of this section provided the standing trustee makes a similar written showing within 90 days prior to the expiration of a present waiver and the United States Trustee determines that the circumstances for waiver are met.

(3) No waivers will be granted for a relative of the United States Trustee or of an Assistant United States Trustee.

(2) *Related party transactions.* (i) A standing trustee shall not direct debtors or creditors of a bankruptcy case administered by the standing trustee to an individual or entity that provides products or services, such as insurance or financial counseling, if a standing trustee is a relative of that individual or if the standing trustee or relative has a financial or ownership interest in the entity.

(ii) A standing trustee shall not, on behalf of the trust, contract or allocate expenses with himself or herself, with a relative, or with any entity in which the standing trustee or a relative of the standing trustee has a financial or ownership interest if the costs are to be paid as an expense out of the fiduciary expense fund.

(iii)(A) The United States Trustee may grant a waiver from compliance with paragraph (d)(2)(ii) of this section for up to three years following the appointment of a standing trustee if the newly-appointed standing trustee can

demonstrate in writing that a waiver is necessary and the cost is at or below market.

(B) The United States Trustee may grant a provisional waiver from compliance with the allocation prohibition contained in paragraph (d)(2)(ii) of this section if one of the following conditions is present:

(1) A standing trustee has insufficient receipts to earn maximum annual compensation as determined by the Director during any one of the last three fiscal years and provides the United States Trustee with an appraisal or other written evidence that the allocation is necessary and the allocated cost is at or below market rate for that good or service, or

(2) A chapter 13 standing trustee also serves as a trustee in chapter 12 cases and provides the United States Trustee with an appraisal or other written evidence that the allocation is necessary and the allocated cost is at or below market rate for that good or service.

(C) Except as otherwise provided in this paragraph, a standing trustee may seek a reasonable extension of time from the United States Trustee to comply with paragraph (d)(2)(ii) of this section. To obtain an extension, a standing trustee must demonstrate by an appraisal or other written evidence, satisfactory to the United States Trustee, that the expense is necessary and at or below market rate. In no event shall an extension be granted for the use and occupation of real estate beyond October 1, 2005. For personal property and personal service contracts, no extension shall be granted beyond October 1, 1998.

(3) *Employment of other standing trustees.* A standing trustee shall not employ or contract with another standing trustee to provide personal services for compensation payable from the fiduciary expense fund. This section does not prohibit the standing trustee from reimbursing the actual, necessary expenses incurred by another standing trustee who provides necessary assistance to the standing trustee provided that the reimbursement has been pre-approved by the United States Trustee.

(e) Paragraph (d) of this section is effective July 2, 1997. As to those standing trustees who are appointed as of

Department of Justice

§ 58.6

July 2, 1997, paragraph (d) will be applicable on the first day of their next fiscal year (i.e., October 1, 1997, for chapter 13 trustees and January 1, 1998, for chapter 12 trustees).

[62 FR 30183, June 2, 1997]

§ 58.5 Non-discrimination in appointment.

The U.S. Trustees shall not discriminate on the basis of race, color, religion, sex, national origin or age in appointments to the private panel of trustees or of standing trustees and in this regard shall assure equal opportunity for all appointees and applicants for appointment to the private panel of trustees or as standing trustee. Each U.S. Trustee shall be guided by the policies and requirements of Executive Order 11478 of August 8, 1969, relating to equal employment opportunity in the Federal Government, section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16), section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a), and the regulations of the Office of Personnel Management relating to equal employment opportunity (5 CFR part 713).

[Order No. 921-80, 45 FR 82631, Dec. 16, 1980, as amended by Order No. 960-81, 46 FR 52360, Oct. 27, 1981]

§ 58.6 Procedures for suspension and removal of panel trustees and standing trustees.

(a) A United States Trustee shall notify a panel trustee or a standing trustee in writing of any decision to suspend or terminate the assignment of cases to the trustee including, where applicable, any decision not to renew the trustee's term appointment. The notice shall state the reason(s) for the decision and should refer to, or be accompanied by copies of, pertinent materials upon which the United States Trustee has relied and any prior communications in which the United States Trustee has advised the trustee of the potential action. The notice shall be sent to the office of the trustee by overnight courier, for delivery the next business day. The reasons may include, but are in no way limited to:

(1) Failure to safeguard or to account for estate funds and assets;

(2) Failure to perform duties in a timely and consistently satisfactory manner;

(3) Failure to comply with the provisions of the Code, the Bankruptcy Rules, and local rules of court;

(4) Failure to cooperate and to comply with orders, instructions and policies of the court, the bankruptcy clerk or the United States Trustee;

(5) Substandard performance of general duties and case management in comparison to other members of the chapter 7 panel or other standing trustees;

(6) Failure to display proper temperament in dealing with judges, clerks, attorneys, creditors, debtors, the United States Trustee and the general public;

(7) Failure to adequately monitor the work of professionals or others employed by the trustee to assist in the administration of cases;

(8) Failure to file timely, accurate reports, including interim reports, final reports, and final accounts;

(9) Failure to meet the eligibility requirements of 11 U.S.C. 321 or the qualifications set forth in 28 CFR 58.3 and 58.4 and in 11 U.S.C. 322;

(10) Failure to attend in person or appropriately conduct the 11 U.S.C. 341(a) meeting of creditors;

(11) Action by or pending before a court or state licensing agency which calls the trustee's competence, financial responsibility or trustworthiness into question;

(12) Routine inability to accept assigned cases due to conflicts of interest or to the trustee's unwillingness or incapacity to serve;

(13) Change in the composition of the chapter 7 panel pursuant to a system established by the United States Trustee under 28 CFR 58.1;

(14) A determination by the United States Trustee that the interests of efficient case administration or a decline in the number of cases warrant a reduction in the number of panel trustees or standing trustees.

(b) The notice shall advise the trustee that the decision is final and unreviewable unless the trustee requests in writing a review by the Director, Executive Office for United States Trustees, no later than 20 calendar days from the date of issuance of the