

§ 58.27 Procedures for denying an application or removing a provider from the approved list, and the administrative review rights granted to denied or removed providers.

(a) As used in this section the term “provider” means a provider of a personal financial management instructional course.

(b) No administrative review will be granted to any applicant that submitted an incomplete application and had its application denied due to incompleteness and failed to subsequently submit a completed application.

(c) The provider shall be notified in writing of any decision denying the provider’s application or to remove the provider from the approved list (“notice”). The notice shall state the reason(s) for the decision and shall reference any documents or communications with the provider, which were relied upon in making the denial or removal decision. If such documents or communications were not provided to the United States Trustee or the EOUST by the provider, copies of the documents or communications shall be provided with the notice. The notice shall be sent to the provider by overnight courier, for delivery the next business day.

(d) The notice shall advise the provider that the decision is final unless the provider requests in writing a review (“request for review”) by the Director, Executive Office for United States Trustees (“Director”), no later than 20 calendar days from the date of issuance of the denial or removal notice. In order to be timely, a request for review must be received at the Office of the Director no later than 20 calendar days from the date of the removal notice to the provider.

(e) A decision to remove a provider from the approved list shall take effect upon the expiration of a provider’s time to seek review from the Director or, if the provider timely seeks such review, upon the issuance of a final written decision by the Director.

(f) Notwithstanding sub-paragraph (e) of this section, a decision to remove a provider from the approved list may include, or may later be supplemented by, an interim directive, which may

immediately remove a provider from the approved list. Such an interim directive may be issued if one or more of the following are specifically found:

(1) The provider made a material false statement on the application;

(2) The provider (board of directors, officer, manager, employee, counselor, or agent) has engaged in conduct that is dishonest, deceitful, fraudulent, or criminal in nature;

(3) The provider (board of directors, officer, manager, employee, counselor, or agent) has engaged in other gross misconduct that is unbecoming the provider’s position as an approved provider;

(4) Revocation of the provider’s license to do business in a particular state, provided the immediate removal shall apply only to the federal judicial districts within the particular state.

(g) The provider’s request for review shall fully describe why the provider disagrees with the denial or removal decision, and shall be accompanied by all documents and materials that the provider wants the Director to consider in reviewing the decision. The provider shall send a copy of the request for review, and the accompanying documents and materials, to the Director by overnight courier, for delivery the next business day, and must be received by the Director within 20 calendar days of the denial or removal notice.

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

(i) The Director shall issue a written decision no later than 45 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 period. That decision shall determine whether the denial or removal decision is supported by the record and the action is an appropriate exercise of discretion, and shall adopt, modify, or reject the denial or removal decision. The Director’s decision shall constitute final government agency action.

(j) In reaching a determination, the Director may specify a person to act as

a reviewing official. The reviewing official shall not be a person who was involved in the denial or removal decision. 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, or such other duties as the Director shall prescribe in a particular case.

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

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APPENDIX A TO PART 58—GUIDELINES
FOR REVIEWING APPLICATIONS FOR
COMPENSATION AND REIMBURSEMENT
OF EXPENSES FILED UNDER 11 U.S.C.
330

(a) *General Information.* (1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, et seq. (“Code”), in accordance with procedural guidelines (“Guidelines”) adopted by the Executive Office for United States Trustees (“Executive Office”). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) *Contents of Applications for Compensation and Reimbursement of Expenses.* All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. §330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.