

**Department of Justice  
Executive Office for United States Trustees**

**Final Agency Action  
Case No. 2019-0001**

**Review of the Decision of [REDACTED]  
[REDACTED]  
Denying Approval of Budget Item Sought by  
Chapter 13 Standing Trustee [REDACTED]**

[REDACTED] the standing chapter 13 trustee for the United States District of [REDACTED] requests review of the denial of approval by [REDACTED] [REDACTED] (“United States Trustee”) of \$515 in [REDACTED] State Bar dues as part of [REDACTED] budget.<sup>1</sup> Based upon the record before me, I affirm the United States Trustee’s decision.

**I. APPOINTMENT AND COMPENSATION OF CHAPTER 13 STANDING TRUSTEES**

A United States Trustee, with the approval of the Attorney General, may appoint a standing trustee, or designate an Assistant United States Trustee, to serve in cases in his or her region arising under chapter 13 of the Bankruptcy Code. 11 U.S.C. § 586(b). The United States Trustee shall supervise any individual appointed as a standing trustee. *Id.*

**A. The Role of Chapter 13 Trustees**

A chapter 13 standing trustee’s duties include: being accountable for property received; ensuring the debtor performs his or her stated intention with respect to the retention or surrender of property; investigating the debtor’s financial situation; if a purpose would be served, examining proofs of claims and objecting to claims that are improper; if advisable, opposing the discharge of the debtor; furnishing information regarding the estate and its administration as requested by parties in interest; making a final report and account of the administration of the estate; appearing and being heard at any hearing that concerns the value of property subject to a lien, confirmation of a plan, or modification of the plan after confirmation; disposing of moneys received in a chapter 13 case; advising, “other than on legal matters,” and assisting the debtor in the performance of the plan; ensuring the debtor commences making timely payments; and providing applicable notice regarding a claim of a domestic support obligation (if any). 11 U.S.C. § 1302.

---

<sup>1</sup> United States Trustees are officials of the Department of Justice who are appointed by the Attorney General. 28 U.S.C. § 581(a). The Director of the Executive Office for United States Trustees (the “Director”) is a Department of Justice official who acts under authority delegated by the Attorney General. 28 U.S.C. §§ 509, 510; *see also* 5 U.S.C. § 301 (head of an executive agency may prescribe regulations for the governance and operations of his or her department).

The Attorney General prescribes the qualifications for standing trustees, but such qualifications may not include a requirement that the individual be an attorney. 28 U.S.C. § 586(d)(1). To be eligible for appointment as a standing trustee, a person must either (a) be a member of a bar, (b) be a certified public accountant, (c) have a bachelor's degree with a major in a business-related field or 20 semester hours of business related courses, (d) be a law student or candidate for a master's degree in business administration recommended by the school and working with supervision, or (e) have equivalent experience deemed acceptable by the United States Trustee. *See* 28 CFR § 58.4(b) (incorporating 28 C.F.R. § 58.3(b)(6)).

Chapter 13 standing trustees are not prohibited from having businesses—including law practices—in addition to performing their role as a trustee. *See generally* 11 U.S.C. § 321(a) – (b) (specifying when a trustee may administer a case); 28 U.S.C. § 586(b) and (d)(1) (authorizing the Justice Department to appoint and set standards for the appointment of chapter 13 standing trustees); 28 C.F.R. § 58.4 (setting forth qualifications for appointment as a chapter 13 standing trustee).

### **B. The Compensation of Chapter 13 Standing Trustees**

Chapter 13 standing trustee compensation is governed by 28 U.S.C. § 586(e)(1). The statute provides that the Attorney General shall fix a percentage fee to be received by a chapter 13 standing trustee from bankruptcy cases for which he or she serves as a trustee based on a “maximum annual compensation” and “the actual, necessary expenses incurred by such individual as standing trustee.” 11 U.S.C. § 1326(b); 28 U.S.C. § 586(e)(1)(B), (e)(2).<sup>2</sup>

The statute defines “maximum annual compensation” as (1) “an amount not to exceed the highest annual rate of basic pay in effect for level V of the Executive Schedule,” and (2) “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 during the same period of time.” 28 U.S.C. § 586(e)(1)(A). The statute does not define “actual, necessary expenses.” *Id.* For purposes of calculating the cash value of employment benefits, the United States Trustee Program historically has looked to Assistant United States Trustees as comparable United States employees.

A United States Trustee may deny a chapter 13 standing trustee's claim for “actual, necessary expenses” for reasons that include, but are not limited to: failing to provide sufficient justification of the expense; failing to demonstrate that the expense is a cost-effective use of funds; failing to demonstrate the expense is reasonably related to the trustee's duties; failing to provide documents or information pertaining to the expense; and failing to demonstrate that the expense is directly related to office operations. 28 C.F.R. § 58.11(b).

The Executive Office for United States Trustees has published the *Handbook for Chapter 13 Standing Trustees* (Oct. 1, 2012) (“Handbook”), available at [https://www.justice.gov/sites/default/files/ust/legacy/2015/05/05/Handbook\\_Ch13\\_Standing\\_Tru](https://www.justice.gov/sites/default/files/ust/legacy/2015/05/05/Handbook_Ch13_Standing_Tru)

---

<sup>2</sup> The Attorney General has delegated this authority to the Director. *See* 62 Fed. Reg. 30172-01, 30172, 1997 WL 284838 (June 2, 1997).

stees\_2012.pdf (last accessed Feb. 11, 2019), a document that sets forth the position of the United States Trustee Program on a variety of matters, including budgets submitted by chapter 13 standing trustees for approval by the United States Trustee. The Handbook states that “Payment of professional licensing fees (including mandatory bar membership dues) for the standing trustee is not authorized.” Handbook at 6-7.<sup>3</sup>

A chapter 13 standing trustee may seek administrative review by the Director of the denial of a claim for an expense. 28 C.F.R. § 58.11(e) – (n). After exhausting available administrative remedies, the trustee may obtain judicial review of the Director’s final agency action denying a claim of “actual, necessary expenses.” 28 U.S.C. § 586(e)(3). The decision of the agency “shall be affirmed . . . unless it is unreasonable and without cause based upon the administrative record before the agency.” *Id.*

## II. COURSE OF THIS PROCEEDING

On July 9, 2018, ██████████ submitted ██████████ proposed budget for the 2018-2019 fiscal year, which included \$515 for ██████████ State Bar dues. Administrative Record (“AR”) 36-62. In a July 9, 2018, letter accompanying ██████████ proposed budget, ██████████ noted that \$35 of those dues pay for ██████████ membership in the ██████████ State Bar Bankruptcy Section. AR 37. ██████████ sent a second letter dated July 25, 2018, in support of that request. AR 68-69.

By letter dated October 1, 2018 (“Notice”), the United States Trustee for Region ██████████ notified ██████████ of ██████████ decision to deny ██████████’s request to include in ██████████ budget \$515 in bar dues. AR 1-2. The United States Trustee denied the request because (a) as the Handbook, at 6-7, states, “Payment of professional licensing fees (including mandatory bar dues) for the standing trustee is not authorized”; and (b) payment of bar dues is a benefit, and one that Assistant United States Trustees do not receive. *Id.*

By letter dated October 18, 2018 (“Request for Review”), ██████████ requested review of the United States Trustee’s decision by the Director. AR 3-30. ██████████ provided further detail in this letter, explaining that the \$515 in ██████████ State Bar dues ██████████ is requesting includes the following components:

- “Active Attorney Member – \$300.00”
- “State of ██████████ License Tax – \$25.00”
- “Lawyers’ Fund for Client Protection – \$20.00”
- “Disciplinary Counsel Assessment – \$125.00”
- “CLE Fee – \$25.00”
- “Bankruptcy Section Dues – \$20.00.”<sup>5</sup>

<sup>3</sup> ██████████ notes that the Handbook is not binding. AR 5. This decision is not based on the Handbook and I reference it here merely as useful background.

<sup>4</sup> This United States Trustee oversees bankruptcy matters in ██████████. 28 U.S.C. § 581(a) ██████████

<sup>5</sup> No explanation was provided for the discrepancy in amounts for Bankruptcy Section dues between the July 9, 2018 and the October 18, 2018 letters.

AR 3. ██████████ argues ██████████ is not seeking a benefit but payment of an actual and necessary expense because ██████████ has no attorney-employees on staff to litigate matters before the bankruptcy court when they arise in the chapter 13 cases ██████████ administers. AR 3-4. For that reason, ██████████ argues ██████████ personally must practice law as part of ██████████ duties as a chapter 13 standing trustee. *Id.* ██████████ further argues that the fact that Assistant United States Trustees are not reimbursed for bar dues does not warrant denial of ██████████ expense request because, unlike Assistant United States Trustees, ██████████ is not a government employee and ██████████ has fiduciary obligations “acting as a sole proprietor with quasi-judicial powers.” AR 4. ██████████ further argues that ██████████ has individual liability for business operations whereas Assistant United States Trustees do not have to pay the necessary expenses of their office operations. *Id.* Finally, ██████████ argues that there is no statutory prohibition on reimbursing bar dues to standing trustees and that, pursuant to a November 16, 2017, Attorney General Memorandum attached to ██████████ letter, the Handbook is not binding because there was no notice and comment on it. AR 4-5.

I requested the following additional information from the United States Trustee by e-mail on October 23, 2018, and asked that it be provided to ██████████ as well: (a) the request for budget approval made by ██████████ and any supporting materials submitted with it; (b) any communications with ██████████ regarding the request; and (c) the written denial of ██████████ ██████████'s request, including both the September 12, 2018, Notice Fixing Compensation and Percentage Fee and the e-mail from the standing trustee coordinator approving the budget with the exception of the \$515 in “Dues, Publications, & On-Line Services.” AR 31. The United States Trustee responded on November 5, 2018, providing me with the requested information (“Additional Information”). AR 32-106.

By letter dated November 8, 2018 (“UST Response” or “Response”), the United States Trustee responded to the Request for Review. AR 107-200. In ██████████ Response, the United States Trustee argues that payment of bar dues is a benefit rather than an expense item. AR 108-09. ██████████ explains that the cash value of benefits received by chapter 13 standing trustees is evaluated every three years and the cash value of ██████████'s benefits most recently was increased to \$63,732.19, or 43.3 percent of basic pay, effective October 1, 2017. *Id.* The United States Trustee states that “[t]he cash value of benefits excluded the payment of bar dues because the Federal Government does not pay bar dues for Assistant United States Trustees.” AR 109.

The United States Trustee argues that ██████████ has not shown that the denial of ██████████ bar dues was an inappropriate exercise of discretion or lacked support in the record. AR 109. First, the United States Trustee argues that ██████████ failed to explain why the fact that \$20.00 of ██████████ bar dues goes to “Bankruptcy Section Dues” should result in re-characterizing the state bar dues as an appropriate educational or training expense. *Id.* Second, the United States Trustee argues that ██████████'s assertion that ██████████ must practice law as part of ██████████ duties as a chapter 13 trustee is incorrect because being an attorney is not a requirement to be eligible to be appointed as a standing trustee. *Id.* Further, the United States Trustee argues that, when appearing in court in ██████████ capacity as a chapter 13 standing trustee, ██████████ would be appearing as a party, not as an attorney representing another party. *Id.* Third, the United States Trustee argues that even if ██████████ were required to have a law license, reimbursement of bar dues would still constitute a non-reimbursable benefit, as demonstrated by the fact that the

federal government does not reimburse bar dues to attorneys with the United States Trustee Program (including Assistant United States Trustees) who appear on behalf of the government. AR 110. Fourth, the United States Trustee argues that the fact that standing trustees are not government employees does not mean that they should not be compared to Assistant United States Trustees for benefits-calculation purposes. AR 110-13. The United States Trustee cites the statutory requirement that the cash value of benefits paid to standing trustees be “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 during the same period of time.” 11 U.S.C. § 586(e)(1)(A)(ii). AR 110. The United States Trustee argues that Assistant United States Trustees perform such “similar services” for purposes of determining the cash value of benefits, and discusses in detail the similarities between the duties, ethical obligations, qualifications, and compensation structure between Assistant United States Trustees and chapter 13 standing trustees. AR 110-13. The United States Trustee also notes that [REDACTED] has not identified any other United States employee who better fits the statutory definition and receives reimbursement of bar dues. AR 110. Finally, the United States Trustee acknowledges [REDACTED]’s argument that the Handbook is not binding and states that the denial of approval was based on 28 U.S.C. § 586(e)(1). AR 113.

The administrative record in this matter consists of the Notice, the Request for Review, the Additional Information and the UST Response, along with their respective attachments.

### **III. STANDARD OF REVIEW**

In conducting this review, I must determine:

1. whether the United States Trustee’s decision is supported by the record, and
2. whether the decision constituted an appropriate exercise of discretion.

28 CFR § 58.11(j) (specifying the scope of the Director’s review of a United States Trustee’s decision to deny a standing trustee’s claim of actual, necessary expenses).

### **IV. ANALYSIS**

The United States Trustee’s decision is supported by the record and constitutes an appropriate exercise of discretion.

Section 586 does not define “actual, necessary expenses.” 11 U.S.C. § 586(e)(1). Nothing in the statute requires approval of bar dues as such an expense. Likewise, section 586 does not explicitly prohibit such reimbursement to chapter 13 standing trustees. However, there is statutory and historical support for concluding that “actual, necessary expenses” do not include bar dues. And the United States Trustee exercised appropriate discretion in determining, based on the record here, that [REDACTED]’s [REDACTED] State Bar dues are not reimbursable as an “actual, necessary expense.”

The statute governing chapter 13 standing trustee compensation establishes three separate components on which a chapter 13 standing trustee’s percentage fee is based:

- (1) a salary component;
- (2) an employment benefits component, based on a cash value for employment benefits comparable to those received by certain United States government employees; and
- (3) “actual, necessary expenses.”

28 U.S.C. § 586(e)(1)(A). Specifically, the statute mandates that the percentage fee be fixed based on the “maximum annual compensation”—which includes “the cash value of employment benefits”—and “the actual, necessary expenses” incurred by the standing trustee. *Id.*

The plain language of the statute thus treats “actual, necessary expenses” as different from, and to be added to, the employment benefits component (included in the maximum compensation) for purposes of fixing the fee received by chapter 13 standing trustees. Accordingly, based on the language and structure of the statute, I read the employment benefits component of the maximum annual compensation and “actual, necessary expenses” as being separate for purposes of calculating the percentage fee to be received by a standing trustee.

Thus, the first question I must answer is whether reimbursement of bar dues would be an employment benefit if provided to a comparable employee of the United States. If so, such dues would be within the scope of the employment benefits component of standing trustee compensation—which is based on the cash value of employment benefits provided United States employees—and should not be reimbursed as an “actual, necessary expense.”

The second question is whether, even if reimbursement of bar dues would not be within the scope of the employment benefits component of standing trustee compensation, the United States Trustee’s refusal to approve that reimbursement as an “actual, necessary expense” constitutes an appropriate exercise of discretion.

Based on the record in this case and relevant legal authority, I find that reimbursement of bar dues falls within the employment benefits component of standing trustee compensation that [REDACTED] receives in accordance with 28 U.S.C. § 586(e)(1)(A)(ii). As such, [REDACTED] may not receive bar dues reimbursement because comparable United States employees do not receive reimbursement of bar dues as a benefit. *Id.*; DOJ Order 1200.1: Part 5. Workforce Development: Chapter 5-2, Payment of Expenses for Credentials, Accreditation, Licenses, Certification, and Examinations (March 26, 2004), available at <https://www.justice.gov/jmd/hr-order-doj12001-part-5-workforce-development-0> (last accessed Feb. 11, 2019) (“DOJ Order 1200.1”). Alternatively, even if reimbursement of bar dues did not fall within the employment benefits component of standing trustee compensation, I find that the United States Trustee exercised appropriate discretion in determining that [REDACTED]’s bar dues are not an “actual, necessary expense.”

**A. Reimbursement of bar dues falls within the employment benefits component of standing trustee compensation and thus bar dues are not recoverable as an “actual, necessary expense”**

Federal authorities have held, for over one-hundred years, that professional license fees necessary to perform a federal employee’s job, such as bar dues, are personal and thus not reimbursable. *See, e.g., United States v. Van Duzee*, 140 U.S. 169, 171 (1891) (“[I]t is the duty of persons receiving appointments from the government . . . to qualify themselves for the office.”); 3 GAO-RB pt. C, § 4 (G.A.O.), 2017 WL 4236243, at \*14 (2017) (“[E]xpenses of admission to the bar for federal attorneys are generally personal qualification expenses that the attorney must pay.”); 61 Comp. Gen. 357, 359, 1982 WL 26614, at \*2 (Apr. 16, 1982) (holding bar admission fees “are personal obligations of attorneys” and “not reimbursable”).

As explained by the United States Government Accountability Office, employees are expected to use their salaries, not appropriated funds, to cover personal costs. 3 GAO-RB pt. C, § 4 (G.A.O.), 2017 WL 4236243, at \*1 (2017). Professionals such as attorneys “are fully aware of the licensing requirements of their professions from the time they begin their professional education, and of the fact that society expects them to fully qualify themselves for the performance of their chosen professions. In that sense, the licensing requirements are considered to be more for the personal benefit of the individuals than for their employers.” *Id.* at \*15 (internal quotation marks omitted). Thus, just as “[e]mployees must bear the costs of commuting to and from their official duty stations each day,” they “also bear the costs necessary to present themselves to the government with the professional licenses that are necessary to perform their work.” *Id.* at \*1.<sup>6</sup>

In 2001, Congress gave agencies discretion (but did not require them) to reimburse certain employees for professional license fees. 5 U.S.C. § 5757.<sup>7</sup> The Department of Justice has not exercised its discretion to do so, and has continued its policy of not reimbursing its attorneys’ bar dues. *See* DOJ Order 1200.1 (providing that authority to pay professional license fees “may NOT be exercised on behalf of any employee occupying or seeking to qualify for . . . [a]ny attorney position”). Although Department attorneys are not reimbursed the costs of bar membership, being an active member in good standing of a bar in a United States jurisdiction is a requirement for being employed as an attorney with the Department. *See* <https://www.justice.gov/legal-careers/entry-level-and-experienced-attorneys-conditions-employment#a3> (last accessed Feb. 11, 2019).

Because the bar dues of government-employed attorneys have long been considered a personal cost borne by the employee, I conclude it is fair to determine that reimbursement of bar dues properly falls within the employment benefits component of standing trustee compensation.

---

<sup>6</sup> Although bar membership is not required for chapter 13 standing trustees, 28 U.S.C. § 586(d)(1), it is one of the ways someone may qualify for the office, *see* 28 CFR § 58.4(b); § 58.3(b)(6).

<sup>7</sup> The statute prohibits agencies from reimbursing such fees for employees in positions “excepted from the competitive service because of the confidential, policy-determining, policy-making, or policy-advocating character of the position.” 5 U.S.C. § 5757(b).

*Accord Levitin v. Nw. Cmty. Hosp.*, 2016 WL 5404600, at \*5 (N.D. Ill. Sept. 28, 2016) (describing payment of professional license fees as an employment benefit); *Brown Cty. Attorneys Assoc. v. Brown Cty.*, 487 N.W.2d 312, 314 (Wis. 1992) (holding collective bargaining agreement provision that county would continue “employee benefits or other amenities” included reimbursement of bar dues). Accordingly, such dues should not be reimbursed as a “necessary expense.”

██████████ and the United States Trustee disagree about whether comparison to Assistant United States Trustees is appropriate for determining the cash value of the employment benefits component of standing trustee compensation. While I find the United States Trustee’s arguments to be more persuasive, I do not need to decide that issue in this decision. The governing statutes and regulations provide for review only of denials of claims for “actual, necessary expenses” and do not provide for review of the employment benefits component of compensation under 28 U.S.C. § 586(e)(1)(A). *See* 28 U.S.C. § 586(d)(2), (e)(3) (providing review only for decisions suspending or terminating trustees or denying claims for “actual, necessary expenses”); 28 C.F.R. §§ 58.6, 58.11 (same).

**B. Alternatively, the United States Trustee exercised appropriate discretion in denying ██████████ reimbursement for ██████ bar dues as an “actual, necessary expense”**

Even if reimbursement of bar dues falls under the “actual, necessary expense” component rather than the employment benefits component of standing trustee compensation, I find that the United States Trustee’s decision to deny the reimbursement to ██████████ is supported by the record and constitutes an appropriate exercise of discretion.

██████████’s state bar dues are not a “necessary” expense that ██████ incurs “as standing trustee,” 28 U.S.C. § 586(e)(1)(B), because standing trustees are not required to be attorneys. 28 U.S.C. § 586(d)(1) (prohibiting Attorney General from requiring an individual be an attorney to qualify for appointment as a standing trustee). Further, standing trustees are free to use their law license for their own benefit, including having an outside law practice. ██████████ previously has stated that ██████ has no outside law practice. AR 69. However, there is no prohibition against ██████ having one in the future even while ██████ is a standing trustee.

**V. CONCLUSION**

Based upon my review of the record, and for all of the foregoing reasons, I affirm the United States Trustee’s decision to deny approval of the inclusion of ██████████’s bar dues in his budget.

This decision constitutes final agency action in this matter.

Dated: 3/4/19



Clifford J. White III, Director  
Executive Office for United States Trustees