

proposed rule to amend the Customs and Border Protection (CBP) regulations to require both importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the United States by vessel. The proposed rule was published in the **Federal Register** on January 2, 2008, and the comment period was scheduled to expire on March 3, 2008.

DATES: Comments on the proposed rule must be received on or before March 18, 2008.

ADDRESSES: You may submit comments, identified by *docket number*, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2007-0077.

- *Mail:* Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, 1300 Pennsylvania Ave., NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and document number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of the proposed rule.

Docket: For access to the docket to read the notice of proposed rulemaking, background documents, or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Richard Di Nucci, Office of Field Operations, (202) 344-2513.

SUPPLEMENTARY INFORMATION:

Background

Notice of Proposed Rulemaking

CBP published a notice of proposed rulemaking in the **Federal Register** (73 FR 90) on January 2, 2008, proposing to require both importers and carriers to submit additional information pertaining to cargo before the cargo is brought into the United States by vessel.

Under the proposed rule, CBP must receive this information by way of a CBP-approved electronic data interchange system. The proposed regulations are specifically intended to fulfill the requirements of section 203 of the Security and Accountability for Every (SAFE) Port Act of 2006 and section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

The notice of proposed rulemaking invited the public to comment on the proposal. Comments on the proposed rule were requested on or before March 3, 2008.

Extension of Comment Period

In response to the proposed rule published in the **Federal Register**, CBP has received correspondence requesting an extension of the comment period. A decision has been made to grant an extension of 15 days. Comments are now due on or before March 18, 2008.

Dated: January 29, 2008.

Sandra L. Bell,

*Executive Director, Regulations & Rulings,
Office of International Trade.*

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DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No: EOUST 102]

RIN 1105-AB17

Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees

AGENCY: Executive Office for United States Trustees ("EOUST"), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking ("rule") sets forth proposed procedures and criteria United States Trustees shall use when determining whether applicants seeking to become and remain approved nonprofit budget and credit counseling agencies satisfy all prerequisites of the United States Code, as implemented under this rule. Under current law every individual debtor shall have received adequate counseling from an approved nonprofit budget and credit counseling agency within 180 days before the date of filing for bankruptcy relief. The current law enumerates mandatory prerequisites and minimum standards applicants seeking to become approved nonprofit budget and credit counseling agencies must meet. Under this rule, United

States Trustees will approve applicants for inclusion on publicly available agency lists in one or more federal judicial districts, if an applicant establishes it meets all the requirements of the United States Code, as implemented under this rule. After obtaining such an approval, a nonprofit budget and credit counseling agency shall be authorized to provide credit counseling in a federal judicial district during the time the agency remains approved.

DATES: Submit comments on or before April 1, 2008.

ADDRESSES: Comments on the rule may be submitted via www.regulations.gov, by telefax to (202) 305-8536, or by postal mail to Executive Office for United States Trustees ("EOUST"), 20 Massachusetts Ave., NW., 8th Floor, Washington, DC 20530. To ensure proper handling of comments, please reference "Docket No. EOUST 102" on all written and electronic correspondence.

FOR FURTHER INFORMATION CONTACT: Henry Hobbs, Acting Chief, Credit Counseling & Debtor Education Unit, at (202) 514-4100 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment

may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph. Comments filed after the end of the comment period may be considered to the extent feasible.

Discussion of Rule

This rule implements those sections of Public Law No. 109-8, 119 Stat. 23, 37, 38 (April 20, 2005) codified at 11 U.S.C. 109(h)(1) and 111. Effective October 17, 2005, an individual may not be a debtor under title 11 of the United States Code unless during the 180-day period preceding the date of filing a bankruptcy petition, the individual receives adequate counseling from an approved nonprofit budget and credit counseling agency. 11 U.S.C. 109(h)(1) and 111. See also H.R. Rep. 109-31, pt. 1 at 2 (the Bankruptcy Code "requires debtors to receive credit counseling before they can be eligible for bankruptcy relief so that they will make an informed choice about bankruptcy, its alternatives, and consequences").

Section 111(b) of title 11, United States Code, governs the approval by United States Trustees of nonprofit budget and credit counseling agencies for inclusion under 11 U.S.C. 111(a)(1) on publicly available agency lists in one or more United States district courts. Section 111 of title 11 provides that, in applicable jurisdictions, a United States Trustee may approve an application to become an approved nonprofit budget and credit counseling agency only after the United States Trustee has thoroughly reviewed the applicant's (a) qualifications, and (b) services. 11 U.S.C. 111(b)(1). A United States Trustee has statutory authority to require an applicant to provide information with respect to such review. 11 U.S.C. 111(b)(1).

After completing that thorough review, a United States Trustee may approve a nonprofit budget and credit counseling agency only if the agency establishes that it fully satisfies all requisite standards. 11 U.S.C. 111(b). Among other things, an applicant must establish it will (a) provide qualified counselors, (b) maintain adequate provision for safekeeping and payment of client funds, (c) provide adequate counseling with respect to client credit problems, and (d) deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial

security of the services it provides. 11 U.S.C. 111(c)(1).

This proposed rule will implement those statutory requirements. By accomplishing that, the rule will help debtors obtain adequate counseling from competent credit counseling agencies, and help safeguard their funds. It also will provide an appropriate mechanism by which entities can apply for approval under section 111 of title 11 to become nonprofit budget and credit counseling agencies, and will enable such applicants to attempt to meet their burden of establishing they should be approved by United States Trustees under 11 U.S.C. 111.

This rule, once final, will supersede the provisions that address credit counseling agencies in EOUST's Interim Final Rule published on July 5, 2006 (71 FR 38076) entitled *Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies and Approval of Providers of a Personal Financial Management Instructional Course by United States Trustees* ("Interim Final Rule"). The credit counseling provisions are currently codified at 28 CFR 58.15, 58.16, and 58.17. Due to the necessity of quickly establishing a regulation to govern the credit counseling application process, EOUST promulgated the Interim Final Rule rather than a notice of proposed rulemaking. Based upon experience administering the Interim Final Rule, and upon consideration of comments received regarding the Interim Final Rule, EOUST promulgates this rule as a notice of proposed rulemaking in an effort to maximize public input. EOUST will respond to the comments to the Interim Final Rule and this rule when it publishes the final rule. EOUST will also publish another notice of proposed rulemaking that addresses providers of a financial management instructional course with a RIN number of 1105-AB31.

In an effort to make information more accessible and understandable, several changes to the Interim Final Rule are proposed in this rule, along with other changes to enhance consumer protections. Some of the more significant changes include the following: (1) Adding identification procedures for clients when accessing Internet or telephone counseling sessions; (2) establishing a limit for credit counseling fees to be presumed reasonable; (3) preserving clients' rights under 11 U.S.C. 502(k); (4) requiring agencies to provide additional counseling at no extra cost to clients when a debt repayment plan has been completed or terminated so that clients may file bankruptcy if they so choose;

(5) providing guidance on agencies' responsibilities to individuals with limited English proficiency; and (6) requiring appropriate disclosures be made before providing services to clients, such as an agency's fee policy and the prohibition from receiving referral fees.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), The Principles of Regulation. The Department has determined that this rule is a "significant regulatory action" and, accordingly, this rule has been reviewed by the Office of Management and Budget ("OMB").

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this regulation include the required costs for the submission of an application. Costs considered also include the cost of establishing and maintaining the approved list in each federal judicial district. In an effort to minimize the burden on applicants, the application keeps the number of items on the application to a minimum.

The costs to an applicant will be minimal. The anticipated costs are the photocopying and mailing of the requested records, along with the salaries of the employees who complete the applications. Based upon the available information, experience with the credit counseling industry, and informal communications with credit counseling agencies, it is anticipated that this cost should equal approximately \$500 per application for agencies. This cost is not new; it is the same cost that credit counseling agencies incurred when applying under the Interim Final Rule. Public comments regarding the cost to applicants in completing the application are requested.

Applicants that offer debt repayment plans must also obtain a surety bond in the amount of 2% of the agency's disbursements made during the previous 12 months from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee or equal to the average daily balance maintained for the 6 months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to

determine, the states) in which the agency seeks approval from the United States Trustee. In addition, credit counseling agencies that offer debt repayment plans must obtain employee fidelity insurance in a face amount equal to 50% of the surety bond. Credit counseling agencies are entitled to receive a credit for any state bond or employee fidelity insurance already obtained.

Although applicants may charge a fee for providing the credit counseling services in accordance with this rule, agencies must provide credit counseling without regard to a client's ability to pay the fee. Based upon the available information, current practice of many credit counseling agencies, experience with the credit counseling industry, and informal communications with credit counseling agencies, \$50 is presumed to be a reasonable fee for credit counseling. The United States Government Accountability Office, after conducting a study on credit counseling, found that \$50 was the typical rate charged by credit counseling agencies and that industry observers and consumer advocates considered this amount to be reasonable. Public comments as to the reasonableness of \$50 for credit counseling are requested.

The amount presumed to be reasonable for credit counseling fees will be reviewed periodically, but not less than every four years, and the amount presumed to be reasonable will be published by notice in the **Federal Register** and identified on EOUST's Web site. In addition, all applicants must waive the fee if the client demonstrates a lack of ability to pay the fee, which shall be presumed if the client's household current income is less than 150% of the income of the official poverty line as identified by the United States Department of Health and Human Services applicable to a household of the same size.

The number of applicants that will ultimately apply is unknown, although EOUST believes that approximately 300 may ultimately apply to be approved credit counseling agencies. Currently, there are approximately 160 approved agencies. The annual hour burden on agencies is estimated to be 10 hours. This estimate is based on consultations with individuals in the credit counseling industry, and experience with applicants who completed the initial applications. Public comments regarding the annual hour burden on credit counseling agencies in completing the application are requested.

The EOUST consulted with the Federal Trade Commission ("FTC") and

with the Internal Revenue Service ("IRS") in drafting this rule and the EOUST does not believe the rule has an adverse effect upon either agency.

The benefits of this rule include the development of standards that increase consumer protections, such as a limit on the presumption of reasonable fees, requirement that agencies provide adequate disclosures concerning agencies' policies, and the preservation of clients' rights under section 502(k). This rule also provides for greater supervision by the United States Trustee to ensure agencies employ proper procedures to safeguard client funds. These benefits justify its costs in complying with Congress' mandate that a list of approved agencies be established. Public Law No. 109-8, § 106(e)(1).

Executive Order 13132

This rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 to 3520, and assigned OMB control number 1105-0084 for form EOUST-CC1, the "*Application for Approval as a Nonprofit Budget and Credit Counseling Agency.*" The Department notes that full notice and comment opportunities were provided to the general public through the Paperwork Reduction Act process, and that the applications and associated requirements were modified to take into account the concerns of those who commented in this process.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Director has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This certification is based upon experience in administering the Interim Final Rule where the surety bond and insurance requirements are less than 1% of gross revenue and also less than 1% of total expenditures for the large

majority of credit counseling agencies considered to be small businesses.

Unfunded Mandates Reform Act of 1995

This rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a federal mandate that may result in the annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than the annual threshold established by the Act (\$100 million). Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, and innovation; or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Privacy Act Statement

Section 111 of title 11, United States Code, authorizes the collection of this information. The primary use of this information is by the United States Trustee to approve nonprofit budget and credit counseling agencies. The United States Trustee will not share this information with any other entity unless authorized under the Privacy Act, 5 U.S.C. 552a *et seq.* EOUST has published a System of Records Notice that delineates the routine use exceptions authorizing disclosure of information. 71 FR 59818, 59827 (Oct. 11, 2006), JUSTICE/UST-005, Credit Counseling and Debtor Education Files and Associated Records.

Public Law 104-134 (April 26, 1996) requires that any person doing business with the federal government furnish a Social Security Number or Tax Identification Number. This is an amendment to section 7701 of title 31, United States Code. Furnishing the Social Security Number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application.

List of Subjects in 28 CFR Part 58

Administrative practice and procedure, Bankruptcy, Credit and debts.

Accordingly, for the reasons set forth in the preamble, part 58 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 11 U.S.C. 109(h), 111, 521(b), 727(a)(11), 1141(d)(3); 1202; 1302; 1328(g), 28 U.S.C. 509, 510, 586, 589b.

2. Add §§ 58.12, 58.13 and 58.14 to read as follows:

§ 58.12 Definitions.

(a) The following definitions apply to sections 58.12 through and including 58.24 of this part, as well as the applications and other materials agencies submit in an effort to establish they meet the requirements necessary to become an approved nonprofit budget and credit counseling agency.

(b) These terms shall have these meanings:

(1) The term “accreditation” means the accreditation that an accrediting organization bestows upon an agency because the accrediting organization has determined the agency meets or exceeds all the accrediting organization’s standards;

(2) The term “accrediting organization” means either an entity that provides accreditation to agencies or provides certification to counselors, provided, however, that an accrediting organization shall:

(i) not be an agency or affiliate of any agency; and

(ii) be deemed acceptable by the United States Trustee;

(3) The term “adequate counseling” means the actual receipt by a client from an approved agency of all counseling services, and all other applicable services, rights, and protections specified in:

(j) 11 U.S.C. 109(h)(1);

(ii) 11 U.S.C. 111; and

(iii) this rule;

(4) The term “affiliate of an agency” includes:

(i) every entity that is an affiliate of the agency, as the term “affiliate” is defined in 11 U.S.C. 101(2), except that the word “agency” shall be substituted for the word “debtor” in 11 U.S.C. 101(2);

(ii) each of an agency’s officers and each of an agency’s directors; and

(iii) every relative of an agency’s officers and every relative of an agency’s directors;

(5) The term “agency” and the term “budget and credit counseling agency” shall each mean a nonprofit organization that is applying under this rule for United States Trustee approval to be included on a publicly available list in one or more United States district courts, as authorized by 11 U.S.C. 111(a)(1), and shall also mean, whenever appropriate, an approved agency;

(6) The term “application” means the application and related forms, including appendices, approved by the Office of Management and Budget as form EOUST–CC1, *Application for Approval as a Nonprofit Budget and Credit Counseling Agency*, as it shall be amended from time to time;

(7) The term “approved agency” means an agency currently approved by a United States Trustee under 11 U.S.C. 111 as an approved nonprofit budget and credit counseling agency eligible to be included on one or more lists maintained under 11 U.S.C. 111(a)(1);

(8) The term “approved list” means the list of agencies currently approved by a United States Trustee under 11 U.S.C. 111 as currently published on the United States Trustee Program’s Internet site on the United States Department of Justice’s Internet site;

(9) The term “audited financial statements” means financial reports audited by independent certified public accountants in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants;

(10) The term “certificate” means the certificate identified in 11 U.S.C. 521(b)(1) that an approved agency shall provide to a client after the client completes counseling services;

(11) The term “client” means an individual who seeks, receives or has received counseling services from an approved agency;

(12) The term “counseling services” means all counseling required by 11 U.S.C. 109(h) and 111, and this rule including, without limitation, services that are typically of at least 60 minutes in duration and that shall at a minimum include:

(i) Performing on behalf of, and providing to, each client a written analysis of each client’s current financial condition, which analysis shall include a budget analysis, consideration of all alternatives to resolve a client’s credit problems, discussion of the factors that caused such financial condition, and

identification of all methods by which the client can develop a plan to respond to the financial problems without incurring negative amortization of debt; and

(ii) Providing each client the opportunity to have the agency negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k) or, if the client accepts this option and the agency is unable to provide this service, the agency shall refer the client to another approved agency in the appropriate federal judicial district that provides it;

(13) The term “counselor certification” means certification of a counselor by an accrediting organization because the accrediting organization has determined the counselor meets or exceeds all the accrediting organization’s standards for counseling services or related areas, such as personal finance, budgeting, or credit or debt management;

(14) The term “criminal background check” means a report generated by the Federal Bureau of Investigation disclosing the entire criminal history record, if any, of the counselor for whom the criminal background check is sought. Whenever the Federal Bureau of Investigation does not have access to, or provides, less than the entire state criminal history record of the counselor, then the term “criminal background check” shall also include the entire state criminal history record, if any, of every state law enforcement agency where the counselor has resided for any part of the immediately preceding five years. If a criminal background check is not available from the Federal Bureau of Investigation and is not authorized by state law in the residential state of the employee, the agency shall instead obtain at least every 5 years a sworn statement from each counselor attesting to whether the counselor has been convicted of a felony, or a crime involving fraud, dishonesty, or false statements;

(15) The term “debt repayment plan” means any written document suggested, drafted, or reviewed by an approved agency that either proposes or implements any mechanism by which a client would make payments to any creditor or creditors if, during the time any such payments are being made, that creditor or those creditors would forbear from collecting or otherwise enforcing their claim or claims against the client; provided, however, that any such written document shall not constitute a debt repayment plan if the client would incur a negative amortization of debt under it;

(16) The term "Director" means the person designated or acting as the Director of the Executive Office for United States Trustees;

(17) The term "entity" shall have the meaning given that term in 11 U.S.C. 101(15);

(18) The term "fair share" means payments by a creditor to an approved agency for administering a debt repayment plan;

(19) The terms "fee" and "fee policy" each mean the aggregate of all fees, contributions, and payments an approved agency charges clients for providing counseling services; "fee policy" shall also mean the objective criteria the agency uses in determining whether to waive or reduce any fee, contribution, or payment;

(20) The term "final decision" means the decision issued by the Director that reviews the United States Trustee's decision either to deny an agency's application or to remove an agency from the approved list;

(21) The term "financial benefit" means any interest equated with money or its equivalent, including, but not limited to, stock, bonds, other investments, income, goods, services, or receivables;

(22) The term "governmental unit" shall have the meaning given that term in 11 U.S.C. 101(27);

(23) The term "independent contractor" means a person or entity who provides any good or service to an approved agency other than as an employee and as to whom the approved agency does not:

(i) Direct or control the means or methods of delivery of the service or goods being provided;

(ii) Make financial decisions concerning the business aspects of the goods or services being provided; and

(iii) Have any common employees;

(24) The term "languages offered" means every language other than English in which an approved agency provides counseling services;

(25) The term "legal advice" shall have the meaning given that term in 11 U.S.C. 110(e)(2);

(26) The term "limited English proficiency" means, alternatively:

(i) An inability to speak, read, write, or understand the English language; or

(ii) The use primarily of a language other than English in a person's daily affairs;

(27) The term "locator" means any entity that assists a prospective client find an approved agency or agencies for the purpose of receiving counseling services, unless such entity is the approved agency proposing to provide counseling services to the prospective client;

(28) The term "material change" means, alternatively, any change:

(i) In the name, structure, principal contact, management, staffing, physical location, counseling services, fee policy, or method of delivery of an approved agency; or

(ii) That renders inapplicable, inaccurate, incomplete, or misleading any statement an agency or approved agency previously made:

(A) In its application or related materials; or

(B) To the United States Trustee;

(29) The term "median family income" shall have the meaning given that term in 11 U.S.C. 101(39A);

(30) The term "method of delivery" means one or more of the 3 methods by which an approved agency can provide some component of counseling services to its clients, including:

(i) "in person" delivery, which applies when a client primarily receives counseling services at a physical location with a credit counselor physically present in that location, and with the credit counselor providing oral and/or written communication to the client at the facility;

(ii) "telephone" delivery, which applies when a client primarily receives counseling services by telephone; and

(iii) "Internet" delivery, which applies when a client primarily receives counseling services through an Internet website;

(31) The term "nonprofit" means, alternatively:

(i) An entity validly organized as a not-for-profit entity under applicable state or federal law, if that entity operates as a not-for-profit entity in full compliance with all applicable state and federal law; or

(ii) A qualifying governmental unit;

(32) The term "notice" in 28 CFR 58.24 means the written communication from the United States Trustee to an agency that its application to become an approved agency has been denied or to an approved agency that it is being removed from the approved list;

(33) The term "qualifying government unit" means any governmental unit that, were it not a governmental unit, would qualify for tax-exempt status under 26 U.S.C. 501(c)(3), or would qualify as a nonprofit entity under applicable state law;

(34) The term "referral fees" means money or any other valuable consideration paid or transferred between an approved agency and another entity in return for that entity, directly or indirectly, identifying, referring, securing, or in any other way encouraging any client or potential client to receive counseling services

from the approved agency; provided, however, that "referral fees" shall not include fees paid to:

(i) The agency under a fair share agreement; or

(ii) Any locator;

(35) The term "relative" shall have the meaning given that term in 11 U.S.C. 101(45);

(36) The term "request for review" means the written communication from an agency to the Director seeking review of the United States Trustee's decision either to deny the agency's application or to remove the agency from the approved list;

(37) The term "state" means state, commonwealth, district, or territory of the United States;

(38) The term "tax waiver" means a document sufficient to permit the Internal Revenue Service to release directly to the United States Trustee information about an agency;

(39) The term "trust account" means an account with a federally insured depository institution that is separated and segregated from operating accounts, which an approved agency shall maintain in its fiduciary capacity for the purpose of receiving and holding client funds entrusted to the approved agency; and

(40) The term "United States Trustee" means, alternatively:

(i) The Executive Office for United States Trustees;

(ii) A United States Trustee appointed under 28 U.S.C. 581;

(iii) A person acting as a United States Trustee;

(iv) An employee of a United States Trustee; or

(v) Any other entity authorized by the Attorney General to act on behalf of the United States under this rule.

§ 58.13 Procedures all agencies shall follow when applying to become approved agencies.

(a) An agency applying to become an approved agency shall obtain an application, including appendices, from the United States Trustee.

(b) The agency shall complete the application, including its appendices, and attach the required supporting documents requested in the application.

(c) The agency shall submit the original of the completed application, including completed appendices and the required supporting documents, and one additional copy of those, to the United States Trustee at the address specified on the application form.

(d) The application shall be signed by an agency representative who is authorized under applicable law to sign on behalf of the applying agency.

(e) The signed application, completed appendices, and required supporting documents shall be accompanied by a writing, signed by the signatory of the application and executed on behalf of the signatory and the agency, certifying the application does not:

(1) Falsify, conceal, or cover up by any trick, scheme or device a material fact;

(2) Make any materially false, fictitious, or fraudulent statement or representation; or

(3) Make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

(f) The United States Trustee shall not consider an application that:

(1) Is incomplete;

(2) Fails to include the completed appendices or all of the required supporting documents; or

(3) Is not accompanied by the certification identified in the preceding subsection.

(g) The United States Trustee shall not consider an application on behalf of an agency if:

(1) It is submitted by any entity other than the agency; or

(2) Either the application or the accompanying certification is executed by any entity other than an agency representative who is authorized under applicable law to sign on behalf of the agency.

(h) By the act of submitting an application, an agency consents to the release and disclosure of its name and contact information on the approved list should its application be approved.

§ 58.14 Automatic expiration of agencies' status as approved agencies.

(a) Except as provided in 28 CFR 58.15(c), if an approved agency was not an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an approved agency shall cease to be an approved agency 6 months from the date on which it was approved unless the United States Trustee approves an additional 1-year period.

(b) Except as provided in 28 CFR 58.15(c), if an approved agency was an approved agency immediately prior to the date it last obtained approval to be an approved agency, such an agency shall cease to be an approved agency 1 year from the date on which it was last approved to be an approved agency unless the United States Trustee approves an additional 1-year period.

3. Sections 58.15 through 58.17 are revised to read as follows.

§ 58.15 Procedures all approved agencies shall follow when applying for approval to act as an approved agency for an additional 1-year period.

(a) To be considered for approval to act as an approved agency for an additional 1-year term, an approved agency shall reapply by complying with all the requirements specified for agencies under 11 U.S.C. 109(h)(1) and 111, and under this rule.

(b) Such an agency shall apply no later than 45 days prior to the expiration of its six-month probationary period or annual period in order to be considered for approval for an additional 1-year period, unless a written extension is granted by the United States Trustee.

(c) An approved agency that has complied with all prerequisites for applying to act as an approved agency for an additional 1-year period may continue to operate as an approved agency while its application is under review by the United States Trustee, so long as either the application for an additional 1-year period was timely submitted, or an agency receives a written extension from the United States Trustee.

§ 58.16 Renewal for an additional 1-year period.

If an approved agency's application for an additional 1-year period is approved, such renewal period shall begin to run from the later of:

(a) The day after the expiration date of the immediately preceding approval period; or

(b) The actual date of approval of such renewal by the United States Trustee.

§ 58.17 Mandatory duty of approved agencies to notify United States Trustees of material changes.

(a) An approved agency shall immediately notify the United States Trustee in writing of any material change.

(b) An approved agency shall immediately notify the United States Trustee in writing of any failure by the approved agency to comply with any standard or requirement specified in 11 U.S.C. 109(h) or 111, this rule, or the terms under which the United States Trustee approved it to act as an approved agency.

(c) An approved agency shall immediately notify the United States Trustee in writing of any of the following events:

(1) Notification by the Internal Revenue Service or by a state or local taxing authority that the approved agency has been selected for audit or examination regarding its tax-exempt status, or any notification of a compliance check by the Internal

Revenue Service or by a state or local taxing authority;

(2) Revocation or termination of the approved agency's tax-exempt status by any governmental unit or by any judicial officer;

(3) Cessation of business by the approved agency or by any office of the agency, or withdrawal from any federal judicial district(s) where the approved agency is approved;

(4) Any investigation of, or any administrative or judicial action brought against, the approved agency by any governmental unit;

(5) Termination or cancellation of any surety bond or fidelity insurance;

(6) Any administrative or judicial action brought by any entity that seeks recovery against a surety bond or fidelity insurance;

(7) Any action by a governmental unit or a court to suspend or revoke the approved agency's articles of incorporation, or any license held by the approved agency, or any authorization necessary to engage in business;

(8) A suspension, or action to suspend, any accreditation held by the approved agency, or any withdrawal by the approved agency of any application for accreditation, or any denial of any application of the approved agency for accreditation;

(9) A change in the approved agency's nonprofit status under any applicable law; and

(10) Any change in the banks or financial institutions used by the agency.

(d) An agency shall notify the United States Trustee in writing if any of the changes identified in paragraphs (a) through (c) of this section occur while its application to become an approved agency is pending before the United States Trustee.

(e) An approved agency whose name or other information appears incorrectly on the approved list shall immediately submit a written request to the United States Trustee asking that the information be corrected.

4. Sections 58.18 through 58.24 are added to read as follows:

§ 58.18 Mandatory duty of approved agencies to obtain prior permission from the United States Trustee before taking certain actions.

(a) By accepting the designation to act as an approved agency, an agency agrees to obtain approval from the United States Trustee, prior to making any of the following changes:

(1) Cancellation or change in amount of the surety bond or employee fidelity bond or insurance;

(2) The engagement of an independent contractor to provide counseling

services or to have access to, possession of, or control over client funds;

(3) Any increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's fee policy;

(4) Expansion into additional federal judicial districts;

(5) Any changes to the method of delivery the approved agency employs to provide counseling services; or

(6) Any changes in the approved agency's counseling services.

(b) An agency applying to become an approved agency shall also obtain approval from the United States Trustee before taking any action specified in paragraph (a) of this section. It shall do so by submitting an amended application. The agency's amended application shall be accompanied by a contemporaneously executed writing, signed by the signatory of the application, that makes the certifications specified in 28 CFR 58.13(e).

(c) An approved agency shall not transfer or assign its United States Trustee approval to act as an approved agency.

§ 58.19 Criteria agencies shall satisfy to become and remain approved agencies.

(a) To become an approved agency, an agency must affirmatively establish, to the satisfaction of the United States Trustee, that the agency at the time of approval:

(1) Satisfies every requirement of this rule; and

(2) Provides adequate counseling to its clients.

(b) To remain an approved agency, an approved agency shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved agency:

(1) Has satisfied every requirement of this rule;

(2) Has provided adequate counseling to its clients; and

(3) Would continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

§ 58.20 Minimum qualifications agencies shall meet to become and remain approved agencies.

To meet the minimum qualifications set forth in 28 CFR 58.19, and in addition to the other requirements set forth in this rule, agencies and approved agencies shall comply with paragraphs (a) through (p) of this section on a continuing basis:

(a) *Compliance with all laws.* An agency shall comply with all applicable laws and regulations of the United States and each state in which the

agency provides counseling services including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on Legal Advice.* An agency shall not provide legal advice.

(c) *Structure and organization.* An agency shall:

(1) Be lawfully organized and operated as a nonprofit entity; and

(2) Have a board of directors the majority of which:

(i) are not relatives;

(ii) are not employed by such agency; and

(iii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency.

(d) *Ethical standards.* An agency shall:

(1) Not engage in any conduct or transaction, other than counseling services, that generates a direct or indirect financial benefit for any member of the board of directors or trustees, officer, supervisor, or any relative thereof;

(2) Ensure no member of the board of directors or trustees, officer, or supervisor receives any commissions, incentives, bonuses, or benefits (monetary or non-monetary) of any kind that are directly or indirectly based on the financial or legal decisions any client or potential client makes after requesting counseling services;

(3) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee appointed under 11 U.S.C. 586(a)(1) or (b) for any Federal judicial district where the agency is providing or is applying to provide counseling services, a federal judge in any Federal judicial district where the agency is providing or is applying to provide counseling services, a Federal court employee in any Federal judicial district where the agency is providing or is applying to provide counseling services, or a certified public accountant that audits the agency's trust account;

(4) Not enter into any referral agreement or receive any financial benefit that involves the agency paying to or receiving from any entity or person referral fees for the referral of clients to or by the agency, except payments:

(i) Under a fair share agreement; or

(ii) To any locator;

(5) Not enter into agreements involving counseling services that create a conflict of interest; and

(6) Not provide counseling services to a client with whom the agency has a lender-borrower relationship.

(e) *Use of credit counselors.* An agency shall have a credit counselor

provide the counseling services to each of the agency's clients. The credit counselor shall interact with the client regarding the accuracy of the information obtained from the client and the alternatives available to the client for dealing with his or her current financial situation, including the plan developed to address such financial situation.

(f) *Credit counselor training, certification and experience.* An agency shall:

(1) Use only counselors who possess adequate experience providing credit counseling, which shall mean that each counselor either:

(i) Holds a counselor certification and who have complied with all continuing education requirements necessary to maintain their counselor certification; or

(ii) Has successfully completed a course of study and worked a minimum of 6 months in a related area such as personal finance, budgeting, or credit or debt management. A course of study shall include training in counseling skills, personal finance, budgeting, or credit or debt management. A counselor shall also receive annual continuing education in the areas of counseling skills, personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing credit counseling, which shall mean that, at a minimum, the agency shall either:

(i) Have experience in providing credit counseling for the 2 years immediately preceding the relevant application date; or

(ii) For each office providing counseling services, employ at least one supervisor who has met the qualifications in paragraph (f)(2)(i) of this section for no less than 2 of the 5 years preceding the relevant application date; and

(3) If offering any component of counseling services by a telephone or Internet method of delivery, use only counselors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such counseling services by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the counseling services is the client, and to determine whether the client has completely received counseling services.

(g) *No variation in services.* An agency shall ensure that the type and quality of services do not vary based on a client's decision whether to obtain a certificate in lieu of other options that may or may not be suggested by the agency.

(h) *Use of the telephone and the Internet to deliver a component of client services.* An agency shall:

(1) Not provide any client diminished counseling services because the client receives any portion of those counseling services by telephone or Internet;

(2) Confirm the identity of the client before receiving counseling services by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the client and assigning an individual access code, user ID, or password at the time of enrollment; and

(ii) Requiring the client to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the counseling services.

(i) *Services to hearing and hearing-impaired clients and potential clients.* An agency shall furnish toll-free telephone numbers for both hearing and hearing-impaired clients and potential clients whenever telephone communication is required. The agency shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired clients or potential clients.

(j) *Language services to clients and potential clients.* An agency shall communicate, in writing and orally, with clients and potential clients in the languages of the major population groups served by the agency. The agency shall provide or arrange for bilingual personnel, interpreters, or the use of communication technology, as needed, in such languages. The agency shall inform any client or potential client with limited English proficiency of the languages offered in providing counseling services. Whenever an agency cannot provide counseling services to a client or a potential client due to a person's limited English proficiency, the agency shall employ its best efforts to expeditiously direct such person to one or more approved agencies that can provide counseling services in the language of the client or potential client's choice.

(k) *Services to clients and potential clients with special needs.* An agency that provides any portion of its counseling in person shall comply with all federal, state and local laws governing facility accessibility. An agency shall also provide or arrange for communication assistance for clients or potential clients with special needs who have difficulty making their service needs known.

(l) *Mandatory disclosures to clients and potential clients.* Prior to providing any information to or obtaining any

information from a client or potential client, and prior to rendering any counseling service, an agency shall disclose:

(1) The agency's fee policy;

(2) The agency's policies enabling clients to obtain counseling services for free or at reduced rates based upon the client's lack of ability to pay;

(3) The agency's funding sources;

(4) The counselors' qualifications;

(5) The potential impacts on credit reports of all alternatives the agency may discuss with the client;

(6) The agency's policy prohibiting it from paying or receiving referral fees for the referral of clients to or by the agency, except:

(i) Under a fair share agreement; or

(ii) To any locator;

(7) The agency's obligation to provide a certificate to the client promptly upon the completion of counseling services;

(8) The client's right to negotiate an alternative payment schedule with regard to each unsecured consumer debt under terms as set forth in 11 U.S.C. 502(k);

(9) The fact that the agency might disclose client information to the United States Trustee in connection with the United States Trustee's oversight of the agency, or during the investigation of complaints, during on-site visits, or during quality of service reviews;

(10) The fact that the United States Trustee has reviewed only the agency's counseling services, and the fact that the United States Trustee has neither reviewed nor approved any other services the agency provides to clients; and

(11) The fact that a client will receive a certificate only if the client completes counseling services.

(m) *Complaint Procedures.* An agency shall employ complaint procedures that adequately respond to clients' concerns.

(n) *Background checks.* An agency shall:

(1) Conduct a criminal background check at least every 5 years for each person providing credit counseling, and

(2) Not employ anyone as a counselor who has been convicted of any felony, or any crime involving fraud, dishonesty, or false statements, unless the United States Trustee determines circumstances warrant a waiver of this prohibition against employment.

(o) *Agency records.* An agency shall prepare and retain records that enable the United States Trustee to evaluate whether the agency is providing adequate counseling and acting in compliance with all applicable laws and this rule. All records, including documents bearing original signatures, shall be maintained in either hard copy

form or electronically in a format widely available commercially. Records that the agency shall prepare and retain for a minimum of two years, and permit review by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the agency remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the applicable periods specified in this paragraph;

(3) Annual audited financial statements, including the audited balance sheet, statement of income and retained earnings, and statement of changes in financial condition;

(4) Books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including without limitation, copies of all correspondence with or on behalf of the client, including the contract between the agency and the client and any amendments thereto;

(5) Records concerning the delivery of services to clients and potential clients with limited English proficiency and special needs, and to hearing-impaired clients and potential clients, including records:

(i) Of the number of such clients;

(ii) Of which languages are offered;

(iii) Detailing the agency's best efforts to provide services to such clients and potential clients; and

(iv) Supporting any justification if the agency did not provide services to such clients or potential clients;

(6) Records concerning the delivery of counseling services to clients for free or at reduced rates based upon the client's lack of ability to pay, including records of the number of such clients and the extent to which the agency voluntarily waived all or part of its fees under 28 CFR 58.21(c);

(7) Records of complaints and the agency's responses thereto;

(8) Records that enable the agency to verify the authenticity of certificates their clients file in bankruptcy cases; and

(9) Records that enable the agency to issue replacement certificates.

(p) *Additional minimum requirements.* An agency shall:

- (1) Provide records to the United States Trustee upon request;
- (2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the agency's qualifications to be an approved agency;
- (3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;
- (4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the credit counseling or bankruptcy process;
- (5) Not exclude any client or creditor from a debt repayment plan because the creditor declines to make a fair share contribution to the agency;
- (6) Take no action that would limit, inhibit, or prevent a client from bringing an action or claim for damages against an agency under any applicable law, including but not limited to 11 U.S.C. 111(g)(2);
- (7) Refer clients and prospective clients for counseling services only to agencies that have been approved by a United States Trustee to provide such services;
- (8) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in appendix A to the application;
- (9) Not disclose or provide to a credit reporting agency any information concerning whether a client has received or sought instruction concerning credit counseling or personal financial management from an agency;
- (10) Not expose the client to commercial advertising as part of or during the client's receipt of any counseling services, and never market or sell financial products or services during the counseling session; provided, however, this provision does not prohibit an agency from generally discussing all available financial products and services;
- (11) Not sell information about any client or potential client to any third party without the client or potential client's prior written permission; and
- (12) If the agency is tax-exempt, submit a completed and signed tax waiver permitting and directing the Internal Revenue Service to provide the United States Trustee with access to the Internal Revenue Service's files relating to the agency.

§ 58.21 Additional minimum requirements to become and remain approved agencies relating to fees.

- (a) If a fee for, or relating to, credit counseling services is charged by an agency, such fee shall be reasonable:
- (1) A fee of \$50 or less for credit counseling services is presumed to be reasonable and an agency need not obtain prior approval of the United States Trustee to charge such a fee;
 - (2) A fee exceeding \$50 for credit counseling services is not presumed to be reasonable and an agency must obtain prior approval from the United States Trustee to charge such a fee. The agency bears the burden of establishing that its proposed fee is reasonable. At a minimum, the agency must demonstrate that its cost for delivering such services justify the fee; and
 - (3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section periodically, but not less than every 4 years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto shall be published in the **Federal Register**.
- (b) An agency shall waive the fee whenever a client demonstrates a lack of ability to pay the fee. A client shall be deemed to have demonstrated a lack of ability to pay the fee if the client's household current income is less than 150% of the income of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) as identified in the Poverty Guidelines updated periodically in the **Federal Register** by the United States Department of Health and Human Services applicable to a family or household of the size involved in the fee decision.
- (c) Notwithstanding the requirements of paragraph (b) of this section, an agency may also waive fees based upon other considerations, including, but not limited to:
- (1) The client's net worth;
 - (2) The percentage of the client's income from government assistance programs;
 - (3) Whether the client is receiving pro bono legal services in connection with a filed or anticipated bankruptcy case; or
 - (4) If the combined current monthly income, as defined in 11 U.S.C.

101(10A), of the client and his or her spouse, when multiplied times 12, is equal to or less than the amounts set forth in 11 U.S.C. 707(b)(7).

(d) An agency shall not link a client or potential client's purchase of counseling services to the purchase of any other service offered by the agency.

§ 58.22 Additional minimum requirements to become and remain approved agencies relating to certificates.

- (a) An approved agency shall deliver a certificate only to the client who took and completed the counseling services, except that an approved agency shall instead deliver a certificate to the attorney of a client who took and completed counseling services if the client specifically requests that in writing.
- (b) An approved agency shall attach to the certificate:
- (1) The client's debt repayment plan (if any); and
 - (2) If the counselor determines a viable alternative to bankruptcy is available to the client to resolve his or her credit problems, the client's budget analysis.
- (c) An approved agency shall deliver a certificate to a client no later than one business day after the client completed counseling services.
- (d) If an approved agency provides other financial counseling in addition to counseling services, and such other financial counseling satisfies the requirements for counseling services specified in 11 U.S.C. 109(h) and 111, and this rule, a person completing such other financial counseling is a client and the approved agency shall deliver a certificate to the client no later than one business day after the client's request. The approved agency shall not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with paragraph (g) of this section.
- (e) An approved agency shall issue certificates only in the form approved by the United States Trustee, and shall generate the form using the Certificate Generating System maintained by the United States Trustee.
- (f) An approved agency shall have sufficient computer capabilities to issue certificates from the United States Trustee's Certificate Generating System.
- (g) An approved agency shall not charge a separate fee for the issuance of a certificate or replacement certificate, unless:
- (1) The approved agency has disclosed such fee in writing before any counseling services are provided and before any payment is made by the client;

(2) The approved agency obtains the written consent of the client before the client commences receiving counseling services; and

(3) Such fee is reasonable and otherwise complies with the waiver requirements of 28 CFR 58.21.

(h) An approved agency shall issue a certificate to each client who completes counseling services. Spouses receiving counseling services jointly shall each receive a certificate.

(i) An approved agency shall issue a replacement certificate to a client who requests one.

(j) An approved agency shall not file certificates with the court.

(k) Only an authorized officer, supervisor or employee of an approved agency shall issue a certificate, and an approved agency shall not transfer or delegate authority to issue certificates to any other entity.

(l) An approved agency shall implement internal controls sufficient to prevent unauthorized issuance of certificates.

(m) An approved agency shall ensure the signature affixed to a certificate is that of an officer, supervisor or employee authorized to issue the certificate, in accordance with paragraph (k) 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 counselor); however, whenever a certificate is prepared for filing electronically with the court, a certificate with the counselor's original signature shall also be provided to the client.

(n) An approved agency shall affix to the certificate the exact name under which the approved agency is incorporated or organized.

(o) An approved agency shall identify on the certificate:

(1) The specific Federal judicial district requested by the client;

(2) Whether counseling services were provided in person, by telephone or via the Internet;

(3) The date on which counseling services were completed by the client; and

(4) The name of the counselor that provided the counseling services.

(p) An approved agency shall affix the client's full, accurate name to the certificate. If the counseling services are obtained by a client through a duly authorized representative, the certificate shall also set forth the name of the legal representative and legal capacity of that representative.

(q) If an individual enters into a debt repayment plan after completing credit

counseling, upon the client's request after the completion or termination of the debt repayment plan, the approved agency shall:

(1) Provide such additional credit counseling as is necessary at such time to comply with the requirements specified in 11 U.S.C. 109(h) and 111, and this rule, including reviewing the client's current financial condition and counseling the client regarding the alternatives to resolve the client's credit problems;

(2) Deliver a certificate to the client no later than one business day after the client completed such additional counseling; and

(3) Not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with paragraph (g) of this section.

§ 58.23 Additional financial requirements and bonding and insurance requirements for agencies offering debt repayment plans.

If an agency offers debt repayment plans, an agency shall possess adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan, and provide for the safekeeping of client funds, which shall include:

(a) Depositing all client funds into a deposit account, held in trust, at a federally insured depository institution. Each such trust account shall be established in a fiduciary capacity and shall be in full compliance with federal law such that each client's funds shall be protected by federal deposit insurance up to the maximum amount allowable by federal law.

(b) Keeping and maintaining books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including without limitation, all of the following:

(1) Separate files for each client's account that include copies of all correspondence with or on behalf of the client, including:

(i) All agreements with all entities, including the contract between the agency and the client and any amendments thereto;

(ii) The analysis of the client's budget;

(iii) Correspondence between the agency and the client's creditors;

(iv) The notice given to creditors of any debt repayment plan; and

(v) All written statements of account provided to the client and subsidiary ledgers concerning any debt repayment plan;

(2) A trust account general ledger reflecting all deposits to and

disbursements from all trust accounts, which shall be kept current at all times;

(3) A reconciliation of the trust accounts, prepared at least once a month; and

(4) An operating account general ledger reflecting all of the agency's financial transactions involving the agency's operating account, which shall be kept current at least on a monthly basis.

(c) Allowing an independent certified public accounting firm to audit the trust accounts annually in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and any Statement of Work prepared by the United States Trustee, which audit shall include:

(1) A report of all trust account activity including:

(i) The balance of each trust account at the beginning and end of the period;

(ii) The total of all receipts from clients and disbursements to creditors during the reporting period;

(iii) The total of all disbursements to the agency; and

(iv) The reconciliation of each trust account;

(2) A report of all exceptions (e.g., discrepancies, irregularities, and errors) found, regardless of materiality; and

(3) An evaluation of the agency's trust account internal controls and its computer operations to determine whether it provides a reasonable assurance that the trust funds are safeguarded against loss from unauthorized use or disposition.

(d) Obtaining a surety bond payable to the United States, as follows:

(1) Subject to the minimum amount of \$5,000, the amount of such surety bond shall be the lesser of:

(i) 2% of the agency's disbursements made during the previous 12 months from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee; or

(ii) Equal to the average daily balance maintained for the 6 months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee;

(2) The agency may receive an offset or credit against the surety bond amount determined under paragraph (d)(1) of this section if:

(i) The agency has previously obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of

credit in compliance with the licensing requirements of the state in which the agency seeks approval from the United States Trustee;

(ii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the agency;

(iii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, is written in favor of the state or the appropriate state agency; and

(iv) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit; or

(B) The surety bond amount determined under paragraph (d)(1) of this section;

(3) If an agency has contracted with an independent contractor to administer any part of its debt repayment plans:

(i) Except as provided in paragraphs (d)(3)(ii) and (iii) of this section, the independent contractor shall:

(A) Be an approved agency; or

(B) If the independent contractor is not an approved agency, then the independent contractor shall:

(1) Be specifically covered under the agency's surety bond required under paragraph (d)(1) of this section; or

(2) Have a surety bond that meets the requirements of paragraph (d)(1) of this section; and

(C) Agree in writing to allow the United States Trustee to audit the independent contractor's trust accounts for the debt repayment plans administered on behalf of the agency and to review the independent contractor's internal controls and administrative procedures;

(ii) If the independent contractor holds funds for transmission for 5 days or less, then the amount of the required surety bond under paragraph (d)(3)(i)(B) of this section shall be \$500,000;

(iii) If the independent contractor performs only electronic fund transfers on the agency's behalf, then the independent contractor need not satisfy the requirements of paragraph (d)(3)(i) of this section during such time as the independent contractor is authorized by the National Automated Clearing House Association to participate in the Automated Clearing House system.

(e) Obtaining either adequate employee bonding or fidelity insurance, as follows:

(1) Subject to the minimum amount set forth below, the amount of such bonding or fidelity insurance shall be 50% of the surety bond amount

calculated under paragraph (d)(1) of this section, prior to any offset or credit that the agency may receive under paragraph (d)(2) of this section; provided, however, that at a minimum, the employee bond or fidelity insurance must be \$5,000;

(2) An agency may receive an offset or credit against the employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section if:

(i) The agency has previously obtained an employee bond or fidelity insurance in compliance with the requirements of a state in which the agency seeks approval from the United States Trustee; and

(ii) The deductible does not exceed a reasonable amount considering the financial resources of the agency; and

(iii) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such employee bond or fidelity insurance; or

(B) The employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section.

§ 58.24 Procedures for obtaining final agency action on United States Trustees' decisions to deny agencies' applications and to remove approved agencies from the approved list.

(a) The United States Trustee shall remove an approved agency from the approved list whenever an approved agency requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved agency from the approved list, and thereby terminate the approved agency's authorization to provide counseling services, at any time.

(c) The United States Trustee may issue a decision to deny an agency's application or remove an agency from the approved list whenever the United States Trustee determines that the agency has failed to comply with the standards or requirements specified in 11 U.S.C. § 109(h) or 111, this rule, or the terms under which the United States Trustee designated it to act as an approved agency, including but not limited to finding any of the following:

(1) The agency is not employing adequate procedures for safekeeping or paying client funds, which results in a loss to a client;

(2) The agency's surety bond has been canceled;

(3) Any entity has revoked the agency's nonprofit status, even if that revocation is subject to further administrative or judicial litigation, review or appeal;

(4) Any entity has suspended or revoked the agency's license to do business in any jurisdiction; or

(5) Any United States district court has removed the agency under 11 U.S.C. 111(e).

(d) If the Internal Revenue Service revokes an agency's tax exempt status, the United States Trustee shall promptly commence an investigation to determine whether any of the factors set forth in paragraphs (c)(1) through (5) of this section exist.

(e) The United States Trustee shall provide to the agency in writing a notice of any decision either to:

(1) Deny the agency's application; or

(2) Remove the agency from the approved list.

(f) 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 agency copies of any such documents that were not supplied to the United States Trustee by the agency. The notice shall be sent to the agency by overnight courier, for delivery the next business day.

(g) Except as provided in paragraph (i) of this section, the notice shall advise the agency that the denial or removal decision shall become final agency action, and unreviewable, unless the agency submits in writing a request for review by the Director no later than 20 calendar days from the date of the notice to the agency.

(h) Except as provided in paragraph (i) of this section, the decision to deny an agency's application or remove an agency from the approved list shall take effect upon:

(1) The expiration of the agency's time to seek review from the Director, if the agency fails to timely seek review of a denial or removal decision; or

(2) The issuance by the Director of a final written decision, if the agency timely seeks such review.

(i) The United States Trustee may provide that a decision to remove an agency from the approved list is effective immediately and deny the agency the right to provide counseling services whenever the United States Trustee finds any of the factors set forth in paragraphs (c)(1) through (5) of this section.

(j) An agency's request for review shall be in writing and shall fully describe why the agency disagrees with the denial or removal decision, and shall be accompanied by all documents and materials the agency wants the Director to consider in reviewing the denial or removal decision. The agency 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. In order to be timely, a request for review shall be received at the Office of the Director no later than 20 calendar days from the date of the notice to the agency.

(k) The United States Trustee shall have 30 calendar days from the date of the agency's request for review to submit to the Director a written response regarding the matters raised in the agency's request for review. The United States Trustee shall provide a copy of this response to the agency by overnight courier, for delivery the next business day.

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

(m) In reviewing the decision to deny an agency's application or remove an agency 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.

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

(o) Whenever the United States Trustee provides under paragraph (i) of this section that a decision to remove an agency 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 agency's request for review, unless the agency agrees to a longer period of time, which 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 agency should be removed from the approved list; after issuing the decision, the Director shall issue a written final decision by the deadline set forth in paragraph (n) of this section.

(p) In reaching a decision under paragraphs (n) and (o) 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.

(q) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

(r) When a decision to remove an agency from the approved list takes effect, the agency shall:

(1) Immediately cease providing counseling services to clients and shall not agree to provide counseling services to prospective clients;

(2) No later than 3 business days after the date of removal, issue all certificates to all clients who completed counseling services prior to the agency's removal from the approved list; and

(3) No later than 3 business days after the date of removal, return all fees to clients and prospective clients who had paid for counseling services, but had not completely received them.

(s) An agency must exhaust all administrative remedies before seeking redress in any court of competent jurisdiction.

Dated: January 18, 2008.

Clifford J. White III,

Director, Executive Office for United States Trustees.

[FR Doc. E8-1451 Filed 1-31-08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

[Docket ID: MMS-2007-OMM-0064]

RIN 1010-AD44

Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS proposes to amend its regulations for oil and gas leases on the Outer Continental Shelf to implement a mandate in the Gulf of Mexico Energy Security Act of 2006. This proposed rule would (1) provide a credit to lessees who relinquish certain eligible leases in the Gulf of Mexico; (2) define eligible leases as those within 125 miles of the Florida coast in the

Eastern Planning Area and certain leases within 100 miles of the Florida coast in the Central Planning Area; and (3) allow lessees to use the credits in lieu of monetary payment for either a lease bonus bid or royalty due on oil and gas production from most other leases in the Gulf of Mexico or to transfer the credits to other Gulf of Mexico lessees for their use.

DATES: Submit comments by April 1, 2008. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this proposed rule by March 3, 2008.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, at (703) 787-1536.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010-AD44 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Select "Minerals Management Service" from the agency drop-down menu, then click "submit." In the Docket ID column, select MMS-2007-OMM-0064 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using [Regulations.gov](http://www.Regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link. All comments will be posted to the docket.

- *Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS-4024, Herndon, Virginia 20170-4817.* Please reference "Bonus or Royalty Credits for Relinquishing Certain Leases Offshore Florida, 1010-AD44" in your comments and include your name and return address.

- *Send comments on the information collection in this rule to:* Interior Desk Officer 1010-AD44, Office of Management and Budget; 202-395-6566 (fax); e-mail: oiradocket@omb.eop.gov. Please also send a copy to MMS.

SUPPLEMENTARY INFORMATION:

Background and Summary of the Proposed Rule

Congress passed, and on December 20, 2006, the President signed, the Gulf of Mexico Energy Security Act of 2006 (GOMESA), Public Law No. 109-432.