

**U. S. DEPARTMENT OF JUSTICE  
UNITED STATES TRUSTEE  
REGION 7**

**GUIDELINES FOR DEBTORS-IN-POSSESSION**

The United States Trustee is responsible for supervising the administration of cases under chapters 7, 11, 12, and 13 of the United States Bankruptcy Code. 28 U.S.C. § 586. To fulfill this responsibility, the United States Trustee has issued these Guidelines for Debtors-in-Possession. These Guidelines impose certain administrative and reporting responsibilities on chapter 11 debtors-in-possession. In addition, there are other requirements imposed by law, including a requirement to pay United States Trustee quarterly fees. The United States Trustee's staff is available to assist debtors-in-possession in fulfilling these requirements. In addition, it is frequently necessary for members of the United States Trustee's staff to contact debtors concerning missing documents, incomplete forms, and other administrative matters. Many debtors-in-possession and attorneys prefer that these administrative matters be handled directly between the debtor and the United States Trustee's staff. Others prefer that all such contacts be made through counsel. The separately enclosed form, Direction of Attorney For the Debtor Concerning Contacts with Client Regarding Administrative Matters, should be carefully reviewed with your attorney who should sign the form authorizing how contacts on administrative matters will be handled.

**I. GENERAL REQUIREMENTS**

A. The Debtor in Possession ("Debtor") is required to comply in all respects with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure ("FRBP"), and applicable Local Rules.

B. The Debtor must pay all obligations arising after the filing of the petition ("post-petition") in full when due. This includes not only general business expenses, but all post-petition obligations including but not limited to:

1. Wages;
2. FICA, both employee and employer share;
3. Tax deposits withheld from wages;
4. Federal and State employment taxes;
5. Sales tax;
6. United States Trustee Quarterly Fees; and
7. Any other taxes (ad valorem, property etc.).

C. The Debtor is **prohibited from paying** pre-petition obligations except as allowed by the Bankruptcy Code or by order of the Court.

D. The Debtor shall file all federal, state and local tax returns when due, or shall procure an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or by order of the court. All post-petition taxes are to be paid timely.

E. **No** assets may be sold or disposed of, other than in the ordinary course of business, except as allowed by and upon compliance with 11 U.S.C. § 363 and the FRBP governing sales.

F. The Debtor may not pay any professionals without Court Order. Applications for employment of professionals must be submitted to and approved by the court **prior** to rendering of any service by such persons. Further, applications for compensation of professionals must be submitted to and approved by the Court **prior** to any payment by the Debtor to such professional. Applications for employment and compensation of professionals must be served upon the United States Trustee.

G. Section 363(c)(2) of the Bankruptcy Code provides that the Debtor may not use cash collateral without the consent of the secured creditor or the approval of the court. Any application for use of cash collateral or approval of a cash collateral agreement must comply with FRBP 4001 and must be served upon the United States Trustee.

H. The Debtor may not obtain credit or incur secured or unsecured debt other than in the ordinary course of business. The Debtor must comply with section 364 of the Bankruptcy Code and FRBP 4001. All applications must be served upon the United States Trustee.

I. The Debtor must provide the United States Trustee with a current and fully accurate address and phone number of the Debtor, debtor's counsel, responsible individual, and responsible financial individual. Any change of address or phone number must be reported to the United States Trustee immediately.

## **II. INSURANCE REQUIREMENTS**

A. All debtors **must** maintain insurance and make all premium payments thereon when due. The United States Trustee is to be identified as a party to be notified of any change, cancellation, or expiration of each policy. A 10-day advance notice is the minimum requirement. However, 30 days should be requested of the insurance company.

B. Unless the United States Trustee otherwise directs, or a waiver of these requirements is obtained from the court the Debtor must maintain insurance customary in the Debtor's business as well as the following:

1. If the Debtor has tangible assets susceptible to casualty loss (fire, weather, theft, vandalism, etc.), casualty insurance must be maintained;

2. If the Debtor has employees, workers' compensation insurance, or sufficient equivalent coverage, must be maintained, unless the Debtor obtains an order of the court waiving this requirement;

3. If the Debtor conducts business operations, general liability and, if appropriate, product liability insurance must be maintained.

C. The United States Trustee's office must be provided with proof that the required insurance is being maintained throughout the pendency of the chapter 11 case. To fulfill this requirement the United States Trustee must be provided a copy of a Certificate of Insurance from

the Debtor's insurance agent(s) or a copy of the first page of the insurance policy if it indicates the expiration date of the policy. Should an insurance policy expire during the pendency of the chapter 11 case, upon expiration, termination, or renewal of any coverage, the Debtor shall **immediately** provide the United States Trustee with adequate proof of renewal or replacement coverage.

### **III. INFORMATION REGARDING BANK ACCOUNTS**

A. The Debtor shall **immediately** upon the filing of the petition close any bank account over which the Debtor has possession or control at the time of filing.

B. The Debtor shall **immediately** open new Debtor bank accounts at a depository approved by the United States Trustee. The new accounts are the Operating Account and, if payroll or other taxes are an issue for the Debtor, the Tax Account. If required by Court order, a separate cash collateral account **must** be established and maintained. If the Debtor has a separate payroll account pre-petition, this account should also be closed and a new payroll account should be opened. The Debtor **must** have Court approval for any request for an exemption to the United States Trustee's policy regarding the use of a depository not approved by the United States Trustee.

C. The Debtor shall insure that the depository imprints the full name of the Debtor, including any d/b/a's, the designation "Debtor in Possession" (not D.I.P.), and the Debtor's bankruptcy case number on all permanent checks used for the new bank accounts. The Debtor must type or print all of the foregoing information on temporary checks. The new account signature cards shall clearly indicate that the Debtor is a "Chapter 11 Debtor in Possession" and show the bankruptcy case number.

D. The Debtor must deposit all receipts and make all disbursements only through the approved Debtor in Possession account(s). Any funds in excess of that required for current operations must be maintained in an interest-bearing account.

E. The Debtor shall deposit to the Tax Account sufficient funds to pay any tax liability (when incurred) associated with the Debtor's payroll.

F. All funds held by the bankruptcy estate must be deposited into an account with a financial institution that agrees to comply with the requirements of the United States Trustee and is an authorized depository approved by the United States Trustee. The Debtor-in-Possession Accounts in the approved depository will be monitored by the United States Trustee and will not exceed the insured or collateralized limits of that approved depository. A copy of the list of the Approved Depositories may be obtained from the United States Trustee's office.

G. The Debtor may be requested to provide copies of bank statements for pre-petition bank accounts and/or post-petition debtor-in-possession bank accounts. Additionally, as part of its responsibilities under 28 U.S.C. §586, the United States Trustee may request copies of

supporting documentation for transactions disclosed in the bank statements. If the bank statements or supporting documentation, e.g., deposit slips, cancelled checks, are not available to the Debtor, the Debtor agrees to provide consent for the United States Trustee to request copies of bank statements and/or supporting documentation directly from the Debtor's financial institution(s).

#### **IV. LISTS OF CREDITORS, SCHEDULES AND STATEMENT OF AFFAIRS**

A. The Debtor must comply fully with FRBP 1002, 1007 and 2015 and applicable Local Rules regarding the filing of schedules and statements of financial affairs. Either the schedules or a complete list of all of the creditors (including their addresses) and complete description of assets must be filed with your petition.

B. Pursuant to FRBP 1007(d), you must also file a list containing the name, address, phone number and amount of claims of your twenty (20) largest **unsecured** creditors. This list should not contain the names of any creditors who are "insiders" as that term is defined in § 101(31) of the Bankruptcy Code.

C. Pursuant to applicable Local Rules, Debtors are required to provide the Clerk of the Bankruptcy Court with, proper mailing cards/matrix for notification of all creditors.

#### **V. INITIAL REPORT**

A. **The "Initial Report" is required and must be submitted to the United States Trustee no later than five (5) days prior to the Initial Debtor Conference ("IDC"). The "Initial Report" should not be filed with the Clerk of the Bankruptcy Court.**

**B. The Debtor is required to submit the following documents with the Initial Report:**

**1. Proof of the establishment of new Debtor in Possession bank accounts;**

**(a) Operating Account;**

**(b) Tax Account (if payroll or other taxes are an issue for the Debtor); and**

**(c) Any other necessary accounts, such as Payroll Account, Cash Collateral Account(s).**

**2. Completed declaration under penalty of perjury from the Debtor verifying the closing of all pre-petition bank accounts and stating the date each account was closed and that all monies were transferred to the new Debtor in Possession bank accounts (form enclosed).**

**3. Completed Insurance Statement (form enclosed) and proof of the following insurance coverage:**

- (a) General comprehensive public liability;**
- (b) Fire and theft;**
- (c) Workers' compensation;**
- (d) Vehicle;**
- (e) Product liability; and**
- (f) Any other coverage customary in the Debtor's business.**

**4. Federal Income Tax Returns for the last three (3) years and State Sales Tax Returns for the last three (3) months. You must also provide our office with a copy of any Federal Income Tax Return or extension filed during the pendency of your Chapter 11 case. You may be asked to provide copies of Personal and Real Property Tax statements for the last three (3) years**

**5. Financial statements, audited as well as unaudited, including, but not limited to, profit and loss statements, inventory statements, balance sheets and tax reconciliations for the last three (3) years.**

**6. Completed projected ninety (90) day profit and loss statement (form enclosed).**

**7. If a debtor in possession is a corporation, a copy of a corporate resolution authorizing the filing of the Chapter 11 petition and designating an individual to sign pleadings.**

**8. If a debtor in possession is a partnership, a copy of the written agreement to the filing of the bankruptcy case signed by all partners, or by all general partners if the debtor in possession is a limited partnership.**

## **VI. CREDITORS MEETINGS**

**A. Section 341(a) of the Bankruptcy Code requires a meeting of creditors in each case. Notice of the meeting is sent to all creditors. A representative of the Debtor and the counsel for the Debtor are required to attend. The Debtor's representative should have knowledge of and be familiar with the operation of the Debtor's business and the bankruptcy proceeding. In addition, the financial person for the Debtor should be available for examination at the creditor's meeting.**

**B. For individual Debtors in a joint case, both Debtors should be present to testify at the creditor meeting. If the Debtor's first monthly operating report is due prior**

to the creditor's meeting, the Debtor must file the operating report(s) and send a copy to the United States Trustee by the due date.

**C.** After notice of the creditor's meeting has been mailed, meetings cannot be canceled or rescheduled to accommodate conflicts with the schedules. If a creditor's meeting must be rescheduled, Debtor's counsel or his representative must appear at the scheduled meeting and request that the meeting be rescheduled.

**D.** If the request is approved, the Debtor's counsel must file a Certificate of Service with the court that notice of the rescheduled meeting has been sent to all parties in interest by the Debtor. The Debtor may be responsible for costs and expenses associated with the rescheduling.

**E.** The United States Trustee or a member of the staff will preside at the creditor's meeting, administer the oaths, and examine the Debtor and/or other appropriate person(s). The meeting will be recorded on audio tape and will be retained five (5) years, at which time the tapes will be erased.

**F.** Requests for copies of tapes must be made in writing to the United States Trustee. The request must include: case name, case number, district, the date of the meeting of creditors and two (2) blank 90-minute cassette tapes or other appropriate media as directed by the United States Trustee

## **VII. OPERATING REPORTS**

**A.** Pursuant to FRBP 2015, the Debtor must file monthly operating reports with the Clerk of the Bankruptcy Court and must serve a copy upon the United States Trustee, the chairman of any committee appointed in the case, and any governmental unit charged with the responsibility for collection or determination of any tax arising out of the debtor's operations (IRS, State Comptroller, Texas Work Force Commission, etc.). All operating reports must be filed no later than the twentieth (20th) day of the month following the end of the month covered by the report. The Debtor must file a report every month using the reporting forms designated by the United States Trustee. The Debtor will not be required to file monthly operating reports once the case has been dismissed or converted.

**B.** In the past, the United States Trustee has instructed the Debtor not to file monthly operating reports after a plan has been confirmed in a case. However, in order to effectuate Public Law Number 104-99 enacted by Congress on January 27, 1996, the United States Trustee is now requiring a Debtor to file quarterly post-confirmation reports until the Court has entered an order closing this case. The post-confirmation reports must be filed no later than the twentieth (20th) day of the month following the end of the quarter covered by the report.

## VIII. QUARTERLY FEES

A. Debtors are required to pay a quarterly fee to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6). Quarterly fees must be paid for every calendar quarter, or a part of a quarter, in which the chapter 11 case is pending until the date of entry of an order closing, dismissing or converting the case. If a case is pending as a chapter 11 case for even one day during a quarter, payment of the fee for that quarter is required.

B. If a chapter 11 case has been jointly administered with another case or has been consolidated with another case for administrative purposes only, quarterly fees will accrue for both cases and the Debtor is responsible for the payment of the quarterly fees assessed in each of the individual cases. If the court has ordered the case to be substantively consolidated (consolidated for all purposes), then quarterly fees will only accrue in the main case number. However, the Debtor is responsible for the payment of quarterly fees accrued in each of the individual cases prior to the entry of the order of consolidation.

C. The amount of the quarterly fee depends upon the dollar amount of the Debtor's disbursements during each calendar quarter. A minimum fee of \$325.00 is due each quarter even if no disbursements are made during that quarter. The fee amounts are as follows:

Total Quarterly Disbursement			Quarterly Fee
Less than		\$15,000.00	\$ 325
\$15,000	to	74,999.99	650
75,000	to	149,999.99	975
150,000	to	224,999.99	1,625
225,000	to	299,999.99	1,950
300,000	to	999,999.99	4,875
1,000,000	to	1,999,999.99	6,500
2,000,000	to	2,999,999.99	9,750
3,000,000	to	4,999,999.99	10,400
5,000,000	to	14,999,999.99	13,000
15,000,000	to	29,999,999.99	20,000
30,000,000	to	Or more	30,000

Fees are to be paid according to the following Schedule:

<u>Quarter</u>		<u>Ending</u>	<u>Due Date for Payment</u>
1 <sup>st</sup> Quarter	Jan-Feb-Mar	Mar. 31	April 30
2 <sup>nd</sup> Quarter	April-May-June	June 30	July 31
3 <sup>rd</sup> Quarter	July-Aug-Sept	Sept 30	Oct. 31
4 <sup>th</sup> Quarter	Oct-Nov-Dec	Dec. 31	Jan. 31



**D. Pursuant to § 1129(a)(12) of the Bankruptcy Code, a plan of reorganization must provide for payment of all unpaid quarterly fees as of its effective date, or it cannot be confirmed. Failure to include provisions for payment of post-confirmation quarterly fees in the Plan, will result in the United States Trustee filing objections to confirmation of the Plan. The following language is a sample quarterly fee provision for inclusion in a disclosure statement, plan of reorganization, and confirmation order:**

**The debtor will pay pre-confirmation fees owed to the U. S. Trustee on or before the effective date of the plan. After confirmation, the reorganized debtor [Debtor/Plan Proponent] will file with the court and serve on the U. S. Trustee quarterly financial reports in a format prescribed by the U. S. Trustee, and the Debtor [Debtor/Plan Proponent] will pay post-confirmation quarterly fees to the U. S. Trustee until a final decree is entered or the case is converted or dismissed. 28 U.S.C. § 1930(a)(6).**

**E. Each Debtor will receive a statement regarding the fee prior to each of the due dates. Each statement contains a payment stub which must be returned along with the Debtor's check made payable to "United States Trustee" to the following address: U. S. Trustee Payment Center, P. O. Box 530202, Atlanta, GA 30353-0202. The Debtor's account number, (obtained from the statement or by contacting the United States Trustee's Office) should be written on the face of the check. Failure to include either the statement or the UST Form 11-A with your payment, will result in the payment center being unable to properly apply your payment. If you do not receive the proper form or a bill, contact the United States Trustee's Office.**

**F. Please Remember That the United States Trustee Payment Center Only Processes Your Quarterly Fee Payments and Is Not an Office of the United States Trustee. The Address Given Is a Lock Box at a Bank. Therefore, Please Forward Only the Statement Stub or the UST 11-A Form with Your Check to the Payment Center. This Address May Not Be Used for Service of Process, Correspondence, or for Any Purpose Other than Payment of Quarterly Fees.**

**G. If a check is returned for insufficient funds, all future quarterly fee payments must be made by cashier's check, certified funds, or money order.**

**H. If the case is converted to a proceeding under chapter 7, 12, or 13 of the Bankruptcy Code, quarterly fees will nevertheless be required for the period the case was pending as a chapter 11 through the date the order of conversion is entered. After conversion, the Debtor will be required to file a schedule of unpaid obligations incurred after the commencement of the chapter 11 case, pursuant to § 348(d) of the Bankruptcy Code and FRBP 1019(5)(A)(i), including accrued United States Trustee quarterly fees, considered administrative expenses under 11 U.S.C. § 503(b).**

**I. The United States Trustee will oppose dismissal unless the dismissal order includes provision for payment of unpaid quarterly fees with language substantially similar to that set forth below.**

**ORDERED that the Debtor in Possession shall pay to the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) within ten (10) days from the entry of this Order and provide the United States Trustee an appropriate affidavit indicating the cash disbursements for the relevant period(s). The Court shall retain jurisdiction to enforce the payment of these fees.**

**K. Failure to Pay the Quarterly Fee Is Cause for Conversion or Dismissal of a Chapter 11 Case under § 1112(b)(10) of the Bankruptcy Code. Anyone Filing a False Report Will Be Subjected to Civil Liability under 31 U.S.C. § 3729(a)(7) and to Criminal Penalties under 18 U.S.C. § 1001 and 19 U.S.C. § 1621. Further, the United States Trustee Intends to Use the Debtor's Taxpayer Identifying Number for the Purpose of Collecting and Reporting Delinquent Quarterly Fees to the Department of Treasury Pursuant to the Debt Collection Improvements Act of 1996. Public Law 104-134, 31 U.S.C. §§ 3701, et Seq., Amended 31 U.S.C. §§ 3701-3720. See Notice Enclosed. The United States Trustee May Take Such Other Steps, as Allowed by Law, to Collect Delinquent Quarterly Fees, Including Referral of the Debt to the Department of the Treasury, or Other Agencies, for Collection.**

#### **IX. OTHER REGULATORY AGENCY REPORTING**

**A. If the Debtor has 100 or more employees and benefit plan assets in excess of \$1,000,000 or has participant claim issues, the Debtor must complete and submit the U.S. Department of Labor ("DOL") Questionnaire. Debtors that have a company sponsored group health/dental/pension plan are reviewed with respect to the DOL Questionnaire.**

**B. If the Debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11 of the Bankruptcy Code, then Exhibit A to the Voluntary Petition must have been completed and filed with the Voluntary Petition.**

**C. If, to the best of the Debtor's knowledge, the Debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, then Exhibit C to the Voluntary Petition must have been completed and filed with the Voluntary Petition and a response must have been provided to Form 7 Statement of Financial Affairs, question no. 17. If the Debtor has not done so, the Debtor is required to report this information to the Environmental Protection Agency.**

**X. NOTICE REQUIREMENTS ON UNITED STATES TRUSTEE**

**Notices and copies of pleadings must be served on the United States Trustee as required by FRBP 1007, 1009, 2002(a)(2), (5), (7), 2002(b), 2002(f), 2014, 2015, 2016 and applicable Local Rules.**

**XI. EFFECT OF NON COMPLIANCE**

**Failure to comply with the United States Trustee Guidelines, including timely filing of operating reports, may result in conversion, dismissal, or other appropriate relief.**

**GOVERNMENTAL TAXING AUTHORITY ADDRESSES FOR MONTHLY OPERATING REPORTS: (Not Including Local Authorities):**

**Texas Workforce Commission  
Bankruptcy Section  
P.O. Box 149080  
Austin, Texas 78714-9080**

**Texas Comptroller of Public Accounts  
Revenue Accounting Division  
Bankruptcy Section  
P.O. Box 13528  
Austin, Texas 78711-3528**

**For cases filed in the Western District of Texas, Austin, Waco, El Paso and Midland Divisions:**

**Internal Revenue Service  
Centralized Insolvency Operation  
P. O. Box 7346  
Philadelphia, PA 19101-7346**

**For cases filed in the Southern District of Texas, Corpus Christi, Brownsville, Laredo, McAllen and Victoria Divisions and the Western District of Texas, San Antonio Division:**

**Internal Revenue Service  
Centralized Insolvency Operation  
P. O. Box 7346  
Philadelphia, PA 19101-7346**

**For cases filed in the Southern District of Texas, Houston and Galveston Divisions:**

**Internal Revenue Service  
Centralized Insolvency Operation  
P. O. Box 7346  
Philadelphia, PA 19101-7346**

**THE UNITED STATES TRUSTEE MAY MODIFY, OR AMEND THESE GUIDELINES AND REQUIREMENTS FROM TIME TO TIME, AND AS IS APPROPRIATE IN AN INDIVIDUAL CASE. QUESTIONS CONCERNING THESE REQUIREMENTS MAY BE DIRECTED TO UNITED STATES TRUSTEE'S OFFICE FOR REGION 7 AT THE FOLLOWING ADDRESSES:**

**SOUTHERN DISTRICT:**

**Houston, Galveston, Laredo and Victoria Divisions:**

**United States Trustee's Office  
515 Rusk, Suite 3516  
Houston, Texas 77002  
Tel: 713-718-4650**

**Corpus Christi, Brownsville, and McAllen Divisions:**

**United States Trustee's Office  
606 N. Carancahua, Suite 1107  
Corpus Christi, Texas 78401  
Tel: 361-888-3261**

**WESTERN DISTRICT:**

**San Antonio, El Paso and Midland Divisions:**

**United States Trustee's Office  
P.O. Box 1539  
San Antonio, Texas 78295-1539  
Tel: 210-472-4640**

**Austin and Waco Divisions:**

**United States Trustee's Office  
903 San Jacinto, Suite 230  
Austin, Texas 78701  
Tel: 512-916-5328**

**JUDY A. ROBBINS  
UNITED STATES TRUSTEE  
REGION 7**