

U.S. Department of Justice

Office of the United States Trustee

OPERATING GUIDELINES AND REPORTING REQUIREMENTS FOR DEBTORS IN POSSESSION AND TRUSTEES (Revised 3/27/09)

Title 28, §586(a)(3) of the United States Code, directs the United States Trustee to supervise the administration of all Chapter 11 cases. To comply with this charge, the United States Trustee for Region 20 has established these Operating Guidelines and Reporting Requirements for Chapter 11 debtors and trustees. Chapter 11 debtors, trustees, and their attorneys must notify the United States Trustee of significant matters affecting their case. The United States Trustee must be served with copies of all papers filed in the case, except as otherwise directed by the Court or the United States Trustee.

Timely compliance with these requirements is essential. Failure to comply may result in motions to dismiss or convert this case for liquidation under Chapter 7, for the appointment of a Chapter 11 trustee or examiner, or for imposition of sanctions. If you believe that the requirements should be waived or varied in your case, you should immediately submit a written request to the appropriate Field Office of the United States Trustee. (Contact information may be obtained from the United States Trustee website, <http://www.justice.gov/ust/r20/index.htm>. However, debtors, if represented, should contact their attorney with questions about this material.

GUIDELINES AND OPERATING REQUIREMENTS

1. **LIST OF CREDITORS.** When the petition is filed, a list of the debtor's twenty (20) largest unsecured creditors, excluding insiders, must be filed with the Clerk of the Bankruptcy Court. The complete name, address, e-mail address, telephone number, and fax number of each creditor must be included.
2. **INITIAL DEBTOR INTERVIEW.** In chapter 11 cases, the United States Trustee will meet with debtor and debtor's counsel prior to the Section 341 meeting of creditors to obtain requested information and ensure that debtor understands the requirements of these Guidelines. The United States Trustee will notify debtor's counsel of the time and date of this meeting.
3. **BOOKS AND RECORDS.** Debtor's books and records (i.e. general ledger accounts) must be closed as of the petition date and new books and records opened. The old books and records must be retained and be available to the United States Trustee.

4. **BANK ACCOUNTS.** All pre-petition bank accounts controlled by debtor must be closed immediately upon the filing of the petition, and Debtor shall immediately open new debtor-in-possession operating, payroll and tax accounts at a United States Trustee Authorized Depository. In addition, individual debtors engaged in business as sole proprietors should open a separate debtor-in-possession account for payment of personal living expenses. All business revenues must be deposited into the general operating account, with amounts needed to fund the other accounts being transferred to those accounts as necessary. Deposits, other than transfers from the operating account, should not be made directly to the payroll or tax accounts. Any deviation from the three required Debtor In Possession Accounts must be approved by the United States Trustee prior to the Initial Debtor Interview.

Disbursements other than by numbered check are prohibited. Counter checks are prohibited. Requests to use, create, or maintain petty cash accounts must be submitted to the United States Trustee in writing. Each account must be located in a United States Trustee approved depository. The Debtor In Possession is required to maintain bank records and canceled checks, which shall be provided to the United States Trustee upon request.

Within fifteen (15) days of filing the petition, debtor must provide the United States Trustee with a sworn statement describing all pre-petition accounts by depository name, account number, and account name, verifying that each such pre-petition account has been closed. A form that complies with this requirement can be obtained from the United States Trustee website. Additionally, proof of closing old accounts and opening new accounts must be provided.

5. **PROOF OF INSURANCE.** Within fifteen (15) days of filing the petition, debtor must provide the United States Trustee with proof of the insurance coverage required by these guidelines. The proof must disclose, at a minimum, the effective date and the termination date of the coverage; the type and limits of coverage provided, and the identity of all loss payees. Binders must be accompanied by paid receipts. Debtor should instruct its insurance companies to list the United States Trustee as a Certificate Holder. Upon expiration or other termination of any coverage, debtor shall immediately provide the United States Trustee with adequate proof of replacement coverage. Debtor shall maintain at least the following coverage, where appropriate:

- a. General comprehensive liability;
- b. Property (personal & realty);
- c. Casualty and theft;
- d. Workers' compensation;
- e. Vehicle;
- f. Product liability;
- g. Flood insurance;
- h. Directors and Officers liability;

- i. Professional malpractice;
 - j. Other coverage customary or prudent in the debtor's business, or required by law.
6. **PHYSICAL INVENTORY**. Within thirty (30) days of filing the petition, debtor, if requested by the United States Trustee, shall provide the United States Trustee with a physical inventory as of the petition date. The inventory shall be itemized and indicate cost values. For purposes of this reporting requirement, "inventory" is defined as all goods in possession of the debtor intended for sale to customers. It includes finished goods and unfinished goods. It does not include fixed assets owned by the debtor.
7. **RENTAL PROPERTY RECORDS**. Debtors who own commercial or residential rental property shall provide the United States Trustee with a rent roll as of the petition date within fifteen (15) days from the filing of the petition. The rent roll shall consist of (1) a description of each property owned, (2) rental price of each unit, (3) security or other deposits held, (4) occupancy and payment status of each unit, (5) name, address, and phone number of management company, if any, and (6) the monthly management fee for each unit.
8. **MONTHLY OPERATING REPORTS**. Debtor must file an original monthly operating report with the Clerk of the Bankruptcy Court, and serve a copy upon the United States Trustee. The monthly operating reports must be prepared using the forms provided on our website at <http://www.justice.gov/ust/r20/index.htm>. Debtors who are individuals and/or operate a sole proprietorship must complete and file a *Monthly Operating Report (Individuals)*. Debtors who are partnerships, LLC's, professional corporations, or corporations must complete and file the *Standard Monthly Operating Report (Business)*. Small Business Debtors must complete and file a *Small Business Monthly Operating Report*. The Monthly Operating Report is based on a calendar month (e.g. January 1 - January 31), and all reports must be filed by the 15th day of the month following the reporting period.

The Monthly Operating Report cover page must be signed by the debtor's attorney before filing with the court or submitting to the United States Trustee. Additional financial information may be required by the United States Trustee.

With respect to small business debtors, the Basic Monthly Operating Report must include the industry classification code for the debtor's business as required by 28 U.S.C. § 586b(c)(1). The United States Department of Commerce through the Census Bureau promulgates the North American Industry Classification System ("NAICS"). Business debtors should be aware of their NAICS number since it is widely used for tax and workers' compensation purposes. This number must be entered on U. S. Trustee Basic Monthly Operating Report on the line for the "SIC Code."

Debtors have a continuing obligation to file monthly operating reports until the court approves and confirms the Plan of Reorganization. After confirmation debtors are required to file a quarterly *Post-Confirmation Operating Report*. The Post-Confirmation Operating Report includes, among other things, all payments made under the Plan of Reorganization and payments made in the ordinary course of doing business. These reports must be filed quarterly until the court enters a Final Decree, dismisses the case, or converts the case to another chapter in bankruptcy. The original report must be filed with the Clerk of the Bankruptcy Court, and a copy served upon the United States Trustee. The report must be filed by the 15th day of the month following the reporting period. The Post-Confirmation Operating Reports may be obtained by accessing our website at <http://www.justice.gov/ust/r20/index.htm>.

9. **TAXES.** Upon payment of each payroll, debtor shall transfer from the operating account to the debtor's tax account sufficient funds to pay any liability associated with the payroll. Taxes shall be paid from the tax account accompanied by appropriate tax deposit coupons. State and local taxes shall also be paid from the tax account. Sales and use taxes shall be deposited to the tax account at least weekly. All tax returns and reports must be timely filed and accompanied by payment in full of any liability. A copy of each return and verification of payment of taxes due must be served on the United States Trustee.
10. **EMPLOYMENT OF PROFESSIONALS AND PRINCIPALS.** A copy of any application to employ or compensate a professional (including, but not limited to, lawyers, accountants, real estate agents/brokers, appraisers, auctioneers, and consultants) must be served upon the United States Trustee. Applications to employ such persons must be filed prior to any services being rendered to debtor.

Each applicant's affidavit must disclose any relationship or contact applicant has with the debtor, any creditor, party in interest, their attorneys and accountants, and employees of the United States Trustee. **A general statement that the applicant is disinterested and does not represent an interest adverse to the estate is *not* sufficient.**

Debtor shall provide the following information regarding employment and compensation of its principals: name and position of the individual; detailed description of the duties and responsibilities; reasons why employment of the individual is necessary for successful reorganization; details of the compensation sought; details of any other benefits or consideration to be received, including but not limited to use of vehicles, housing, expense reimbursement, insurance, and pension or profit sharing; and, each individual's salary and benefit history for the year immediately preceding the filing of the petition.

11. **PRE-PETITION FINANCIAL STATEMENTS.** Within fifteen (15) days of the petition filing, debtor shall provide the United States Trustee with copies of debtor's most recent audited and unaudited financial statements.
12. **FEDERAL INCOME TAX RETURNS.** Within fifteen (15) days of the petition filing, debtor shall provide the United States Trustee with copies of debtor's federal income tax returns for the two years prior to the filing.
13. **UNITED STATES TRUSTEE QUARTERLY FEES.** A Chapter 11 debtor must pay a quarterly fee to the United States Trustee for each calendar quarter, or portion thereof, between the date of filing the petition and the date the court enters a final decree closing the case, dismisses the case, or converts the case to another chapter in bankruptcy. Payment of all fees which are due and owing must be made before the effective date of a confirmed Plan of Reorganization. The quarterly fee is calculated by totaling debtor's disbursements as reported on the Monthly Financial Reports for the three-month calendar quarter, according to the following table. A minimum fee of \$325 is due even if there are no disbursements during a calendar quarter. There is no proration of the fee:

<u>Total Quarterly Disbursements</u>	<u>Quarterly Fee Owed</u>
\$0 to \$14,999.99	\$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
\$15,000,000,000 to 29,999,999.99	\$20,000
\$30,000,000 or more	\$30,000

Quarterly fees are due no later than one month following the end of each calendar quarter. Failure to pay quarterly fees may result in the conversion or dismissal of the case. The debtor will receive a bill or statement from the Executive Office for United States Trustees, Washington, D.C., for each calendar quarter, prior to the payment due date. These billings are estimates only, based on financial information previously provided by the debtor to the Office of United States Trustee. The debtor is responsible for calculating the correct quarterly fee amount. A check for the quarterly fee, made payable to "United States Trustee," should be mailed with the tear-off portion of the statement form to:

U. S. Trustee Payment Center
Post Office Box 70937
Charlotte, NC 28272-0937

The address shown above is a lockbox at a bank. It may **NOT** be used for service of process, correspondence, or for any purpose other than payment of quarterly fees. Only the quarterly fee payment along with the payment form provided to the debtor should be sent to the above lockbox address. Any other correspondence or documents sent to the lockbox other than the payment form will be destroyed. The completed disbursement stub provided with the payment form should be sent to the identified US Trustee Field Office in the window envelope.

Debtor is responsible for timely payment of the quarterly fee. Failure to receive a bill from the Executive Office for United States Trustees does not excuse debtor from timely payment. Debtor's attorney may contact the Office of United States Trustee if there are any questions regarding quarterly fee forms or billing information.

Interest Assessment on Unpaid Quarterly Fees

Pursuant to 31 U.S.C. § 3717, the United States Trustee Program will begin assessing interest on unpaid Chapter 11 quarterly fees charged in accordance with 28 U.S.C. §1930(a) effective October 1, 2007. Interest assessed on past due amounts first appeared on the October 2007 statements. The interest rate assessed is the rate in effect as determined by the Treasury Department at the time your account becomes past due. If payment of the full principal amount past due is received within thirty (30) days of the notice of initial interest assessment, the interest assessed will be waived.

Notice to Debtors Making Payment by Check

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times.

14. **QUARTERLY FEES AFTER CONFIRMATION OF PLAN.** Quarterly fees continue to accrue after the Plan of Reorganization has been confirmed. After confirmation, the debtor is required to submit proof of monthly disbursements, and to continue to pay quarterly fees following the same payment guidelines outlined in Paragraph 13 above until a Final Decree is entered by the court or the case is dismissed or converted to another chapter. Debtor's attorney may contact the Office of United States Trustee if there are any questions regarding post-confirmation quarterly fee forms or billing information.

15. **DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER.** Pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, §31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. §3701, the United States Trustee intends to use the debtor's Taxpayer Identifying Number (TIN) as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceeding for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees and interest, if applicable, that are owed to the United States Trustee.

The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to the debtor; (4) engage private collection agencies to collect the debt and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

16. **ADDITIONAL NOTICE REQUIREMENTS.** The United States Trustee must be advised immediately of any significant change in debtor's business. Significant changes include, but are not limited to, casualty or theft losses, changes in insurance

coverage, or allegations of violations of laws, ordinances, or regulations, including but not limited to the failure to pay taxes, which could affect the continued operation of the Debtor's business.

17. **CHANGE OF ADDRESS**. It is the debtor's responsibility to notify the United States Trustee and the Bankruptcy Court of any change of address or telephone number within ten (10) days of the change. Notice to the Clerk and the United States Trustee must be in writing. Debtor(s) may not receive notice of actions taken in the case if the debtor fails to provide proper notice to the Clerk and the United States Trustee.

**AMENDMENTS TO OPERATING REQUIREMENTS
and
SOLICITATION OF COMMENTS AND SUGGESTIONS**

The United States Trustee reserves the right to revise, modify or amend these guidelines and requirements from time to time, and as is appropriate in an individual case. Comments or suggestions regarding these guidelines or other policies and procedures of the Office of The United States Trustee are sought and appreciated and should be directed to the United States Trustee for Region 20 at the address shown below:

**UNITED STATES TRUSTEE
REGION 20
301 North Main, Ste. 1150
Wichita, Kansas 67202**