

U.S. Department of Justice

United States Trustee Region 21

**OPERATING GUIDELINES AND REPORTING REQUIREMENTS
FOR DEBTORS IN POSSESSION AND CHAPTER 11 TRUSTEES
(Revised 01/13/13)**

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 21 has established these operating guidelines and reporting requirements for chapter 11 debtors and trustees. Chapter 11 debtors, trustees, and/or their attorneys must notify the United States Trustee of significant matters affecting their case.

Timely compliance with these requirements is essential. Failure to comply may result in a motion to dismiss or convert the case to a chapter 7 liquidation proceeding; a motion for the appointment of a chapter 11 trustee or examiner; or a motion for imposition of sanctions. A request that these requirements be varied or waived must be in writing directed to the appropriate United States Trustee field office. Contact information for each field office may be obtained from the Region 21 website at <http://www.justice.gov/ust/r21>.

GUIDELINES AND OPERATING REQUIREMENTS

1. **LIST OF CREDITORS.** When the petition is filed, a list of the debtor's 20 largest unsecured creditors, excluding insiders, must be filed with the clerk of the bankruptcy court. The complete name and mailing address including zip code must be provided as well as the name, telephone number, and complete mailing address, including zip code, of the employee, agent or department of the creditor familiar with the claim who may be contacted. Fax numbers and e-mail addresses are also helpful.
2. **INITIAL DEBTOR INTERVIEW.** In chapter 11 cases, the United States Trustee will meet with the debtor and debtor's counsel prior to the section 341 meeting of creditors to obtain requested information and ensure that the debtor understands the requirements of these guidelines. The United States Trustee will notify debtor's counsel or the pro se debtor of the time and date of this meeting.
3. **BOOKS AND RECORDS.** The 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 for review by the United States Trustee.

4. **BANK ACCOUNTS.** All pre-petition bank accounts controlled by the debtor must be closed immediately upon the filing of the petition, and the 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 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.

Counter checks are prohibited. Requests to use, create, or maintain petty cash accounts must be submitted to the United States Trustee in writing. Each bank account must be located in a United States Trustee approved depository. A list of approved depositories is available on the Region 21 website at <http://www.justice.gov/ust/r21>. Under each office, navigate to chapter 11 for the approved depositories for each judicial district. The debtor is required to maintain bank records and canceled checks, and provide them to the United States Trustee as required by the Monthly Operating Report instructions.

Within 14 days of filing the petition, the 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 Region 21 website at http://www.justice.gov/ust/r21/reg_info.htm#ch11. Proof of closing old accounts and opening new accounts must be provided.

5. **PROOF OF INSURANCE.** Within 14 days of filing the petition, the 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. The debtor must instruct its insurance companies to list the United States Trustee as a certificate holder. Upon expiration or other termination of any coverage, the debtor shall immediately provide the United States Trustee with adequate proof of replacement coverage. The 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 30 days of filing the petition, the 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 14 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) name of tenant, occupancy and payment status of each unit, (5) name, address, and phone number of the management company, if any, and (6) the monthly management fee for each unit. The debtor shall also provide any agreement with a third party to manage the property.

8. **MONTHLY OPERATING REPORTS**. The debtor must file an original monthly operating report with the clerk of the bankruptcy court, and serve a paper copy upon the United States Trustee. The monthly operating reports must be prepared using the forms provided on the Region 21 website at http://www.justice.gov/ust/r21/reg_info.htm#ch11. Debtors who are individuals and/or operate a sole proprietorship must complete and file a monthly operating report for individuals. Debtors that are partnerships, LLC's, professional corporations, or corporations must complete and file the monthly operating report for businesses. Small business debtors must complete and file the 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 21st 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. Additional financial information may be required by the United States Trustee.

With respect to small business debtors, the small business monthly operating report must include the industry classification code for the debtor's business as required by 28 U.S.C. § 586b(e)(1). The United States Department of Commerce through the Census Bureau promulgates the North American Industry Classification System ("NAICS"). While business debtors should be aware of their NAICS number since it is widely used for tax and workers' compensation purposes, NAICS numbers are listed at <http://www.naics.com/search.htm>. This number must be entered on the monthly operating report on the line for the "SIC Code."

Debtors have a continuing obligation to file monthly operating reports until the court 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 paper copy served upon the United States Trustee. The report must be filed by the 21st day of the month following the reporting period. The post confirmation operating report may be obtained from the Region 21 website at http://www.justice.gov/ust/r21/reg_info.htm#ch11.

9. **TAXES.** Upon payment of each payroll, the 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.

10. **EMPLOYMENT OF PROFESSIONAL AND PRINCIPALS.** Applications to employ or compensate a professional (including, but not limited to, lawyers, accountants, real estate agents/brokers, appraisers, auctioneers, and other professional persons) must be filed with the bankruptcy court.

Each application must be accompanied by a verified statement that discloses any relationship or contact the 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.

The 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 14 days of filing the petition, the debtor shall provide the United States Trustee with copies of the debtor's most recent audited and unaudited financial statements.

12. **FEDERAL INCOME TAX RETURNS.** Within 14 days of filing the petition, the debtor shall provide the United States Trustee with copies of the debtor's federal income tax returns for the two years prior to the filing of the petition.

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 of a calendar quarter, between the date of the filing of 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 plan of reorganization. The quarterly fee is calculated by totaling the debtor's disbursements as reported on the operating reports for the three calendar quarters ending on March 31, June 30, September 30, and December 31 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> |
|---|--------------------------------|----------------------------------|
| \$ | 0.00 to 14,999.99 | \$ 325.00 |
| \$ | 15,000.00 to 74,999.99 | \$ 650.00 |
| \$ | 75,000.00 to 149,999.99 | \$ 975.00 |
| \$ | 150,000.00 to 224,999.99 | \$ 1,625.00 |
| \$ | 225,000.00 to 299,999.99 | \$ 1,950.00 |
| \$ | 300,000.00 to 999,999.99 | \$ 4,875.00 |
| \$ | 1,000,000.00 to 1,999,999.99 | \$ 6,500.00 |
| \$ | 2,000,000.00 to 2,999,999.99 | \$ 9,750.00 |
| \$ | 3,000,000.00 to 4,999,999.99 | \$ 10,400.00 |
| \$ | 5,000,000.00 to 14,999,999.99 | \$ 13,000.00 |
| \$ | 15,000,000.00 to 29,999,999.99 | \$ 20,000.00 |
| \$ | 30,000,000.00 or more | \$ 30,000.00 |

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 dismissal of the case or conversion to a chapter 7 liquidation case. Delinquent quarterly fees will be assessed interest until paid even if the case is dismissed. The debtor will receive a statement from the Executive Office for United States Trustees, Washington, D.C. for each calendar quarter prior to the payment due date. These statements are only estimates based on financial information previously provided by the debtor to the 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 quarterly fee payment stub of the statement form to:

**U.S. Trustee Payment Center
P.O. Box 530202
Atlanta, GA 30353-0202**

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 quarterly fee tear-off payment stub provided to the debtor should be sent to the above lockbox address. Any other correspondence or documents sent to the lockbox will be destroyed. The completed quarterly fee disbursement stub provided with the statement should be sent to the identified U.S. Trustee field office in the window envelope along with the address stub if an address correction is needed.

The debtor is responsible for timely payment of the quarterly fee. Failure to receive a statement from the Executive Office for United States Trustees does not excuse

the debtor from timely payment. The debtor's attorney or a pro se debtor should contact the appropriate United States Trustee field office if there are any questions regarding the quarterly fee forms or statement information.

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 quarterly post confirmation reports 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. The debtor's attorney or a pro se debtor should contact the appropriate United States Trustee field office if there are any questions regarding post-confirmation quarterly fee forms or billing information.

15. **ADDITIONAL NOTICE REQUIREMENTS.** The United States Trustee must be advised immediately of any significant change in the 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.

16. **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 14 days of the change. Notice to the clerk and the United States Trustee must be in writing. The debtor may not receive notice of actions taken in the case if the debtor fails to provide proper notice of address changes 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 how they are applied in individual cases. Comments or suggestions regarding these guidelines or other policies and procedures of the United States Trustee for Region 21 are sought and appreciated and should be directed to the United States Trustee at the address shown below or sent by e-mail to USTP.Region21@usdoj.gov.

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