



**U.S. Department of Justice**

*Office of the United States Trustee*

*Districts of Colorado, Utah, and Wyoming*

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Denver, Colorado 80202

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**OPERATING GUIDELINES AND REPORTING REQUIREMENTS  
OF THE UNITED STATES TRUSTEE**

**FOR CHAPTER 11 DEBTORS IN POSSESSION  
AND CHAPTER 11 TRUSTEES**

**I. INTRODUCTION**

**A. United States Trustee's Authority to Supervise Debtor in Possession**

Pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 704(8), the United States Trustee has established these **Operating Guidelines and Reporting Requirements** (the "requirements") for chapter 11 debtors in possession and chapter 11 trustees (the "debtor" or "debtors"). Under these requirements, debtors must establish and observe certain operating procedures and file certain financial reports with the Bankruptcy Court, the United States Trustee, and any committee appointed in the case by the United States Trustee. Counsel should carefully review these requirements with debtor upon receipt.

**B. Compliance, Amendments or Modifications**

***Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with any requirement may result in the filing of a motion to dismiss or convert the case or a motion to appoint a chapter 11 trustee or examiner.***

***Any request to amend or modify these requirements for a particular chapter 11 case must be made in writing. To be effective, approval by the United States Trustee must be in writing.***

**C. Duties of Debtor in Possession**

With the filing of a chapter 11 petition, a debtor becomes a new entity called a debtor in possession. The debtor in possession has fiduciary and statutory responsibilities to preserve and maintain the estate and to operate its business as efficiently as possible in order to maximize ultimate payments on pre-petition debts while keeping post-petition debt current. (See 11 U.S.C. §§ 1106 and 1107.)

**D. Duties of Trustee or Debtor in Possession in Small Business Cases**

A "small business case" is a case in which the debtor is a "small business debtor." See 11 U.S.C. § 101 (51C) and (51D). Section 1116 of Title 11 sets out a number of additional requirements in small business cases:

- 1) The debtor must append to the voluntary petition its most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or a statement made under penalty of perjury that the financial statements have not been prepared or the tax return has not been filed.
- 2) The debtor must attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States Trustee, including initial debtor interviews, scheduling conferences, and the §341 meeting of creditors, unless the court waives the requirement upon a finding of extraordinary and compelling circumstances.
- 3) The debtor must timely file all schedules and statements of financial affairs unless the court grants an extension of time, which shall not extend beyond 30 days after the order for relief absent extraordinary and compelling circumstances.
- 4) The debtor must file all post-petition financial and other reports required by the Federal Rules of Bankruptcy Procedures or Local Bankruptcy Rules.
- 5) The debtor must maintain insurance customary and appropriate to the industry, subject to 11 U.S.C. §363(c)(2) concerning use of cash collateral.
- 6) The debtor must timely file tax returns and other required governmental filings and timely pay all taxes entitled to administrative expense priority, except those being appropriately and diligently contested, and subject to 11 U.S.C. §363(c)(2) concerning use of cash collateral.
- 7) The debtor must allow the United States Trustee or a designated representative to inspect the debtor's business premises, books, and records at reasonable times, and after reasonable prior written notice, unless the debtor waives notice.

## **E. Individual Debtors**

Title 11 includes a number of provisions that apply specifically to Chapter 11 cases in which the debtor is an individual, including the following:

- Property of the bankruptcy estate includes property acquired post-petition. 11 U.S.C. § 1115(a)(1).
- Property of the bankruptcy estate includes post-petition earnings from personal services. 11 U.S.C. § 1115(a)(2).
- The plan must provide for the debtor to pay creditors all or such portion of earnings from personal services or other future income of the debtor as is necessary for the execution of the plan. 11 U.S.C. § 1123(a)(8).
- If a holder of an allowed unsecured claim objects to confirmation of the plan, the plan must either provide for payment of the full value of the claim as of the effective date, or for payment of the projected disposable income of the debtor for five years or for the term of the plan, whichever is longer, with disposable income defined in 11 U.S.C. §1325(b)(2). 11 U.S.C. § 1129(a)(15).
- At the request of the debtor, the trustee, the United States Trustee, or the holder of an allowed unsecured claim, the plan may be modified at any time after confirmation but before

completion of payments to 1) increase or reduce the amount of payments to a particular class; 2) extend or reduce the time period for payments; or 3) change the amount to be paid to a creditor to the extent necessary to take account of any payments made other than under the plan. 11 U.S.C. § 1127(e).

- At the request of the court, the United States Trustee, or any party in interest, the debtor must file with the court a copy of any post-petition federal income tax returns at the same time they are filed with the taxing authorities, and certain pre-petition federal income tax returns that had not been filed with the taxing authorities on the petition date. 11 U.S.C. § 521(f).
- An individual debtor does not receive a discharge until completion of all payments under the plan. The court may grant a discharge to an individual debtor who has not completed all plan payments if the court finds that the value of the property actually distributed to unsecured creditors as of the effective date is not less than the amount that would have been paid in a chapter 7 case if the estate had been liquidated on the effective date, and if the court also finds that modification of the plan under §1127 is not practicable. 11 U.S.C. § 1141(d)(5).

## II. OPERATING GUIDELINES

### A. Bank Accounts/Money of the Estate

1. The debtor must immediately close pre petition bank accounts and open new “debtor in possession” bank accounts. All receipts must flow through the debtor in possession account(s). All disbursements should be by check.
2. The account name on the bank’s records must include the words “Debtor in possession.” Checks for the new accounts must be pre-numbered by the printer, and must be **imprinted** with the words “Debtor in Possession” and the bankruptcy case number. Handwritten, typewritten, or hand-stamped versions are not acceptable. (See **Exhibit 1.**)
3. All money of the estate must be deposited or invested in accordance with 11 U.S.C. § 345. Examples of deposits and investments that comply with § 345(b) include, but may not be limited to, the following:
  - a. Deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
  - b. Investments in United States Treasury securities.
  - c. Deposits and investments with an entity that has posted a surety bond in favor of the United States, or pledged securities of the kind specified in 31 U.S.C. § 9303, to secure the funds invested or on deposit.

### B. Insurance

The debtor must maintain without interruption all insurance customarily carried in the debtor’s line of business or required by law or regulation. In most cases, the debtor will be required to carry liability, workers’ compensation, and property insurance, i.e., fire and extended coverage. The property insurance coverage must be for no less than the fair market value or replacement cost of the insured assets. The debtor must immediately notify the United States Trustee of any lapse, cancellation, modification, or

renewal of insurance coverage. Failure by the debtor to maintain appropriate insurance that poses a risk to the estate or to the public is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(C).

### **C. Taxes**

The debtor must remain current on all post petition federal, state, and local taxes and file all tax returns on a timely basis. If the debtor has payroll tax obligations, the debtor may be required to open a special tax account and report payroll tax deposits to the appropriate taxing authority. Failure by the debtor to timely pay post-petition taxes or to file post-petition tax returns is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(I).

### **D. Quarterly Fees**

Pursuant to 28 U.S.C. § 1930(a)(6), debtors are required to pay certain fees for each calendar quarter (or portion thereof) until the case is dismissed or converted or a final decree is entered and the case is closed. (See **Exhibit 2.**) Failure to pay quarterly fees when due is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(K).

### **E. Legal Documents to Be Transmitted to the United States Trustee**

Pursuant to Federal Rules of Bankruptcy Procedure 2002 and 9034, it is the responsibility of the debtor and the debtor's counsel to keep the United States Trustee apprised of all matters pertaining to the case at all times. This includes ensuring that the United States Trustee is served with copies of all papers (motions, applications, etc.) filed in the case.

### **F. Initial Debtor Interview**

The United States Trustee will schedule an Initial Debtor Interview ("IDI") with the debtor and counsel shortly after the case is filed. (See 11 U.S.C. § 1116(2) for specific requirements in small business cases.) The IDI will generally be conducted either at the debtor's place of business or at the office of the United States Trustee. At the IDI, a bankruptcy analyst from the United States Trustee's office will seek to become familiar with the debtor's case as well as with the debtor's business plan and operations, assets, liabilities, and accounting methods. Accordingly, the debtor's representative(s) at the IDI should have personal knowledge and information regarding the debtor's pre-petition and post-petition operations, accounting records, tax returns and financial statements. The analyst will also discuss the role of the United States Trustee, explain the Operating Guidelines and Reporting Requirements, and discuss scheduling matters. The IDI will be held within 30 days after the petition is filed. Prior to the IDI, the debtor must ensure that the United States Trustee has a copy of the debtor's Statement of Financial Affairs and Schedules and the debtor's Initial Financial Report. (See Section III, **Reporting Requirements.**) Failure by the debtor to attend meetings reasonably requested by the United States Trustee is cause for conversion or dismissal of the bankruptcy case. 11 U.S.C. § 1112(b)(4)(H).

### **G. Additional Legal Requirements**

The debtor's attention is directed to the following selected provisions of the Bankruptcy Code:

#### **1. Meeting of Creditors**

A first meeting of creditors will generally be held 25 to 40 days after the petition is filed. The debtor or one of the debtor's officers, directors, or general partners must attend and respond, under oath, to questions from the United States Trustee and creditors regarding the debtor's business and financial affairs, the cause of the bankruptcy, and the status of the debtor's reorganization efforts.

(See 11 U.S.C. §§ 341 and 343.) Failure by the debtor to attend the meeting of creditors without good cause shown is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(G).

## **2. Unsecured Creditors' Committee**

- a. As soon as possible after the entry of an order for relief, the United States Trustee will invite the 20 largest unsecured creditors to an organizational meeting for the purpose of forming an unsecured creditors' committee. This organizational meeting may be held in conjunction with the first meeting of creditors described above, or it may be scheduled separately. The debtor and the debtor's counsel may be requested to attend this meeting. (See 11 U.S.C. § 1102.)
- b. If a committee is appointed by the United States Trustee, the debtor must provide the committee with copies of all financial reports required by the United States Trustee.
- c. If a committee is appointed in a small business case, the debtor is no longer considered a small business debtor unless the court determines that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor.

## **3. Cash Collateral**

The debtor may not use "cash collateral" unless the secured creditor agrees to such use, or such use is authorized by the court after notice and a hearing. (See 11 U.S.C. § 363(c)(2).) Unauthorized use of cash collateral by the debtor that is substantially harmful to a creditor is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(D).

## **4. Obtaining Credit**

The debtor may not obtain credit other than in the ordinary course of business without court authorization after notice and a hearing. (See 11 U.S.C. § 364.)

## **5. Use, Sale or Lease of Property of the Estate**

The debtor may not use, sell, or lease property of the estate when such use, sale, or lease is not in the ordinary course of business, except after notice and a hearing. (See 11 U.S.C. § 363(b).)

## **6. Employment and Compensation of Professionals**

The debtor may not employ or compensate professional persons, including the debtor's attorney, without court approval. (See 11 U.S.C. §§ 326-331, 503 and 1107.)

## **7. Prohibition on Payment of Pre Petition Debts**

The debtor must not pay any pre petition debts without court approval. (See 11 U.S.C. Sec. 549.)

# **III. REPORTING REQUIREMENTS**

In addition to the reports described below, the United States Trustee may require the submission of any additional information that may be necessary to properly monitor the administration of the estate. **The Initial Financial Report is to be submitted to the United States Trustee only; it is not to be filed with the Clerk of Court. The Monthly Operating Reports are to be filed with the Clerk of the Court, and a hard copy of each report bearing an original signature is to be submitted to the United States Trustee.** Copies of all reports must also be provided to any committee appointed by the United States Trustee. Debtors that file the reports electronically with the Court must comply with applicable requirements concerning retention of original signatures. The debtor's unexcused failure to satisfy timely any filing or reporting requirement is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(F).

## **A. Initial Financial Report**

1. The Initial Financial Report is due **fifteen days** after the petition is filed. It is submitted only to the United States Trustee, with a copy provided to any committee appointed in the case.

2. The Initial Financial Report consists of the following:

a. **Cover Sheet (Form 1).**

b. **Latest fiscal year financial statements and tax returns.** The debtor must provide a complete set of financial statements for its most recent fiscal year. Publicly-held corporations must submit the most recent Form 10-K. Audited statements should be submitted if available. If audited statements are not available, the debtor should submit its last two federal income tax returns, along with unaudited statements. Individual debtors should redact any Social Security Numbers for themselves and their dependents that are included on the tax returns.

c. **Balance sheet as of the end of the month immediately prior to filing.**

(Debtors in small business cases are required to append their most recent balance sheet to the petition. 11 U.S.C. § 1116(1)(A). If the balance sheet was filed with the petition, the debtor may check the "previously submitted" box on Form 1.)

d. **Profit and loss statement (statement of operations) for the month immediately prior to filing and the year to date, through the end of that month.**

(Debtors in small business cases are required to append their most recent statement of operations to the petition. 11 U.S.C. § 1116(1)(A). If the statement of operations was filed with the petition, the debtor may check the "previously submitted" box on Form 1.)

e. **Proof of insurance coverage.** The debtor must provide a certificate(s) of insurance, signed by an authorized representative of the carrier or agent, with the United States Trustee named as a party to be notified in the event of cancellation. All documents provided as evidence of insurance must clearly indicate the policy expiration date, the types and amounts of coverage, the location(s) covered, the deductible, the named insured, the insurer, and the name, address, and telephone number of the local agent.

f. **Projections.** The debtor must submit a projected statement of monthly revenue, expenses, and cash flow that covers the first 180 days of post-petition operations.

Significant assumptions used in the projections must be described. The statement must provide sufficient detail to support a review of reasonableness when compared with other financial statements provided with the report.

- g. **Information concerning debtor in possession account(s).** The debtor must submit a sample voided check for each debtor in possession account. If a sample check is not yet available, the debtor must, in the interim, provide the account number and name and address of financial institution where the account is located.

## **B. Monthly Operating Reports**

1. A Monthly Operating Report must be submitted for each month (or portion thereof) after the petition is filed until a plan is confirmed or the case is dismissed or converted. The Monthly Operating Report submitted for the month in which an order confirming the plan is entered should cover the entire month.

2. The Monthly Operating Report is due **fifteen days** after the end of the month covered by the report. The Monthly Operating Report is filed with the Clerk of Court. A hard copy with an original signature is submitted to the United States Trustee. Copies must also be provided to any committee appointed in the case.

3. The Monthly Operating Report consists of the following:

- a. **Cover Sheet (Form 2-A).**
- b. **Cash Receipts and Disbursements Statements (Form 2-B).** The Cash Reconciliation (page 1 of Form 2-B) requires information for the monthly reporting period along with cumulative information from the petition date through the end of the reporting period.
- c. **Balance Sheet (Form 2-C).** Comparative balance sheets as of the last month-end and the petition date must be provided.
- d. **Profit and Loss Statement (Form 2-D).** Information must be provided for the monthly reporting period along with cumulative information from the petition date through the end of the reporting period.
- e. **Supporting Schedules (Form 2-E):**
  - 1) Post Petition Taxes Payable Schedule
  - 2) Insurance Schedule
  - 3) Accounts Receivable and Post Petition Payable Aging Summary (debtor must attach detailed agings)
  - 4) Schedule of Payments to Attorneys and Other Professionals
  - 5) Schedule of Payments to Principals/Executives
- f. **Quarterly Fee Summary (Form 2-F).**
- g. **Narrative (Form 2-G).**
- h. **Complete copies of bank statements for all accounts.**

i. **Bank statement reconciliations for all accounts.**

4. Individual debtors should discuss appropriate monthly reporting requirements with the bankruptcy analyst assigned to the case. Reports must include detailed reporting of all financial activity of the bankruptcy estate, including transactions generated by post-petition earnings from personal services, operation of a business, and sales of property of the estate. Individuals who derive their income from closely held corporations, partnerships or limited liability companies may be required to provide periodic financial statements for those closely-held entities.

5. Each Monthly Operating Report must be prepared on the attached forms. Computerized versions of these forms are available from the United States Trustee. System-generated reports may be attached as exhibits if prior approval from the United States Trustee has been obtained.

6. The Monthly Operating Report must be prepared on 8-1/2 by 11 inch, standard quality white paper, in order to conform to court filing requirements. (See Local Rules and Standing Orders for other restrictions and requirements.)

7. The Monthly Operating Report must be legible. If possible, the report should be typed. No entries should be left blank; if an item does not apply, enter "0" or "N/A".

8. Reports prepared on the accrual basis of accounting are **strongly** recommended. The debtor may not switch from accrual to cash basis reports without the prior written approval of the United States Trustee.

9. Regardless of who prepared the Monthly Operating Report, the report must be signed, under penalty of perjury, by the debtor(s), a corporate officer, a general partner, or the chapter 11 trustee, as appropriate.

**C. Reports on Cases Converted to Chapter 7**

Pursuant to Fed.R.Bankr.P. 1019(5), the debtor must: 1) within fifteen days after entry of an order converting the case to a case under chapter 7, file a schedule of unpaid debts incurred after commencement of the chapter 11 case, such list to include the name and address of each post petition creditor; and 2) within 30 days after entry of the order of conversion, file with the court and transmit to the United States Trustee a final report and account.

**D. Post Confirmation Reporting Requirements**

Pursuant to 11 U.S.C. Sec. 1106(a)(7), the debtor must file a Post Confirmation Quarterly Report (**Form 3**) for every post-confirmation calendar quarter, including the quarter in which the plan was confirmed and the quarter in which the debtor files its application for final decree. The first report should be for the entire calendar quarter, not just the post-confirmation period. The final report should include all activity through the date of the application for final decree. The Post Confirmation Quarterly Report is due **thirty days** after the end of each quarter, except for the **final** Post-Confirmation Quarterly Report, which should be filed at the same time as the Chapter 11 Final Report and Motion for Final Decree.



# DEBTOR IN POSSESSION ACCOUNTS

This is an example of a correctly styled check for a debtor in possession bank account. Please use it as a guide in setting up your account and ordering checks.

The words "Debtor in Possession" and the bankruptcy case number must be **imprinted on all** checks issued by a debtor. Handwritten, typewritten and hand-stamped versions are **not** acceptable. The use of the abbreviation "DIP" for "debtor in possession" is **not** acceptable. In addition, the checks must be pre-numbered by the printer.

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John Doe Holding, Inc., dba USA GOODS 1001  
Debtor in Possession  
Case No. 05C-20000  
1400 Every Street 11-7/1000  
Anytown, CO 80000  
(303) 111-1111

PAY  
TO THE  
ORDER OF \_\_\_\_\_, \$( )  
DOLLARS

Solvent National Bank  
1 Finance Street  
Metropolis, CO 80001

FOR \_\_\_\_\_  
|:3 25079486|:57670 008641811 - 0801

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## CHAPTER 11 QUARTERLY FEES

The chapter 11 debtor in possession or chapter 11 trustee is responsible for paying this fee. The amount of the fee depends on disbursements made during the calendar quarter.

Fee payments are due no later than the last day of the month following the quarterly reporting period. In order for a plan to be confirmed in the case, the plan must provide that payment of quarterly fees will continue until a final decree is entered and the case is closed.

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### FEE SCHEDULE

<u>TOTAL QUARTERLY DISBURSEMENTS</u>		<u>QUARTERLY FEE</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 to	29,999,999.99	20,000
30,000,000 or more		30,000

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Failure to pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case. [11 U.S.C. § 1112(b)(4)(K)].

**Checks are to be made payable to The United States Trustee** and mailed to the address set forth below. Fees are **not** to be mailed or delivered to the local Office of the United States Trustee. If any check is returned "unpaid" for any reason, all subsequent payments must be made by way of cashier's check, certified check, or money order.

To ensure proper credit, it is imperative that the debtor in possession and chapter 11 trustee write the case number on each check and remit the payment with the coupon provided with the quarterly billing. A separate check and coupon is required for each quarterly payment even if more than one quarterly fee is paid at the same time.

Send all payments to: U.S. Trustee Payment Center  
Post Office Box 70937  
Charlotte, NC 28272-0937