

## United States Trustee Program Policy Statement

---

### **Bank Statement and Canceled Check Requirements For Bankruptcy Trustee Bank Accounts Under the Check Clearing for the 21<sup>st</sup> Century Act**

The Check Clearing for the 21<sup>st</sup> Century Act (“Act”), H.R. 1474, Public Law 108-100, enacted in October 2003, facilitates the collection of electronic images of checks in place of the original checks. Banks that convert original checks to electronic images would truncate and may destroy the original checks. The Act authorizes a new negotiable instrument, called a substitute check, to replace the original check. A substitute check is a paper reproduction of the original check that is suitable for automated processing in the same manner as the original check. The Act permits banks to provide substitute checks in place of original checks to subsequent parties in the check processing stream. A downstream bank is not required to accept an electronic image, but must accept a substitute check, which is the legal equivalent of the original check.

The Act is effective on October 28, 2004. Thereafter, private trustees, Assistant United States Trustees, and United States Trustees who administer cases under Chapters 7, 11, 12, and 13 of the Bankruptcy Code (“Trustees”) may start receiving a combination of canceled original checks, canceled substitute checks, and electronic images thereof, from banks holding bankruptcy-related funds (“Depositories”).

The United States Trustee Program has established a set of requirements for Depositories. Such Depositories must also comply with § 345 of the Bankruptcy Code and 31 C.F.R. Part 225. The current requirements are explained in the *Handbook for Chapter 7 Trustees* in Chapter 9, the *Handbook for Chapter 13 Standing Trustees* in Chapter 9, the *Handbook for Chapter 12 Standing Trustees* at pages 10-11, the *Handbook for Chapter 11 Trustees* in Chapter 7, and in each United States Trustee’s Depository Agreement. The four Trustee Handbooks are available at [www.usdoj.gov/ust](http://www.usdoj.gov/ust).

This Policy Statement amends the existing requirements for Depositories until new Depository Agreements can be executed. During 2005, current Depositories will be requested to sign a new Depository Agreement that reflects the revised requirements for bank statements, canceled checks, and related matters, as set forth below.

In addition, this Policy Statement amends the four Trustee Handbooks mentioned above. These Handbooks will be revised during 2005 to reflect the following:

## **Chapter 7 Cases**

1. Monthly bank statements must continue to be in paper form.
2. The following must be included and returned with the monthly paper bank statements:
  - a. Canceled original checks, and/or
  - b. Canceled substitute checks, and/or
  - c. Electronic images on paper of both the front and back of each canceled check with no more than four checks (front and back – eight images in total) per statement page.

## **Chapters 11/12/13 Cases**

1. Monthly bank statements must continue to be in paper form.
2. The following must be included and returned with the monthly paper bank statements:
  - a. Canceled original checks, and/or
  - b. Canceled substitute checks, and/or
  - c. Electronic images on paper of both the front and back of each canceled check with no more than four checks (front and back – eight images in total) per statement page.
  - d. As an alternative to the paper format described in 2(a)-(c), electronic images of all of the canceled checks may be provided on unalterable CDs (e.g., read-only and write-protected CD-Rs), with the front and back of the canceled checks segregated by account.

## **Cases Under All Chapters**

1. Blank check stock used by Trustees must be capable of being digitally reproduced in a legible image.
2. If the Depository provides canceled check images printed no more than four checks (front and back) to a page, the images must be printed on paper that is identifiable as coming from the Depository (e.g., paper containing the Depository's logo).
3. The following optional provision applies only to Depositories that provide canceled check images: if the Depository pays canceled original checks and canceled substitute checks subsequent to October 28, 2004, it would be helpful to Trustees if, during a transition period, the Depository includes both the canceled checks and their electronic images with the bank statements provided to Trustees through January 31, 2005.
4. The Depository must have controls that prevent tampering with, and unauthorized access to, canceled original and substitute checks and their electronic images.

5. The electronic images must be retained by the Depository according to industry standards (which is currently seven years).
6. If it is necessary for the Trustee to present testimony regarding substitute checks and electronic check images, the Depository agrees to provide an employee to testify as a subject matter expert at trial or other court proceeding.
7. The Depository must provide a substitute check or an enlarged electronic check image in paper form to a Trustee, upon request.
8. The Depository must provide the Trustee, for each account maintained, a minimum of thirty (30) days from the date of receipt of each monthly bank statement to: (1) examine the statement and all canceled checks for alteration and unauthorized use of the Trustee's signature, and (2) notify the Depository of any problem, notwithstanding anything to the contrary contained in any signature card, account contract, applicable account rules and regulations, or other agreement between the Trustee and the Depository.