



U.S. DEPARTMENT OF JUSTICE

UNITED STATES TRUSTEE
SOUTHERN DISTRICT OF CALIFORNIA
January 1, 2008

**GUIDELINES FOR
FULFILLING THE
REQUIREMENTS
OF THE
UNITED STATES TRUSTEE**

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Revised January 1, 2008

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OFFICE OF THE UNITED STATES TRUSTEE
SOUTHERN DISTRICT OF CALIFORNIA

GUIDELINE NO. 1
SERVICE OF DOCUMENTS ON
THE OFFICE OF THE UNITED STATES TRUSTEE

A. SERVICE OF DOCUMENTS

1. Cases Under Chapters 7, 11, and 12: Pursuant to Federal Rules of Bankruptcy Procedure (“Fed.R.Bankr.P.”) 9034, 5005, 2002, the United States Trustee requests that copies of all notices and documents filed in cases under chapters 7, 11, and 12 of the Bankruptcy Code be served upon the Office of the United States Trustee located at 402 West Broadway, Suite 600, San Diego, CA 92101-8511.

Exceptions: DO NOT SERVE THE FOLLOWING DOCUMENTS ON THE OFFICE OF THE UNITED STATES TRUSTEE:

- Proof of Claim;
 - Petitions and accompanying materials that are included in the initial filing with the Bankruptcy Court;
 - Chapter 7 Relief from Stay papers;
 - Chapter 7 Avoidance of Lien papers; and
 - Reaffirmation/Redemption papers.
2. Adversary Proceedings: Only the following documents need be served on the United States Trustee upon the commencement of an adversary proceeding:
 - Initial Complaint (and any amendments); and
 - Answer (or other responsive pleadings).
 - a. NOTE: The United States Trustee should not be named as a party defendant in Motions for Relief from Stay or Adversary Proceedings, unless the United States Trustee is an actual party.
 - b. NOTE: Do not serve discovery or discovery requests on the Office of the United States Trustee, unless United States Trustee is a named party.

3. Special Note for Chapter 12 Cases: In cases under chapter 12, all documents served upon the United States Trustee must also be served upon the Chapter 12 Trustee appointed in the case. For information regarding service on the Chapter 12 Trustee, please contact the Office of the United States Trustee.
4. Chapter 13 Cases: In chapter 13 cases, only copies of motions to dismiss or motions to convert, along with a copy of the proposed order should be served upon the United States Trustee.

B. MANNER OF SERVICE

1. For cases and proceedings pending in the Southern District of California, all documents which are required to be served upon the United States Trustee should be served at the following address:

Office of the United States Trustee
402 West Broadway, Suite 600
San Diego, California 92101-8511

2. The United States Trustee does not accept service by facsimile unless prior arrangement has been made with the attorney assigned to the case. Facsimile transmissions may be accepted for informational purposes, but the United States Trustee undertakes no responsibility for incomplete, imperfectly received or misdirected transmission and requires a hard copy to be served.

OFFICE OF THE UNITED STATES TRUSTEE
SOUTHERN DISTRICT OF CALIFORNIA

GUIDELINE NO. 2
MATTERS REQUIRING SUBMISSION TO THE UNITED STATES TRUSTEE PRIOR TO FILING WITH THE BANKRUPTCY COURT

Prior to filing any of the following motions or applications with the Clerk of the Bankruptcy Court, a moving party must first obtain a Statement of Position of the United States Trustee with respect to the motion or application in accordance with Local Bankruptcy Rules (“LBR”) 9034-1, 1007-3, 2014-1(d), 6005-2, and 4002-2(c):

- A. Motions for Extension of Time for filing Schedules of Assets and Liabilities and Statements of Financial Affairs required by LBR 1007;
- B. Applications to employ attorneys or other professionals by a debtor-in-possession or trustee pursuant to LBR 2014 and 6005-2¹;
- C. Applications for Entry of Final Decree in a chapter 11 case pursuant to Fed.R.Bankr.P. 3022;
- D. Applications for interim compensation of debtors and insiders pursuant to LBR 4002-2.

To obtain the Statement of Position of the United States Trustee, the moving party must serve a **copy** of the motion or application, the proposed order, a proof of service, and any other documents required (hereinafter "the motion papers"), together with a self-addressed, stamped envelope on the United States Trustee.

Do not serve the United States Trustee with the original motion papers. Retain the originals for filing with the Bankruptcy Court along with the Statement of Position. The United States Trustee will not file documents on behalf of other persons or parties.

The United States Trustee’s office now has procedures to provide attorneys and other professionals seeking employment in cases with Statements of Position in PDF format which can then be filed electronically by the Applicant via ECF. Those wishing to receive Statements of Position in PDF format may make such requests to the U.S. Trustee by sending the Application to Employ, Declarations in support thereof, and Proposed Order (all in PDF format) to the United States Trustee at the following email address:

ustp.region15sop@usdoj.gov

Please DO NOT mail a hard copy of your Application/Declaration/Order concurrently with your email request.

¹ See also Guideline No. 3, *infra*, *Applications to Employ Professional Persons*.

The United States Trustee will review the motion papers and return to the moving party a Statement of Position of the United States Trustee with respect to the motion or application. The Statement of Position will be issued no later than five (5) business days from the date of personal service of the motion papers and no later than eight (8) business days from the date of service by mail of the motion papers.

Thereafter, the applicant or movant may proceed to file movant's papers together with the Statement of Position of the United States Trustee with the Clerk of the Bankruptcy Court.

OFFICE OF THE UNITED STATES TRUSTEE
SOUTHERN DISTRICT OF CALIFORNIA

GUIDELINE NO. 3
APPLICATIONS TO EMPLOY PROFESSIONAL PERSONS AND
AUTHORIZE INTERIM COMPENSATION TO INSIDERS

The Bankruptcy Court must approve the employment of any attorney, accountant, appraiser, auctioneer, agent or other professional retained pursuant to 11 U.S.C. §§ 327, 1103, and 1114 of the Bankruptcy Code. See also Fed.R.Bankr.P. 2014(a) and LBR 2014-1. In addition, Local Bankruptcy Rule 4002-2 requires Bankruptcy Court approval before interim compensation or other remuneration can be paid to the debtor or any insider.

Prior to filing with the Court any application to authorize employment of professionals, or pay interim insider compensation, a Statement of Position must first be obtained from the United States Trustee. [See Guideline No. 2, supra, for instructions on how to obtain a Statement of Position.]

A. APPLICATIONS TO EMPLOY PROFESSIONALS

A request to employ a professional must include the following information:

1. The name and occupation of the person or firm to be employed.
2. Facts demonstrating the necessity for the employment and the specific services to be rendered.
3. The terms and condition of employment. Include the dates and amounts of all payments to applicant related to the case, the source of such payments, the current hourly rate(s) for the professionals and para-professionals expected to render services, and the charges that may be considered in an application for compensation and reimbursement of expenses. If applicable, attach any employment agreement including a retainer agreement, guarantee, or security agreement to the application.
4. The reason for the selection of the particular professional to be employed (attachment of a statement of the past experience of the professional should be included).
5. An authorized person's signature such as the debtor-in-possession, the chapter 11 trustee, or an officer, general partner, or other principal of the debtor-in-possession. (The Application should not be signed by the professional seeking employment.)

6. A declaration under penalty of perjury setting forth, to the best of the professional's knowledge, all of the professional's connections. Include connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States Trustee and any person employed by the office of the United States Trustee. State whether the professional holds any adverse interest to the estate of the debtor. The declaration must contain facts, not merely legal conclusions.
7. A proposed Order which states that no compensation will be paid by the debtor-in-possession or any other person or entity for services rendered to the estate, or by the chapter 11 trustee, except upon application.

B. RETROACTIVE EMPLOYMENT OF PROFESSIONALS

If an application to employ a professional by the debtor-in-possession or chapter 11 trustee is made more than thirty (30) days after the date of commencement of post-petition services by that professional, an explanation of the delay in the form of an affidavit must accompany the Application. Any application seeking an Order of retroactive effect more than 30 days after the commencement of services shall be noticed to all creditors and state the amount of fees and expenses which have accrued during the period between the date of the commencement of post-petition services and the date the Application was submitted.

For applications that seek retroactive (nunc pro tunc) approval, professionals are referred to In re Atkins, 60 F.3d 970 (9th Cir. 1995); In re THC Financial Corp., 837 F.2d 389 (9th Cir. 1988); In re Crook, 79 B.R. 475 (9th Cir. BAP 1987); In re Kroeger Properties and Development Inc., 57 B.R. 821 (9th Cir. BAP 1986); and In re Mahoney, Trocki & Associates, 54 B.R. 823 (Bankr. S.D.Cal. 1985).

C. MULTIPLE REPRESENTATION

If more than one attorney is being retained to represent the debtor-in-possession, the chapter 11 trustee, or the Unsecured Creditors' Committee, facts must be stated in the Application as to the need for multiple counsel, the services to be performed by each, and an affirmative statement in each application that there will be no duplication of services.

D. POST-PETITION RETAINERS

No retainer shall be paid to counsel post-petition in the absence of a Bankruptcy Court Order authorizing the payment.

E. SUBSTITUTION OF PROFESSIONAL

When the debtor-in-possession or trustee has been authorized to employ a professional person, any successor professional must also obtain court authorization for such employment. LBR 2014-1(a). If there is a substitution of counsel, a substitution of attorney form is also required.

F. APPLICATIONS TO AUTHORIZE INTERIM INSIDER COMPENSATION

1. Except in chapter 13 cases, Applications seeking authorization to pay interim insider compensation shall comply with Local Bankruptcy Rule 4002-2. Applications should include the following information:
 - a. The date notice, required by Local Bankruptcy Rule 2002-2, was given;
 - b. A personal income and expense declaration for the applicant, where such applicant is an individual, partner, or insider of the debtor;
 - c. A description of the nature and extent of the duties to be performed by the person to be compensated;
 - d. A description of the compensation received from the debtor, by the person to be compensated during the one year preceding the date the chapter 11 or 12 petition was filed;
 - e. A statement as to whether operating reports are due or current; and
 - f. A copy of the proposed order.
2. The failure to file monthly or other reports may result in an objection to interim compensation motions.

OFFICE OF THE UNITED STATES TRUSTEE
SOUTHERN DISTRICT OF CALIFORNIA

GUIDELINE NO. 4
COMPENSATION AND REIMBURSEMENT OF PROFESSIONALS

No professional person may be paid without court approval unless otherwise permitted by the Bankruptcy Code. An application for allowance of compensation and expenses for professional persons should conform with Fed.R.Bankr.P. 2016, LBR 2016 and the following substantive requirements:

- A. **FEE AND EXPENSE GUIDELINES:** Consult the Guidelines for Reviewing Application for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 adopted by the Executive Office for the United States Trustee pursuant to 28 U.S.C. § 586(a)(3)(A) available from the United States Trustee.

- B. **APPLICABILITY OF PROJECT BILLING:** Project billing, referred to in the Guidelines for Reviewing Application for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330, shall not apply to any applicant whose total aggregate compensation request in a case is anticipated to be less than \$7,500, unless the Office of the United States Trustee or the Court deem otherwise. This amount excludes expense reimbursements.

- C. **OBJECTION CEILING FOR IN-HOUSE EXPENSES:** The objection ceiling for in-house expenses that are routinely incurred are as follows:
 - 1. Photocopy charges in excess of actual cost, or 20 cents per page, whichever is less, without a showing of good cause; and
 - 2. Facsimile charges in excess of actual cost, or \$1.00 per page for outgoing transmissions and 20 cents per page for incoming transmissions, whichever is less, without a showing of good cause.

- D. **APPLICATIONS FOR FINAL ALLOWANCE:** A final application shall be filed by each professional at the conclusion of the case. The application shall seek approval of all prior payments of compensation and reimbursement of expenses, including the application of any pre-petition retainer, and shall state the total amounts sought to be finally approved for payment.

OFFICE OF THE UNITED STATES TRUSTEE
SOUTHERN DISTRICT OF CALIFORNIA

GUIDELINE NO. 5
DISCLOSURE STATEMENTS

Disclosure Statements are required to contain “adequate information” in accordance with 11 U.S.C. § 1125. The following is a check list of items that should generally appear in disclosure statements. The list is neither exclusive nor exhaustive and, depending upon the size and nature of the debtor and the plan of reorganization (“plan”) itself, the requirements for items to be included in a disclosure statement may vary considerably from case to case².

- A. **PURPOSE OF THE DISCLOSURE STATEMENT:** The disclosure statement should indicate that its purpose is to provide adequate information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records. The purpose is to enable a hypothetical reasonable investor typical of the holders of claims (creditors) or interests (shareholders) in the case to make an informed judgement concerning the plan. [See 11 U.S.C. § 1125(a)(1)].
- B. **VOTE REQUIRED FOR APPROVAL:** The disclosure statement should indicate which classes of creditors are impaired and entitled to vote. The disclosure statement shall set forth the vote required for approval of the plan. The disclosure statement shall also indicate that the creditors or interest holders can either vote for or against the plan. The disclosure statement should also explain that a class of creditors has accepted the plan if voting creditors holding at least two-thirds in amount and more than one-half in number of the allowed claims voting, have voted for the plan. [See 11 U.S.C. § 1126(c)].
- C. **DESCRIPTION OF THE PLAN:** The disclosure statement shall provide a description of the major provisions of the plan, including an estimate date by which creditors can expect to begin to receive payment, an expected percentage return on their claims, and a summary of the treatment of various classes under the plan. The effective date of the plan should be provided as well as any bar date that has been set. Generally, the description does not have to be detailed and may merely refer to the specific provisions of the plan which contains such detailed information. Further, the summary should contain a description of each class of creditors and the approximate dollar amount of the claims in each class.
- D. **MEANS OF EFFECTUATING THE PLAN:** The disclosure statement shall indicate how the debtor intends to accomplish the goals of the plan, i.e., whether by an infusion of case by an investor, sale of real or personal property, continued

² See In re Metrocraft Publishing Service, Inc., 39 B.R. 567 (Bankr.N.D.Ga. 1984).

business operation, issuance of stock or otherwise. If an investor is to provide funds, the identity of the investor and financial information regarding the investor's ability to provide such funds should be included.

- E. **CASH REQUIREMENTS:** The disclosure statement shall indicate the amount of cash to be paid upon confirmation of the plan to satisfy administrative claims and any other claims. The source of such cash shall also be identified. If the debtor expects a cash infusion from an outside source or from principals which is to be repaid in the future, then the identity of the source as well as the repayment terms should be disclosed. Similarly, the effect of such repayment (i.e., principal and interest payments) should be reflected in the debtor's financial projections.
- F. **ADMINISTRATIVE EXPENSES:** The disclosure statement shall identify whether any administrative expenses which must be paid, the identity of the administrative claimants and the source of the funds from which payments are to be made. The disclosure statement should also set forth that these expenses will be paid at the time of confirmation or on the effective date of the plan, unless the holder of such claimant has agreed to a different treatment, the identity of the party and the alternative treatment shall be disclosed. [See 11 U.S.C. § 1129(a) (9)(A)].
- G. **LEGAL PROCEEDINGS:** The disclosure statement shall briefly describe all material legal proceedings to which the debtor is a party, proceedings which the debtor contemplates instituting, and legal proceedings which are known to be threatened against the debtor. The information shall include the name of the proceeding, the court in which the litigation is pending, the present status, the relief sought, the debtor's prognosis for the outcome, the estimated litigation costs, and the effect, if any, on the plan.
- H. **DESCRIPTION OF THE DEBTOR:** The disclosure statement should describe the debtor and the debtor's business and should address any factors that may be unusual or peculiar to the business, such as seasonal cycles and unique product lines.
- I. **REASONS FOR FINANCIAL DIFFICULTIES AND CORRECTIONS OF THOSE FACTORS:** The disclosure statement should contain a brief narrative description of the reasons for the debtor's financial difficulties (which precipitated the filing of the debtor's case) and the steps taken to alleviate the situation since the inception of the case.
- J. **ASSETS AND VALUATION:** The disclosure statement shall provide a review of the debtor's scheduled assets and scheduled values, an estimate of the current value of the debtor's assets and the basis for such estimate (e.g. cost or appraisals), and an explanation of any deviation of current asset values from the scheduled values. The disclosure statement shall also contain a current profit and loss statement and a balance sheet. A statement shall be made as to whether these

documents have been audited, the date of the audit and the identity of the auditor.

- K. **LIABILITIES:** The disclosure statement shall provide a review of the scheduled claims, their amounts and an estimate of the current amounts of all of the debtor's liabilities, including a summary of the proofs of claims filed in the case. The disclosure statement should indicate whether any claims are disputed and what action will be taken to resolve the dispute, including any estimated expenses to be incurred relative to such action.
- L. **HISTORICAL AND CURRENT FINANCIAL INFORMATION:** The disclosure statement shall include historical and current financial data. It shall include a profit and loss statements, a cash flow statements, and a balance sheets. This information provides creditors with some perspective on the debtor's past and current financial situation as well as the debtor's prospective financial prospects under the plan of reorganization. A *pro forma* balance sheet as of the date the plan is projected to be confirmed, indicating the financial condition of the reorganized debtor, should be included. In order to allow full analysis, profit and loss statements must be provided on both a cash and accrual basis.
- M. **LIQUIDATION ANALYSIS:** Creditors are entitled to receive as much under a chapter 11 plan of reorganization as they would under a chapter 7 liquidation. Consequently, the disclosure statement should clearly indicate the difference between the treatment proposed in the plan and that which creditors would receive under a chapter 7 liquidation. Such a comparison might indicate the percentage return to creditors under each alternative and must disclose any assumptions regarding liquidation values, administrative costs, etc [See 11 U.S.C. § 1129(a)(7)(A)(ii)]. It is insufficient to merely indicate that the plan will provide a better return than liquidation without information to support that conclusion. A simple tabular presentation setting forth estimated administrative expenses, priority expenses, secured and unsecured claims, together with the debtor's estimated asset values (including sources of such values) is appropriate. The liquidation analysis should also provide a present value calculation of the payments to creditors under the proposed plan versus liquidation. Where the debtor is a partnership, the disclosure statement should also describe the rights of a chapter 7 trustee under 11 U.S.C. § 723, including an estimate of any recovery and relevant financial information about the general partners.
- N. **FINANCIAL PROJECTIONS:** Projections are critical to a creditor's ability to assess the viability of the plan, especially where the plan calls for deferred payments to creditors or is based upon future earnings. The disclosure statement should include projections as far into the future as is practicable, including assumptions used by the debtor in formulating the projections, such as expected sales levels, gross and net profit levels, and inventory acquisition. The bases for the projections must be disclosed, and such projections must be realistically founded. At a minimum, the period covered by the projections should be

commensurate with the period of payment deferral under the plan. Use of spreadsheets is encouraged. Financial projections must be provided on both cash and accrual basis.

- O. **MARKETING EFFORTS:** The disclosure statement should indicate what efforts the debtor has made since the bankruptcy filing to market its properties for sale. Such a description should include the identity of the listing agent, the listing price, any offers received or anticipated, pending litigation which might affect the sale of the property, the equity in the property (including the source of the valuation), and any alternatives for marketing the property in the future.
- P. **POST-PETITION EVENTS:** The disclosure statement shall indicate whether any major events have occurred post-petition which might affect the case. Such events may include the appointment of a creditors' committee, a trustee, an examiner, or may involve post-petition financing or asset sales which could have potentially significant consequences on the ability of debtor to meet the plan requirements.
- Q. **MANAGEMENT COMPENSATION:** The disclosure statement shall disclose the identities and qualifications of management personnel, and set forth the respective compensation to be paid. The disclosure statement should identify if any of the management personnel are insiders as defined by 11 U.S.C. § 101(31)]. This disclosure statement should also include the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as director, officer or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan. [See 11 U.S.C. § 1129(a)(5)].
- R. **INSIDER AND AFFILIATE CLAIMS:** The disclosure statement shall disclose the claims asserted by insiders as defined by 11 U.S.C. § 101(31). This disclosure shall indicate the identity of the claimant, the affiliation of the insider with the debtor, the circumstances giving rise to the claim, the amount of the claim, and the amount the insider is asserting as a creditor. In addition, the disclosure shall indicate whether any or all of these claims have been subordinated and, if so, the basis for the subordination.
- S. **STOCK ISSUED FOR DEBT:** If the debtor plans to issue stock for all or part of its debt, the disclosure statement shall indicate if the debtor asserts that such stock is exempt from securities laws under 11 U.S.C. § 1145. The disclosure statement should also describe the nature of the stock or securities including information such as voting rights, interest rate, accumulation of dividends, liquidation preference, potential markets and market values after confirmation, the existence of other classes of stock, registration rights and any limitation on transferability. The debtor should state whether the stock is registered under Section 5 of the Securities Act of 1933 or, if not, what exemption from registration

is claimed and the basis for such a claim. Further, if the exemption of 11 U.S.C. § 1145 is relied upon, the disclosure statement should indicate this fact will be fully disclosed on any issued securities.

- T. **UNITED STATES TRUSTEE SYSTEM FUND FEES:** The disclosure statement should indicate that any unpaid quarterly fee balances, including assessed interest, will be brought current prior to or on the effective date of the plan. Section 1129(a)(12) provides that a plan may not be confirmed unless all fees payable by the debtor under 28 U.S.C. § 1930 have been paid or the plan provides for the payment of all such fees on the effective date of the plan. Additionally, the disclosure statement and plan of reorganization should provide for the payment of quarterly fees until the case is either closed by the court, converted to another chapter or dismissed by the court. To monitor compliance with the plan of reorganization, the plan of reorganization should provide that quarterly post-confirmation reports will be filed with the United States Bankruptcy Court and served on the United States Trustee's office.
- U. **ABSOLUTE PRIORITY RULE:** 11 U.S.C. § 1129(b) provides that if an impaired class has not accepted the plan, the court may not confirm the plan unless it does not discriminate unfairly, and is fair and equitable, with respect to each impaired class of claims or interests. The disclosure statement should set forth whether the plan meets this standard with respect to every impaired class, and specifically indicate whether any holder of any claim or interest that is junior to the claims of an impaired class will receive or retain any property under the plan on account of such junior claim or interest. The absolute priority rule and its impact should be clearly explained.
- V. **NEW VALUE CONTRIBUTION:** If the debtor proposes to allow contributing shareholders to retain an interest in the debtor ahead of more senior claimants, the disclosure statement should specifically set forth this treatment and the new investment, or value, to be contributed by the shareholders. The disclosure statement should indicate the reasons that such treatment does not violate the absolute priority rule set forth in 11 U.S.C. § 1129(b).
- W. **TAX ANALYSIS:** The disclosure statement should describe the plan's tax impact upon the debtor and the debtor's equity interest holders and creditors.
- X. **RISKS TO CREDITORS UNDER THE PLAN:** The disclosure statement should describe any risks that might impede the debtor's ability to perform under the plan or that would otherwise cause the debtor to fail to meet the plan's requirements.
- Y. **"SMALL BUSINESS" ELECTION:** The Bankruptcy Reform Act of 1994 provides that a business which falls within the parameters of 11 U.S.C. § 101(51C) may elect to be considered a "small business" and follow a "fast track" chapter 11

bankruptcy process set forth in 11 U.S.C. § 1121 (e). This election allows the court to “conditionally approve” a disclosure statement, subject to final approval after notice and a hearing. It also allows the plan proponent to hold a combined hearing on approval of the disclosure statement and confirmation of the plan. [See 11 U.S.C. § 1125(f)]. A debtor electing this treatment should describe, in its disclosure statement, the factors qualifying the debtor for the small business election and the special procedures applicable to qualified debtors who make such an election. The disclosure statement should specifically set forth it is conditionally approved and final approval is to occur at the combined hearing on the disclosure statement and plan confirmation.

- Z. **DEFAULT PROVISIONS:** The disclosure statement should set forth the events which will constitute a default under the terms of the plan.

OFFICE OF THE UNITED STATES TRUSTEE
SOUTHERN DISTRICT OF CALIFORNIA

GUIDELINE NO. 6
CHAPTER 11 QUARTERLY FEE PAYMENTS

A. **FEE SCHEDULE:** Quarterly fees pursuant to 28 U.S.C. § 1930(a)(6) shall be paid to the United States Trustee in all chapter 11 cases in accordance with the following schedule:

TOTAL QUARTERLY DISBURSEMENTS	QUARTERLY FEE
\$ 0 to 14,999.99	\$ 325 ³
15,000.00 to 74,999.99	650
75,000.00 to 149,999.99	975
150,000.00 to 224,999.99	1,625
225,000.00 to 299,999.99	1,950
300,000.00 to 999,999.99	4,875
1,000,000.00 to 1,999,999.99	6,500
2,000,000.00 to 2,999,999.99	9,750
3,000,000.00 to 4,999,999.99	10,400
5,000,000.00 to 14,999,999.99	13,000
15,000,000.00 to 29,999,999.99	20,000
30,000,000.00 or more	30,000

B. **RESPONSIBILITY FOR PAYMENT OF FEES:** The fees shall be paid to the United States Trustee every calendar quarter or portion thereof. Fees accrue from the date the chapter 11 case is commenced until the case is closed by the court, dismissed by the court or converted to another chapter. Fees for the first quarter are calculated from the date of the filing of the petition to the end of the calendar quarter. Fees for the last quarter are calculated from the beginning of that quarter to the date of the entry of the order closing, converting, or dismissing the case.

A minimum fee of \$325 is due each quarter even when no disbursements are made. There is no proration of the fee owed based upon the length of time a debtor is in chapter 11. The fee is based on the disbursements made during the pendency of the chapter 11 case. Debtor (or Trustee) is responsible for providing Monthly Operating Reports, indicating all case disbursements for the relevant period, so that the fees can be determined. Fees shall be paid no later than one month following the calendar quarter for which the fee is owed.

Interest will be charged on unpaid quarterly fees, pursuant to 31 U.S.C. § 3717.

³The amount of the Quarterly Fees changed on January 1, 2008. For the amounts imposed for calendar quarters before January 1, 2008, contact the Office of the United States Trustee for a copy of the prior fee schedule.

- C. **FAILURE TO MAKE PAYMENTS:** Failure to pay the quarterly fee is cause for conversion or dismissal of a chapter 11 case pursuant to 11 U.S.C. § 1112(b)(10). Requests for a voluntary dismissal and applications for compensation may be objected to by the United States Trustee if all fees have not been paid. Filing a false report may subject you to civil liability under 31 U.S.C. § 3729(a)(7), and to criminal penalties under 28 U.S.C. §§ 1001 and 1621.
- D. **METHOD OF PAYMENT:** A billing and a payment coupon with Debtor's account number will be mailed each quarter. Quarterly fee payments are to be made payable to "The United States Trustee" and are to be returned with the payment coupon to:

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

Include the account number (or debtor's name and case number if the account number is not known) on the check. Fees are not to be mailed or delivered to the local office of the United States Trustee unless prior arrangement has been made with the attorney assigned to the case. If the debtor does not receive a billing statement, it remains the responsibility of the debtor to forward timely payments to the payment center.

- E. **RETURNED CHECK:** If any check is returned "unpaid" for any reason, Debtor shall make all subsequent payments by cashier's check, certified check, or money order.
- F. **PAYMENT REQUIRED FOR CONFIRMATION:** A plan cannot be confirmed unless all fees payable under 28 U.S.C. § 1930 are current. Additionally, the plan must provide for the payment of quarterly fees until the case is either closed by the court, dismissed by the court or converted to another chapter. Once a plan of reorganization is confirmed, Quarterly Post-Confirmation Reports should be prepared, filed and served in accordance with the Operating and Reporting Requirements for Chapter 11 Cases.

OFFICE OF THE UNITED STATES TRUSTEE
SOUTHERN DISTRICT OF CALIFORNIA

GUIDELINE NO. 7
BANKRUPTCY PETITION PREPARERS

11 U.S.C. § 110 of the Bankruptcy Code provides civil penalties for persons, other than an attorney or a supervised employee of an attorney, who negligently or fraudulently prepare bankruptcy petitions or any other documents for filing by a debtor in connection with a bankruptcy case. These civil penalties include, where appropriate, the disgorgement of fees, monetary fines and the imposition of an injunction from participation in activities constituting the unauthorized practice of law.

All petition preparers shall comply with the requirements of 11 U.S.C. § 110. Failure to comply with § 110 may result in the filing of a civil enforcement action by the United States Trustee. The preparer may also be subjected to criminal prosecution under 18 U.S.C. § 154. Individuals who are aware of improper petition preparer activity are urged to report same to the Office of the United States Trustee.

Issued: January 1, 2008

STEVEN JAY KATZMAN
UNITED STATES TRUSTEE



**UNITED STATES TRUSTEE
GUIDELINES FOR REVIEWING APPLICATIONS
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
FILED UNDER 11 U.S.C. § 330**

Issued January 30, 1996

I. GENERAL INFORMATION

- A. The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. § 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. § 101, et seq. ("Code"), in accordance with procedural guidelines ("Guidelines") adopted by the Executive Office for United States Trustees ("Executive Office"). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.
- B. The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.
- C. The Guidelines are not intended to supersede local rules, but should be read as complementing the procedures set forth in local rules.
- D. Nothing in the Guidelines should be construed:
 - 1. to limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application;
 - 2. to limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or
 - 3. to create any private right of action on the part of any person enforceable in litigation with the United States Trustee.

- E. Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.
- F. Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

II. CONTENTS OF APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES

All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

A. Information about the Applicant and the Application. The following information should be provided in every fee application:

1. Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.
2. Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.
3. Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.
4. Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.
5. Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.
6. When an application is filed less than 120 days after the order for relief or after a prior application to the Court, date and terms of the order allowing leave to file at shortened intervals.
7. Time period of the services or expenses covered by the application.

B. Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

1. In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.
2. In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.
3. In every case, the amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.
4. Any material changes in the status of the case that occur after the filing of the fee application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

C. Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

1. total compensation and expenses requested and any amount(s) previously requested;
2. total compensation and expenses previously awarded by the court;
3. name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;
4. total hours billed and total amount of billing for each person who billed time during billing period; and

5. computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

D. Project Billing Format

1. To facilitate effective review of the application, all time and service entries should be arranged by project categories. The project categories set forth in Exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.
2. The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.
3. Each project category should contain a narrative summary of the following information:
 - a. a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;
 - b. identification of each person providing services on the project; and
 - c. a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.
4. Time and service entries are to be reported in chronological order under the appropriate project category.
5. Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or "lumped" together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis

amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

- E. Reimbursement for Actual, Necessary Expenses.** Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate, Factors relevant to a determination that the expense is proper include the following:
1. Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.
 2. Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.
 3. Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc.) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.
 4. Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.
 5. Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

6. Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).
7. Whether the expenses appear to be in the nature of nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephone and monthly car phone charges, lighting, heating and cooling, and library and publication charges.
8. Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

EXHIBIT A

PROJECT CATEGORIES

Here is a list of suggested project categories for use in most bankruptcy cases. Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

ASSET ANALYSIS AND RECOVERY: Identification and review of potential assets including causes of action and non-litigation recoveries.

ASSET DISPOSITION: Sales, leases (§ 365 matters), abandonment and related transaction work.

BUSINESS OPERATIONS: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

CASE ADMINISTRATION: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

CLAIMS ADMINISTRATION AND OBJECTIONS: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims,

EMPLOYEE BENEFITS/PENSIONS: Review issues such as severance, retention, 401 K coverage and continuance of pension plan.

FEE/EMPLOYMENT APPLICATIONS: Preparations of employment and fee applications for self or others; motions to establish interim procedures.

FEE/EMPLOYMENT OBJECTIONS: Review of and objections to the employment and fee applications of others.

FINANCING: Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

LITIGATION: There should be a separate category established for each matter (e.g. XYZ Litigation).

MEETINGS OF CREDITORS: Preparing for and attending the conference of

creditors, the § 341 (a) meeting and other creditors' committee meetings.

PLAN AND DISCLOSURE STATEMENT: Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.

RELIEF FROM STAY PROCEEDINGS: Matters relating to termination or continuation of automatic stay under § 362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

ACCOUNTING/AUDITING: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

BUSINESS ANALYSIS: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

CORPORATE FINANCE: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

DATA ANALYSIS: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

LITIGATION CONSULTING: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions; forensic accounting, etc.

RECONSTRUCTION ACCOUNTING: Reconstructing books and records from past transactions and bringing accounting current.

TAX ISSUES: Analysis of tax issues and preparation of state and federal tax returns.

VALUATION: Appraise or review appraisals of assets.