



**U.S. Department of Justice
Office of the United States Trustee**

Region 2 - New York, Connecticut and Vermont

**OPERATING GUIDELINES AND REPORTING REQUIREMENTS
FOR DEBTORS IN POSSESSION AND TRUSTEES
(Revised 2/1/08)**

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 2 has established the Operating Guidelines and Reporting Requirements for Chapter 11 debtors and trustees. Chapter 11 debtors, trustees and their attorneys must notify the United States Trustee of significant matters affecting their case. The United States Trustee must be served with copies of all papers filed in the case, except as otherwise directed by the Court or the United States Trustee.

Timely compliance with each of the following requirements is essential. Failure to comply may result in a motion to dismiss or convert this case to liquidation under Chapter 7, for the appointment of a Chapter 11 trustee or examiner, or for imposition of sanctions. If you believe that the requirements should be waived or varied in your case, you should immediately submit a written request to the appropriate Field Office of the United States Trustee. Contact information may be obtained from the United States Trustee website, <http://www.usdoj.gov/ust/r02/>. If you are represented by counsel, please contact your attorney with questions regarding this material.

GUIDELINES AND OPERATING REQUIREMENTS

- 1. List of Creditors.** When the petition is filed, a list of the debtor's twenty (20) largest unsecured creditors, excluding insiders, must be filed with the Clerk of the Bankruptcy Court. The complete name, address, e-mail address, telephone number, fax number and name of contact of each creditor must be supplied .
- 2. Initial Debtor Interviews.** In chapter 11 cases, the United States Trustee generally requires the debtor and its counsel to meet with a member of the staff of the United States Trustee at an initial debtor interview prior to the Section 341 meeting of creditors. The purpose of the meeting is to discuss the debtor's particular financial situation, its operating framework under Chapter 11, and the requirements of the United States Trustee.

At the meeting, the debtor is required to furnish the following documentation and such other information as requested. If no initial debtor interview is scheduled, such materials must be provided to the United States Trustee within fifteen days of the petition filing.¹

¹If the debtor is a "small business debtor" these documents must be filed along with the petition. 11

- Copies of the debtor's last two filed income tax returns, including all applicable schedules.
- Copy of the most recently issued or prepared financial statements (inclusive of balance sheet, income statement, and statement of cash flows).
- A schedule of aged accounts receivable.
- Specimen (voided) checks that verify the opening of "debtor in possession" bank accounts (see "Bank Accounts"), and a listing of the authorized signatories (not the signature card).
- Proof that all applicable insurance is in place (see "Insurance").
- A listing of all disbursements for the ninety days prior to the filing, which may take the form of a check register for an individual.
- Copies of all licenses and/or permits (including licenses to intellectual property and certificates evidencing ownership of intellectual property).
- Copies of all written policies given to customers regarding the sale of personally identifiable information.

3. **Meeting of Creditors.** A meeting of creditors will be held by the United States Trustee within 20 to 40 days after the filing of a voluntary petition. The debtor and debtor's attorney are required to appear. All creditors and other parties in interest are notified of the meeting by the Clerk of the Bankruptcy Court. The debtor(s) will be examined under oath by the representative of the United States Trustee, creditors, and other parties in interest in attendance pursuant to 11 U.S.C. §§ 341 and 343, and Fed. R. Bankr. P. Rule 2003(b).

4. **Books and Records.** Debtor's books and records (i.e. general ledger accounts) must be closed as of the petition date and new books and records opened. The old books and records must be retained and be available to the United States Trustee.

5. **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. A list of approved depositories is available on the United States Trustee Website, www.usdoj.gov/ust/r02/. In addition, individual debtors engaged in business as sole proprietors should open a separate debtor-in-possession account for payment of personal living expenses. All business revenues must be deposited into the general operating account, with amounts needed to fund the other accounts being transferred to those accounts as necessary. Deposits, other than transfers from the operating accounts, should not be made directly to the payroll or tax accounts. Any deviation from the three required Debtor In Possession Accounts must be approved by the United States Trustee prior to the Initial Debtor Interview.

Disbursements other than by numbered check are prohibited. Counter checks are prohibited. Requests to use, create or maintain petty cash accounts must be submitted to the United States Trustee in writing.

¹(...continued)
U.S.C. §1116

The checks for each account must bear the case name, case number, the words “Debtor-In-Possession”, and the type of account (operating, payroll or tax) imprinted on the face of each check, in substantially the following form:

ABC, Inc. Debtor-in-Possession, 08-XXXXX OPERATING ACCOUNT 123 Main Street New York, NY 10004	No. 00001 _____, 20____
Pay to the Order of _____ \$ _____ _____ Dollars	

00XXX-XXX-00-XXXXX 000XXX-XX00	

Within fifteen 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 United States Trustee Website, www.usdoj.gov/ust/r02/. Additionally, proof of closing old accounts and opening new accounts must be provided.

6. **Insurance.** Within fifteen 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 coverage; the type and limits of coverage provided, and the identity of all loss payees. Binders dated after the filing of the petition must be accompanied by paid receipts. Debtor should instruct its insurance companies to list the United States Trustee as a Certificate Holder. Upon expiration or other termination of any coverage, the debtor shall immediately provide the United States Trustee with adequate proof of replacement coverage. Debtor shall maintain at least the following coverage, where appropriate:

- a. General comprehensive liability
- b. Property (personal & theft)
- 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.
- k. Proof of Renewal of Insurance during pendency of the case.

7. **Physical Inventory.** Within thirty (30) days of filing the petition, debtor, if requested by the United States Trustee, shall provide the United States Trustee with a physical inventory as of the petition date. The inventory shall be itemized and indicate cost values. For purpose 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.

8. **Rental Property Records.** Debtors who own commercial or residential rental property shall provide the United States Trustee with a rent roll as of the petition date within fifteen (15) days from the filing of the petition. The rent roll shall consist of (1) a description of each property owned, (2) rental price of each unit, (3) security or other deposits held, (4) occupancy and payment status of each unit, (5) name, address, and phone number of the management company, if any, and (6) the monthly management fee.

9. **Monthly Operating Reports.** Debtor must electronically file an original monthly operating report with the Clerk of the Bankruptcy Court, and serve a copy upon the United States Trustee.² A copy should also be provided to the creditors committee, if one has been appointed in the case.

Notwithstanding local ECF requirements, the United States Trustee will not accept service of the operating reports via electronic transmission.

The monthly operating reports must be prepared using the forms provided herein. These forms are also located on our website at <http://www.usdoj.gov/ust/r02>. Compliance with Local Rules and filing procedures in each jurisdiction is required. The debtor is also required to attach to the monthly operating report a photocopy of each month's bank statements. If bank statements are not available at the time the monthly operating report is filed, they should be submitted separately, as soon as the debtor-in-possession receives them. A bank reconciliation should be prepared and attached to the 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 20th day of the month following the reporting period.³ Such reports shall disclose all transactions of the calendar month immediately preceding the due date. The first report shall include all transactions for the period of the first month the debtor is in bankruptcy. It is recognized that in almost all cases, this first report will only be for a partial month. The partial month report should not be combined with that of the first full month.

Debtors have a continuing obligation to file monthly operating reports until the court approves and confirms the Plan of Reorganization. After confirmation, debtors are required to file a 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. The reports must be filed until the courts enters a Final Decree, dismisses the case, or converts the case to another chapter in bankruptcy. The original report must be electronically filed with the Clerk of the Bankruptcy Court, and a copy served upon the United States Trustee. The report must be

²In districts with ECF, the signature filed with the Court should be submitted in the manner required by the Court. The copy served on the United States Trustee must contain the actual signature of the preparer.

³Reports for the Rochester and Buffalo Divisions of the Western District of New York are due on the 15th day of the month, as are reports for the Southern District of New York.

filed by the 20th day of the month following the reporting period.⁴ The Post-Confirmation Operating Reports may be obtained from the local office in the Region.

10. **Taxes.** Upon payment of each payroll, debtor shall transfer from the operating account to the debtor's tax account sufficient funds to pay any liability associated with the payroll. Taxes shall be paid from the tax account accompanied by appropriate tax deposit coupons. State and local taxes shall also be paid from the tax account. Sales and use taxes shall be deposited to the tax account at least weekly. All tax returns and reports must be timely filed and accompanied by payment in full of any liability. A copy of each return and verification of payment of taxes due must be served on the United States Trustee with the monthly operating report.

11. **Employment of Principals and Professionals.** Pursuant to 11 U.S.C. §327 and Fed. R. Bank R. P. 2014, the debtor or trustee must apply for an order of the Court approving the employment of professionals, unless local rules otherwise direct. A copy of any application to employ or compensate a professional (including, but not limited to, lawyers, accountants, financial advisors, appraisers, auctioneers, real estate agents/brokers, and consultants) must be served upon the United States Trustee. Applications to employ such persons must be filed, and an order approving such employment must be entered, prior to any services being rendered to the debtor.

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

No later than the date of the first meeting of creditors, 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.

12. **Pre-Petition Financial Statements.** Within fifteen (15) days of the petition filing, debtor shall provide the United States Trustee with copies of the debtor's most recent audited and unaudited financial statements.

13. **Federal Income Tax Returns.** Within fifteen (15) days of the petition filing, 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.

⁴ **Exception – Southern District of New York Local Rule:** Pursuant to Local Bankruptcy Rule 3021-1(c) of the Southern District of New York, Debtors have to file post-confirmation status reports with the Court every January 15th, April 15th, July 15th, and October 15th until a final decree has been entered.

14. **Change of Address.** The debtor must notify the United States Trustee, in writing within 10 days, of any change of address or telephone number of the debtor. The debtor must also file with the Clerk of the Bankruptcy Court a change of address form.

15. **United States Trustee Quarterly Fees.** Debtors in Chapter 11 cases must pay a quarterly fee to the United States Trustee Program for each calendar quarter, or portion thereof, between the date of filing the petition and the date the court enters a final decree closing the case, dismisses the case or converts the case to another chapter in bankruptcy. The quarterly fee is calculated by totaling the debtor's disbursements as reported on the Monthly Operating Reports for the three-month calendar quarter, according to the following chart. The quarterly fee amount will be estimated if disbursements for all of the months of a calendar quarter that the case is open have not been reported to the United States Trustee. The estimated fee is based on, a) reported disbursement history, b) initial financial data submitted when the case was filed, or c) an estimation done by the United States Trustee office. If you calculated the fee to be less than the estimated quarterly fee, you must submit the reports supporting your estimation to the United States Trustee. **A minimum fee of \$325.00 is due even if there are no disbursements during a calendar quarter. There is no proration of the fee.**

TOTAL QUARTERLY DISBURSEMENTS	QUARTERLY FEE
\$0 to \$14,999.99	\$325.00
\$15,000 to \$74,999.99	\$650.00
\$75,000 to \$149,999.99	\$975.00
\$150,000 to \$224,999.99	\$1,625.00
\$225,000 to \$299,999.99	\$1,950.00
\$300,000 to \$999,999.99	\$4,875.00
\$1,000,000 to \$1,999,999.99	\$6,500.00
\$2,000,000 to \$2,999,999.99	\$9,750.00
\$3,000,000 to \$4,999,999.99	\$10,400.00
\$5,000,000 to \$14,999,999.99	\$13,000.00
\$15,000,000 to \$29,999,999.99	\$20,000.00
\$30,000,000 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 conversion or dismissal of the case. Payment of that quarter's fees and any past due fees and interest, if applicable, must be made before the effective date of a confirmed Plan of Reorganization and quarterly fees will continue to accrue until entry of the final decree, or until the case is converted or dismissed. Failure to pay these fees may result in a motion by the United States Trustee to convert the case to a Chapter 7 case.

The debtor will receive a bill or statement from the Executive Office for the United States Trustees, Washington, D.C., for each calendar quarter, prior to the payment due date. A check for the quarterly fee, made payable to "United States Trustee", should be mailed with the tear-off portion of the statement form to:

**United States Trustee Payment Center
P.O. Box 70937
Charlotte, NC 28272-0937**

The address shown above is a lockbox at a bank. It may NOT be used for service of process, correspondence or any purpose other than payment of quarterly fees. Any other correspondence or documents sent to the lockbox other than the payment form will be destroyed.

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

Failure to pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case pursuant to 11 U.S.C. § 1112(b)(4)(K) (for cases filed on or after October 17, 2005) or 11 U.S.C. §1112(b)(10) (for cases filed before October 17, 2005).

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

17. **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 file Post-Confirmation Operating Reports, and to continue to pay quarterly fees following subject to the same payment guidelines outlined in Paragraph 15 and 16 above until a Final Decree is entered by the court or the case is dismissed or converted to another chapter.

18. **Additional Notice Requirements.** The United States Trustee must be advised immediately of any significant change in debtor's business. Significant changes include, but are not limited to, casualty or theft losses, changes in insurance coverage, or allegations of violations of laws, ordinances, or regulations, including but not limited to the failure to pay taxes, which could affect the continued operation of the debtor's business.

19. **Waiver of Modification of Reporting Requirements.** The reporting requirements of the United States Trustee's office may be waived or modified only after a request in writing demonstrating sufficient cause for the requested action, and specifying what alternative is to be provided (i.e., the form and detail) for reporting on that estate. No waiver or modification shall be effective unless in writing and signed by the United States Trustee or an authorized delegate.

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

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

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

The United States Trustee reserves the right to revise, modify or amend these guidelines and requirements from time to time, and as is appropriate in an individual case. Comments or suggestions regarding these guidelines or other policies and procedures of the Office of The United States Trustee are sought and appreciated and should be directed to the United States Trustee for Region 2 at the address shown below:

**DIANA G. ADAMS
UNITED STATES TRUSTEE
REGION 2
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New York, New York 10004-2112**