



**U.S. DEPARTMENT OF JUSTICE**

*United States Trustee  
District of Arizona*

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**UNITED STATES TRUSTEE  
OPERATING GUIDELINES AND REPORTING REQUIREMENTS  
FOR CHAPTER 11 CASES**

Section 586(a) (3) of Title 28 of the United States Code provides that the United States Trustee shall monitor the administration of chapter 11 cases within the region for which such United States Trustee is appointed. These guidelines\* and reporting requirements have been promulgated by the United States Trustee for the District of Arizona pursuant to her statutory duty, and supplement the provisions in the Bankruptcy Code, The Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the District of Arizona. The latter, however, must be separately consulted to assure full compliance with all of the substantive and procedural requirements governing a chapter 11 bankruptcy case.

**ILENE J. LASHINSKY  
United States Trustee  
District of Arizona**

\* These guidelines set forth the general policy of the United States Trustee, District of Arizona. The guidelines do not create any right or benefit, substantive or procedural, enforceable at law, by a party against the United States Trustee.

September, 2003

**Timely compliance with each of the following requirements is mandatory. Failure to**

**comply with any given 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.**

## **WEEK-ONE REQUIREMENTS**

### **1. Close Out All Existing Books and Records**

All books and records of the chapter 11 business debtor must be closed as of the date the petition is filed.

### **2. Open a New Set of Books and Records**

These are the debtor-in-possession books and records, which must be maintained throughout the bankruptcy. Provisions must be made for separate accounting with respect to pre-petition and post-petition accounts and transactions. This requirement applies only to business debtors and to sole proprietor businesses operated by individuals in chapter 11 cases.

### **3. Close All Existing Bank Accounts**

All accounts that the debtor owns, has access to, or over which the debtor exercises possession, custody or control must be closed **immediately** upon filing and any existing balances transferred to a debtor-in-possession account (see No. 4 below). Any outstanding checks will be returned by the Bank as “account closed”, and the payee will be a creditor in the estate.

### **4. Open New General, Payroll and Tax Bank Accounts**

In business cases, a minimum of three new debtor-in-possession bank accounts must be opened at a bank that appears on the list of approved depositories. The list is attached to this package. The three mandatory new accounts are general, payroll and tax accounts, as follows:

**General Account:** All revenues and receipts and all other income received by the chapter 11 debtor shall be deposited into this account. Under no circumstances may a debtor engage in cash or other transactions that do not pass through this account.

**Payroll Account:** At the time payroll is due to be paid to the employees, an amount equal to net payroll should be transferred from the General Account to this account, from which payroll is to be made. Payroll accounts are only required if the debtor has six or more employees, or if the U.S. Trustee specifically requires such accounts in cases of less than six employees.

**Tax Account:** Sufficient funds to cover tax liabilities must be deposited into this account from the General Account as they accrue. Taxes must be paid timely in the manner specified by the appropriate taxing authorities. Monies may not be drawn from this account to cover payroll and general operating expenses.

For individual debtor cases, one new debtor-in-possession bank account must be opened at a bank that appears on the attached list of approved depositories

In addition to a debtor-in-possession account, individual debtors may open a non-debtor-in-possession account. Only monies that are **not** property of the estate may flow through such an account.

**All estate funds must be kept in a debtor-in-possession account.** The new bank signature cards and pre-printed checks **must clearly indicate that this is a "debtor-in-possession" account, and the chapter 11 case number must also appear on the face of the checks.** The notation "DIP" is not acceptable as a substitute for the words "debtor-in-possession". If the debtor is required to segregate cash collateral, additional separate debtor-in-possession accounts must be established and maintained.

## 5. Obtain Insurance Coverage

The debtor must maintain appropriate insurance coverage for all estate property, including raw land. Listed below are the types of insurance coverage that are normally required for most bankruptcy estates. If the debtor does not have the required insurance coverage at the time of filing, it must be obtained immediately.

*General Comprehensive Public Liability Insurance*

*Fire and Theft Insurance*

*Worker's Compensation Insurance*

*Vehicle Insurance*

*Product Liability Insurance*

*Any other insurance coverage customary in debtor's business*

**Debtors must provide a certificate of insurance from the insurance agent indicating which policies are in effect, the expiration date of each policy, and naming the United States Trustee as certificate holder. The United States Trustee is to be notified by the insurance agent when a policy is canceled.**

## INITIAL DEBTOR INTERVIEW PACKAGE

Within seven days of the service of these guidelines and reporting requirements, the debtor must submit a package of required documents (IDI Package) to the United States Trustee's office, consisting of the following:

### 1. Debtor Compliance Cover Sheet

The Debtor Compliance Cover Sheet, which is attached, contains a list of the documents required to be included in the IDI Package. The debtor must check the box on the compliance form corresponding to each document that is attached. If a required document is not attached, an explanation must be provided. An inadequate explanation may result in the filing of a motion to compel, dismiss or convert the case.

### 2. Debtor Information Sheet

The debtor shall fill out the Debtor Information Sheet, which is attached, providing a detailed

discussion of the circumstances leading to the filing of the bankruptcy petition. The discussion should include any relevant specific action taken by a creditor to cause the petition to be filed, such as lock out, foreclosure action, or bank account seizure. The discussion must also include the broader topics of changes in management, economic trends, or other relevant events which actually led to the need for bankruptcy protection.

### **3. Proof of Insurance Coverage**

The debtor shall provide the United States Trustee with a copy of the first page of the binder of all policies. In addition, all riders listing all business locations, all vehicles, and all machinery covered by the policy must be provided. These copies are in addition to the certificate of insurance from the insurance agent naming the United States Trustee as certificate holder discussed on page 3.

### **4. Proof of Closed Pre-petition Bank Accounts**

The debtor must provide the United States Trustee with a copy of a bank statement for each pre-petition bank account evidencing that the account has been closed. A letter from the bank stating that the account has been closed will suffice. Such a letter must be written on bank stationary and signed by an authorized bank representative. **A bank statement which shows a \$0 balance, but which does not clearly state the account is closed, is not adequate proof.**

### **5. Proof of Debtor-in-Possession Bank Accounts**

The debtor must provide the United States Trustee with copies of all new debtor-in-possession bank account signature cards together with evidence of the amount transferred to the new accounts. A voided sample of pre-printed checks from each account must also be provided. Additional time will be allowed for the debtor to provide samples of the printed checks. These should be forwarded to the United States Trustee as soon as the samples are available.

### **6. Pre-petition Financial Statement**

The business debtor must submit copies of its most recent financial statements (audited or unaudited), including but not limited to a balance sheet and income (profit and loss) statement. Copies of the year-end financial statement for the previous fiscal year must also be provided.

### **7. Tax Questionnaire**

Each business debtor must complete the Tax Questionnaire, which is attached, listing all taxes accrued, taxes that have come due, and tax payments made within the last 3 month period, including the check number and date the payment was made.

### **8. Federal Income Tax Returns and Personal Property Tax Returns**

The debtor must submit copies of all federal income tax returns filed for the two fiscal years immediately preceding the filing of the chapter 11 petition. If the debtor has not filed tax returns in the last two fiscal years, the debtor must provide a copy of the last federal tax return filed and copies of the filing extensions. Business debtors must also submit a copy of the most recently filed personal property tax return, if applicable, with all schedules and attachments.

**9. Asset Inventory**

The debtor must provide a written list\* describing all machinery and equipment, furniture and fixtures, and vehicles on hand as of the date the petition is filed.

*\* This requirement may be eliminated if sufficient asset detail is provided in Schedule B.*

**10. Trust Agreements**

The debtor must submit copies of any trust agreements to which the debtor is a party or under which the debtor holds, has possession of, or operates any personal or real property or business as a trustee or otherwise.

**11. Verification of Debtor Entity Status**

For the following entities, the debtor must provide the documents listed below:

- a. Corporation - Articles of Incorporation
- b. Limited Liability Company - Articles of Organization, Operating Agreement and any amendments
- c. General Partnership - General Partnership Agreement and any amendments
- d. Limited Partnership - Certificate of Limited Partnership and any amendments

**12. Proof of Required Certificates and Licenses**

The debtor must submit proof that it holds all certificates and licenses required by federal, state, and local laws for the lawful operation of its business. The following is a list of licenses and certificates that are typically required:

*Liquor and Tobacco Licenses  
Health-related Licenses  
Contracting License*

**13. Real Property Questionnaire**

The debtor must submit a separate Real Property Questionnaire for each parcel of real property the debtor leases, owns, has an interest in, or is in the process of purchasing. **A form of said questionnaire is included.** Please make the necessary copies prior to completing the form if multiple parcels are owned.

**14. Attorney Authorization For Direct Contact**

Authorizes United States Trustee non-attorney personnel to contact the debtor and/or its designees directly in order to obtain financial information and resolve financial and administrative questions and/or issues, and to ensure compliance with various bankruptcy requirements. If a debtor is represented by counsel, all communication will be through counsel until this form is returned to the United States Trustee's office.

# INITIAL DEBTOR INTERVIEW

The United States Trustee requires a personal interview with the debtor. The interview will take place approximately two weeks prior to the § 341 Meeting of Creditors and will be conducted in the office of the United States Trustee. Meeting dates may only be rescheduled in emergency situations. A telephonic interview will be scheduled for those debtors who do not reside or conduct business within a convenient commuting distance to the United States Trustee's office. Such debtors would include those located in the outlying counties such as, for example, Yuma, Mohave, Coconino, La Paz, and Yavapai.

The purpose of the interview is to discuss the debtor's current financial affairs, identify potential problems of administration, and discuss compliance with the regulations of the United States Trustee. The interview will also afford the debtor the opportunity to ask questions regarding the format of the monthly operating reports.

## ADDITIONAL AND ONGOING REQUIREMENTS

### 1. Insider Compensation

The United States Trustee must be notified in writing of any proposed increases to the compensation of an insider.

### 2. Operating Reports

Pursuant to Bankruptcy Rule 2015(a)(5), Local Rules of Bankruptcy Procedure 2015-1, and 28 U.S.C. § 586 (a)(3)(G), the debtor-in-possession or trustee is required to file monthly financial reports in all chapter 11 cases until the case is dismissed, converted to chapter 7 or 13, or a final decree is entered. All financial reports must be filed by the 15th of each month following the end of the month covered by the report. **Reports must be submitted whether or not any financial activity has occurred.** The original signed reports are to be filed with the Clerk of the United States Bankruptcy Court, and a copy is to be mailed to the Office of the United States Trustee. Both pre-confirmation and post-confirmation reports must be on the forms provided by the Office of the United States Trustee.

#### (a) Monthly Pre-confirmation Reports

Debtors-in-Possession are required to report all post-petition income, defined as income earned after the date of filing, from any source, and to identify the source of the income.

The reports must be typed or completed in ink and *must be signed by the debtor-in-possession*. Any attachments must include the case name and case number. All blanks must be filled out completely. If any information requested on the report is inapplicable, it must be so noted on the report. Failure to submit reports to the United States Trustee and the Court in a timely fashion may result in a motion to compel, convert or dismiss the bankruptcy, or appoint a trustee or examiner. Submission of reports that are incomplete or not prepared in accordance with this guide will be treated as a failure to submit.

The reports are meant to be generic so that they can easily be adapted to various types of businesses. If you believe the report provided with this package is not applicable to your case, you may discuss this with the bankruptcy analyst during the initial debtor interview (discussed on page 7 of this package). The reports have been designed to utilize the debtor's own in-house financial reporting records when applicable, as well as to enable debtors to complete them without professional assistance. Applicable segments of the reports, such as the Balance Sheet and Statement of Operations, must be prepared in accordance with generally accepted accounting principles.

In involuntary bankruptcy cases, the requirement to file monthly reports commences on the date of the order for relief.

### **(b) Quarterly Post-confirmation Reports**

Post-confirmation financial reports must be filed by the reorganized debtor on a quarterly basis until the case is converted, dismissed, or a final decree is entered. The report must be submitted on the form provided by the Office of the United States Trustee.

## **3. Preparation and Filing of Tax Returns**

All tax returns, including income, sales, personal property, payroll and real property, must be prepared and filed throughout the pendency of the bankruptcy.

## **4. Applications to Employ Professionals**

A debtor may employ an attorney, accountant or other professional only upon authorization of the court. See 11 U.S.C. § 327; Bankruptcy Rule 2014. No payments may be made, either by the estate or a third party, to such attorneys, accountants or other professionals after the bankruptcy is filed without approval of the Court after notice to all creditors and a hearing. See 11 U.S.C. § 330; Bankruptcy Rule 2016.

Counsel should consult the "United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330" for specific procedural and substantive guidance on payment of professionals.

## **5. Quarterly Fees**

On October 27, 1986, President Reagan signed into law the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, as amended on January 27, 1996 and September 30, 1996. Section 1930 of the Act establishes a system of quarterly fee payments for chapter 11 cases. See 28 U.S.C. § 1930.

ALL CHAPTER 11 CASES ARE SUBJECT TO PAYMENT OF THE QUARTERLY FEE UNTIL THE CASE IS DISMISSED, CONVERTED TO ANOTHER CHAPTER, OR IS CLOSED BY THE COURT. A case is closed by the court once a final decree has been entered. Generally, a final decree is entered after a confirmed plan has been substantially consummated. Cases that have been administratively consolidated must still pay a separate fee for each case; however, cases that have been substantively consolidated need pay only one quarterly fee,

beginning the first full quarter after consolidation. Operating during even one day of a quarter requires payment of the fee applicable for that quarter.

Fees are due no later than the last day of the month following the quarterly reporting period. In order to be confirmed, a chapter 11 plan of reorganization must provide for payment of outstanding quarterly fees on or before the effective date of the plan. It must also provide for payment of all post-confirmation quarterly fees prior to entry of a final decree (case closure). Payment of quarterly fees is due prior to entry of an order dismissing the case.

The amount of quarterly fee varies, depending upon the dollar amount of disbursements made during the calendar quarter, with the minimum fee required regardless of the amount disbursed. The current Quarterly fee Schedule, including the address to which checks should be mailed, is as follows:

<u>Total Quarterly Disbursement</u>	<u>Quarterly Fee</u>
No Disbursements	\$ 250.00
\$0.01 to \$14,999.00	250.00
\$15,000.00 to \$74,999.99	500.00
\$75,000.00 to \$149,999.99	750.00
\$150,000.00 to \$224,999.99	1,250.00
\$225,000.00 to \$299,999.99	1,500.00
\$300,000.00 to \$999,999.99	3,750.00
\$1,000,000.00 to \$1,999,999.99	5,000.00
\$2,000,000.00 to \$2,999,999.99	7,500.00
\$3,000,000.00 to \$4,999,999.99	8,000.00
\$5,000,000.00 and above	10,000.00

FAILURE TO PAY THE QUARTERLY FEE IS CAUSE FOR CONVERSION OR DISMISSAL OF YOUR CASE (11 U.S.C. § 1112(b)(10)), OR FOR AN OBJECTION BY THE OFFICE OF THE UNITED STATES TRUSTEE TO A DEBTOR'S PLAN CONFIRMATION OR APPLICATION FOR FINAL DECREE. The plan must provide for payment of the quarterly fees on its effective date in order to be confirmed by the court. 11 U.S.C. § 1129(a)(12). It also must provide for payment of post-confirmation quarterly fees. Please note that post-confirmation quarterly fees are based on all disbursements made by the reorganized debtor, including payments not made under the plan.

Quarterly fees are to be made payable to the UNITED STATES TRUSTEE and mailed to the Georgia address set forth below. Unless you are otherwise instructed by the Office of the United States Trustee, fees are not to be mailed or delivered to the local Office of the United States Trustee. If any check is returned marked "insufficient funds," all future quarterly fee payments must be made by cashier's check, certified funds or money order.

Send all payments to:	U.S. Trustee Payment Center P.O. Box 198246 Atlanta, GA 30384
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**6. On-site Visits and Inspections**

The United States Trustee may conduct on-site visits and inspections, which may be unannounced, in order to review the debtor's books and records, and facilities to verify the information provided by the debtor and to ensure that estate assets are safeguarded appropriately. Under 18 U.S.C. § 152, concealment of books, records, or assets of a bankruptcy estate is a felony, punishable by a maximum sentence of 5 years imprisonment and a fine of \$5,000.

**7. Notice and Service on United States Trustee**

Generally, copies of all pleadings filed in a chapter 11 case, including those filed in adversary proceedings and contested matters, must be served on the United States Trustee, whether or not the United States Trustee is a party to the proceeding.

**8. Change of Address**

It is the debtor's responsibility to notify the Office of the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number within 7 days of the change.

**9. Conversion to Chapter 7 Liquidation Case**

If a case is converted or reconverted to a chapter 7 liquidation case, unless required by the Court, the schedules and statement of financial affairs filed with the original chapter will be deemed to be filed in the chapter 7 case. In the event no schedules and statement of financial affairs were previously filed, the debtor or trustee shall have 15 days following the entry of the conversion to do so.

**10. Post-confirmation Final Report and Application for Final Decree**

The reorganized debtor or trustee shall file a post-confirmation final report, using the form provided by the Office of the United States Trustee, with the Application for Final Decree, and provide a copy of both documents to the Office of the United States Trustee. The post-confirmation final report shall include a written statement of consummation of the plan.

**11. Additional Reports**

Pursuant to 28 U.S.C. § 586(a)(3) and 11 U.S.C. § 704(8), the Office of the United States Trustee reserves the right to require the filing of such additional reports as the Office of the United States Trustee may reasonably need in supervising the administration of the estate. Such additional reports may include inventory reports, projections, and cash flow statements.

**EXHIBIT A**

**AUTHORIZED DEPOSITORIES FOR REGION 14, DISTRICT OF ARIZONA**

ENTER CURRENT LISTING HERE BEFORE MAILING TO DEBTOR AND/OR COUNSEL

FOR DEBTOR