

# Chapter 11 Guidelines for Debtors-in- Possession



## U.S. Department of Justice

United States Trustee

Region 13

Arkansas, Missouri and Nebraska

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# CHAPTER 11 GUIDELINES FOR DEBTORS-IN-POSSESSION

These guidelines are provided to Chapter 11 debtors in possession to assist them with the administration of their bankruptcy case.

The United States Trustee is required to supervise the administration of chapter 11 cases pursuant to 28 U.S.C. § 586(a)(3). These operating guidelines and reporting requirements for chapter 11 cases must be followed so that the United States Trustee can properly supervise the administration of this case. Accordingly, the debtor's failure to comply with the operating and/or reporting requirements set forth below may result in the dismissal or conversion of this case to a case under chapter 7 of the Bankruptcy Code.

The United States Trustee reserves the right to modify these guidelines from time to time. Any request for a waiver of any requirement must be in writing stating the reasons for the request. The United States Trustee will determine whether a waiver should be granted or denied based upon the circumstances of the case.

### **I. GENERAL GUIDANCE AND CHAPTER 11 DEBTOR OBLIGATIONS**

- A. The debtor is required to comply in all respects with Title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules of Practice for the United States Bankruptcy Court
- B. The debtor shall appear at the initial debtor interview prior to the Section 341(a) initial meeting of creditors and shall also appear at the Section 341(a) initial meeting of creditors.
- C. The debtor must pay all obligations arising after the filing of the petition ("post petition") in full when due. This includes not only general business expenses, but all post-petition obligations in the ordinary course of business including but not limited to:
  - a. Wages
  - b. U.S. Trustee Quarterly Fees and Court Costs
  - c. FICA, both employee and employer share
  - d. Tax deposits withheld from wages

- e. Any other taxes
- D. The debtor may not pay pre-petition obligations except as allowed by the Bankruptcy Code or by order of the court.
- E. The debtor shall obtain court approval to obtain secured credit and unsecured credit outside the ordinary course of business.
- F. The debtor shall obtain court approval to use cash collateral.
- G. The debtor shall obtain court approval to sell, use or lease property outside of the ordinary course of business.
- H. The debtor shall obtain court approval to employ and pay professionals.
- I. The debtor shall maintain adequate insurance on estate assets.
- J. The debtor shall close pre-petition banking/depository accounts and open banking/depository debtor-in-possession accounts.
- K. The debtor shall timely file all federal, state and local tax returns when due, or shall procure an extension from the appropriate taxing authority, unless otherwise provided by applicable law or by order of the court. Individual debtors shall obtain a tax EIN for the bankruptcy estate.
- L. Individual chapter 11 debtors shall provide appropriate notices in connection with domestic support obligations to such claim holders and appropriate state agencies.

## **II. MAINTENANCE AND PROOF OF INSURANCE**

- A. All debtors must maintain insurance, make all premium payments thereon when due and provide proof thereof to the United States Trustee
- B. The debtor is required to maintain the following insurance coverage, as appropriate: general comprehensive liability; property loss from fire, theft, water, or other extended coverage; workers' compensation; vehicle, products liability; fidelity bonds for employees; and such other coverage as is customary for such a debtor, the debtor's property and the debtor's business.
- C. Within 14 days after the filing of the petition, the debtor shall provide to the United States Trustee proof of its insurance coverage. Such proof of coverage shall consist of certificates of insurance or other verified documents showing that each policy of insurance required for the estate is in full force and effect, and shall disclose the names of the insured, the type and extent of coverage, effective dates (including date of expiration), name of insurance carrier, and name, address, and telephone number of agent. Failure to provide proof of insurance presumes no insurance is in effect.

- D. The debtor is responsible for making arrangements with all insurers to provide notice to the United States Trustee of any payments made on, cancellations, lapses or modifications of any of its insurance policies by including the United States Trustee as a notice certificateholder on each policy. The debtor is responsible for including the address of the United States Trustee on the cancellation notice for each insurance policy. Upon the expiration or other termination of any coverage, the debtor shall immediately provide the United States Trustee with proof of replacement coverage. By the date set for the meeting of creditors the Debtor shall provide to the United States Trustee copies of the front page of all insurance certificates or other documentation showing that the United States Trustee has been added as a certificate holder to the policy.

**III. BANK ACCOUNTS – CLOSING PRE-PETITION ACCOUNTS AND OPENING “DIP” ACCOUNTS**

The debtor will be responsible to immediately close all of its existing bank accounts and to open new bank accounts that must be designated as “Debtor-In-Possession” bank accounts (commonly referred to as “DIP” Accounts). These DIP Accounts may include: operating, payroll, tax escrow or such other accounts as is appropriate for such a debtor, the debtor’s industry or debtor’s business. Upon consultation with the United States Trustee, the DIP Accounts shall be maintained with an authorized depository (see authorized depository list provided by the United States Trustee). The United States Trustee will provide you with a Debtor-In-Possession Statement for Depository identifying your authorized depository which can be presented to the Bank when opening these DIP accounts. The debtor must provide the United States Trustee with a sample of a voided check from such accounts which shall be imprinted with the debtor’s name, bankruptcy case number and “Debtor-In-Possession”. Below is an example of the correct styling for a Debtor-in-Possession bank account. Please use this as a guide in setting up your account. This information must be IMPRINTED on ALL checks issued by a Chapter 11 debtor.

John P. Doe, d/b/a Ace Machine Shop Debtor-in-Possession, Case No. 4:09-bk-10000 General Account 4567 Market Street Little Rock, AR 72201	No. 4546 _____, 20____
Pay to the Order of _____ \$ _____  <div style="text-align: right;">_____ DOLLARS</div>	
000123456	

- A. The debtor should **deposit all receipts and make all disbursements through the debtor in possession account(s)**, unless otherwise approved by order of the court or the United States Trustee. Any funds in excess of those required for current operations should be maintained in an interest-bearing DIP Account.

#### **IV. CREDITORS MEETING**

Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. This meeting is scheduled by the United States Trustee, and notice of the meeting is sent by the Bankruptcy Court to all creditors. A representative of the debtor as well as debtor's counsel, are required to attend. All individual Debtors must provide documents verifying their identity and their Social Security Numbers. All documents must be originals or certified copies.

#### **V. MONTHLY OPERATING REPORTS AND POST-CONFIRMATION REPORTING**

Pursuant to 11 U.S.C. §§ 1107(a), 1106(a)(1), and 704(8) and Local Rule, debtors-in-possession and chapter 11 trustees are required to submit periodic reports and summaries of the operation of the business. The United States Trustee program requires such reports to be submitted on a monthly basis.

Monthly Operating Report Forms must be filed electronically by the debtor's attorney no later than the 21<sup>st</sup> day of the month following the end of the month covered by the report.

Unless the debtor is designated a "Small Business Debtor" the Monthly Operating Reports (MORs) required to be completed and submitted by debtors include: balance sheets; income statements; statement of cash flow; schedules of aging accounts receivable, fixed assets and post-petition debts; and a summary of significant items such as the debtor's insurance coverage, payments to secured creditors, tax entities, professionals and compensation and a record of monthly disbursements and payments of quarterly fees due and paid to the United States Trustee. Debtors that are individuals must additionally include an individual statement of household activity to report receipts and disbursements of the household, separate from the operation of any business. Copies of monthly bank reconciliations to the bank statements must be included with each of the MORs in the provided format. You must use the report format provided by the United States Trustee's office (or a similar format as approved in writing by this office for your case). This format for MORs, for both business and individual reporting, is available on the at the United States Trustee's Office.

If the debtor is designated as a "Small Business Debtor" (see Section VII. Small Business Debtor Designation, below), the debtor must use the Bankruptcy Court's official Small Business Monthly Operating report form.

After confirmation of the plan of reorganization, the reorganized debtor is no longer required to submit MORs to the United States Trustee, but must instead submit quarterly post-confirmation reports to the United States Trustee twenty-one days after the conclusion of each calendar quarter; (i.e., April 21<sup>st</sup>, July 21<sup>st</sup>, October 21<sup>st</sup> and January 21<sup>st</sup>.) These "Chapter 11 Post Confirmation Reports" are required until such time as substantial consummation of the Plan has occurred and the Court has entered a final decree closing the case pursuant to Federal Rules 3022 and Section 350 of the Bankruptcy Code. The Chapter 11 Post Confirmation Report form is available by contacting the United States Trustee's Office.

All sections of the Monthly Operating Reports must be filled out completely. If any item on the report form is not applicable, so state. Filing of incomplete reports will be treated as if no report had been filed.

A copy of the Operating Report must be filed electronically with the court by the debtor=s attorney. The debtor, debtor's authorized agent, or an officer must sign one copy of the signature page of the operating report which must be maintained in the debtor=s attorney=s file. The electronic signature of the debtor may be used on the operating report for the court. The signature of the debtor constitutes a declaration under penalty of perjury that the debtor has examined the documents and found them to be true, correct and complete to the best of the debtor's knowledge.

Monthly Operating Reports must be filed with the United States Bankruptcy Court with the following supporting documentation:

- i. A copy of the bank statements complete with cancelled check and deposit slip images. All pages of each statement from any bank account that was open at any time during the reporting period must be provided to the UST. All documents must be legible. Redact all but the last 4 digits visible on the bank account(s).
- ii. A copy of the bank statement reconciliation from each account.
- iii. A copy of the check register associated with each account.
- iv. A copy of the cash receipts journal.
- v. If monthly financial statements are prepared, a copy of the debtor=s income statement and balance sheet for the reporting period.
- vi. A copy of receipts for tax payments made during the month.

#### **VI. PERIODIC REPORTING REQUIRED ON NON-DEBTOR ENTITIES (IN WHICH THE DEBTOR HOLDS A SUBSTANTIAL OR CONTROLLING INTEREST)**

In a chapter 11 case where the debtor holds a substantial or controlling interest in other entities, the debtor is required to file a Periodic Report Regarding Value, Operations And Profitability Of Entities In Which The Estate Of Debtor Holds A Substantial Or Controlling Interest. This form is required to be filed under Federal Rule of Bankruptcy Procedure 2015.3 with the first forms filed no later than seven (7) days before the first date set for the meeting of creditors under Section 341 of the Code. Subsequent reports shall be filed no less frequently than every six (6) months thereafter, until the effective date of a plan or the case is dismissed or converted. Copies of the report shall be served on the United States Trustee, any committee appointed under Section 1102 of the Bankruptcy Code, and any other party in interest that has filed a request therefor.

## **VII. THE SMALL BUSINESS DEBTOR DESIGNATION**

A debtor must declare on the face of its petition whether it is a small business debtor pursuant to Federal Rule of Bankruptcy Procedure 1020(a). A debtor's case will not be treated as a small business if a creditors' committee is appointed. A small business debtor is defined under Section 101(51D) of the Bankruptcy Code. If the primary activity of the debtor is the business of owning or operating real property or activities incident thereto, the debtor is not a small business debtor. A small business debtor, as indicated above, must use the Small Business Monthly Operating report, Official Form 25C. Additionally, the exclusivity period for the debtor to file a plan and the plan deadlines and requirements are different in a "Small Business" case.

## **VIII. QUARTERLY FEES**

Pursuant to 28 U.S.C. § Section 1930(a)(6), each debtor in a case pending under the provisions of chapter 11 is responsible for pay a fee to the United States Trustee. The fee must be paid on a quarterly basis from the time that a petition is filed until such time as the case is dismissed, converted, or closed with a Final Order. Fees must continue to be paid post-confirmation of any plan. The amount of fees due to the United States Trustee program is calculated under the aforesaid statute on all disbursements, including plan disbursements of the debtor in the billable quarter. The amount of the fee will vary based upon the amount of money disbursed by the debtor during a quarter.

Pursuant to the recently enacted Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, the chapter 11 quarterly fee schedule established by 28 U.S.C. § 1930(a)(6) is amended effective January 1, 2018 for the largest chapter 11 debtors. The amendment provides for an increase in quarterly fees paid by chapter 11 debtors with disbursements of at least \$1 million per quarter, thereby excluding practically all small businesses. The increase is capped at one percent of disbursements made per quarter by the debtor or \$250,000, whichever is less.

The current fee schedule will remain effective through December 31, 2017. **The following table displays the revised quarterly fee schedule for the calendar quarters January 1, 2018 through September 30, 2018.** The revised fee schedule will remain in effect for every fiscal year from FY 2019 through FY 2022

<u>Quarterly Disbursement Range</u>	<u>Quarterly Fee</u>
\$0 to \$14,999.99	\$325
\$15,000 to \$74,999.99	\$650
\$75,000 to \$149,999.99	\$975
\$150,000 to \$224,999.99	\$1,625
\$225,000 to \$299,999.99	\$1,950
\$300,000 to \$999,999.99	\$4,875
\$1,000,000 or more	1% of quarterly disbursements or \$250,000 whichever is less

\* A minimum payment of \$325 is due each quarter even if no disbursements are made in the case during the period.

The fee is due on the last day of the calendar month following the calendar quarter for which the fee is owed, starting with the quarter in which the case commenced, and continuing until and including the quarter in which the case is dismissed, converted to another chapter of the Bankruptcy Code, or closed by the court.

Quarterly United States Trustee fees are to be paid pursuant to the following schedule:

1 <sup>st</sup> Quarter	Jan-Feb-Mar	Payment due date Apr 30
2 <sup>nd</sup> Quarter	Apr-May-June	Payment due date July 31
3 <sup>rd</sup> Quarter	Jul-Aug-Sept	Payment due date Oct 31
4 <sup>th</sup> Quarter	Oct-Nov-Dec	Payment due date Jan 31

The Executive Office for the United States Trustees will mail to the debtor-in-possession the transmittal form including a Chapter 11 Quarterly Fees Statement with payment stubs and in advance of the payment due date. Along with bill, debtors will receive a pre-addressed payment envelope to the following address:

United States Trustee Payment Center  
P.O. Box 6200-19  
Portland, OR 97228-6200

If the debtor does not receive the transmittal form, or does not timely receive a bill for quarterly fees, the debtor must immediately contact the Office of the United States Trustee located in the jurisdiction where the case is pending.

The sole purpose of the above address is to process payments. All other correspondence should be sent to the United States Trustee office at the following address:

United States Trustee  
111 South 18<sup>th</sup> Plaza, Suite 1148  
Omaha, NE 68102

Failure to submit actual data on disbursements will cause the billing center to estimate the fee owed for the quarter in question. Failure to provide disbursements and/or fees timely may cause difficulties in converting, dismissing, or closing the case.

Please note that in writing your Plan for confirmation, you must include the information concerning the requirement to pay post-confirmation United States Trustee quarterly fees. During the post-confirmation period the debtor will be billed the same as during the pre-confirmation period.

Pursuant to 31 U.S.C. § 3717, the United States Trustee Program assesses interest on unpaid chapter 11 quarterly fees charged in accordance with 28 U.S.C. § 1930(a)(6). Interest assessed on past due amounts will appear on the quarterly statements mailed to debtors. The interest rate charged is the rate in effect as determined by the Treasury Department at the time the chapter 11



account becomes past due. If payment of the full past due amount is received within 30 days of the date of the notice of the initial interest assessment, the interest will be waived.

**Disclosure Of Intent To Use Taxpayer ID Number.** Please be advised that, 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 proceedings for the purpose of collecting and reporting on all delinquent debt, including chapter 11 quarterly fees, 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.

## **IX. TAXES**

Copies of all tax returns filed post-petition must be provided to the United States Trustee. Tax returns provided to the United States Trustee are confidential and no tax information is revealed to other parties in the case and the tax returns provided to the United States Trustee are destroyed after the case is dismissed or closed. If the case is converted to another chapter, the returns will be delivered to the appropriate trustee.

All tax returns and reports for postpetition obligations shall be timely filed and accompanied by payment in full of any liability. Such taxes include, but are not limited to, federal and state payroll withholding taxes, FICA taxes, federal and state unemployment insurance, real property taxes, and sales and use taxes. The debtor shall timely deposit sufficient funds in the DIP tax account to pay any payroll tax liability. The debtor shall timely file all pre-petition tax returns, but shall not pay the tax due.

As a Chapter 11 debtor you should consider other obligations that may exist under applicable IRS rule; specific rules related to chapter 11 filings can be found at the following IRS web link [Internal Revenue Manual - 5.17.10 Chapter 11 Bankruptcy \(Reorganization\)](#).

## **X. EMPLOYMENT AND COMPENSATION OF PROFESSIONALS**

The employment of professionals (including, but not limited to lawyers, accountants, appraisers, or auctioneers) must be approved by the Court 11 U.S.C. § 327. Generally, professionals will not be compensated for services rendered prior to Court approval. No payments may be made to such professionals without Court authorization after notice to creditors and a hearing 11 U.S.C. § 330. The United States Trustee Guidelines For Reviewing Applications For Compensation and

Reimbursement of Expenses Filed Under 11 U.S.C. § 330. A corporate debtor must be represented by an attorney; such a debtor may not appear *pro se*.

## **XI. DOMESTIC SUPPORT NOTICES IN INDIVIDUAL CHAPTER 11 CASES**

If with respect to the debtor there is a claim for a domestic support obligation (“DSO”) under a domestic support order, the debtor must provide the appropriate notices to such DSO claim holders and any such respective state child support enforcement agencies as required under Section 704(c) of the Bankruptcy Code. Section 101 of the Bankruptcy Code defines a domestic support order as a debt or obligation to pay a spouse, former spouse, parent, child, or someone on the child's behalf, including a government entity, alimony, maintenance or support under a court order or separation agreement. Notices must be provided to (1) the DSO claim holders and (2) respective state child support agencies. The initial notices should be provided within fourteen (14) days of the commencement of the bankruptcy case, but in any event no later than three (3) days after the commencement of the Section 341(a) initial meeting of creditors.

The notices to DSO claim holders must include: (i) the right of such claim holder to use the services of the state child support enforcement agencies in the State in which such holder resides, for assistance in collecting child support during and after the bankruptcy case; (ii) the address and telephone number of such state child support enforcement agencies; and (iii) an explanation of the rights of such holder to payment of such claim in the context of the bankruptcy case.

The notices to the respective state child support enforcement agencies for such claims must include the name, address and telephone number of such claim holders. In order to assist state child support enforcement agencies in identifying debtors with DSOs, the debtor must include the debtor’s full Social Security number on those notices going to the state child support enforcement agency, except where prohibited by state law or regulation. The United States Trustee must be notified immediately if the debtor is not in compliance with this requirement based upon a state statute or regulation that prohibits the full disclosure of Social Security numbers. The debtor’s full Social Security number is *not* to be included on the notices going to the DSO claim holder. If the debtor chooses to file the notice with the court, the debtor should ensure that the first five digits of the debtor’s Social Security number are redacted from the notice.

A second notice to each DSO claim holders and to such state child support enforcement agencies should be sent by the debtor when a discharge is granted and include the following: (i) the last known address of the debtor; (ii) the last known address of the debtor’s employer; and (iii) the name of each creditor that holds a claim that is not discharged or that was reaffirmed (i.e., a debt the debtor agreed to remain responsible for, such as a car payment).

Copies of all of the aforementioned notices should be provided to the United States Trustee.

## **XII. CHANGE OF ADDRESS OR TELEPHONE NUMBER**

The debtor must notify the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number within 14 days of the change.

### **XIII. GENERAL AND ADDITIONAL BANKRUPTCY INFORMATION**

Please note that the United States Trustee should not be consulted for legal advice. All debtors, creditors and other interested parties should consult their own attorneys for legal advice.

**FAILURE TO COMPLY WITH ANY OF THE ABOVE GUIDELINES, INCLUDING, BUT NOT LIMITED TO, PAYMENT OF POST-PETITION OBLIGATIONS SUCH AS TAXES AND U.S. TRUSTEE QUARTERLY FEES, MAINTANENCE OF INSURANCE AND SUBMISSION OF MONTHLY OPERATING REPORTS IS CAUSE FOR CONVERSION OR DISMISSAL OF A CHAPTER 11 CASE, PURSUANT TO 11 U.S.C. § 1112(b)(4).**