

## **Monthly Operating Report Frequently Asked Questions (FAQs)**

**Can I file my reports on the accrual basis?** No. The activity of the Debtor in Possession should be reported on the cash basis. There are some sections of the Monthly Operating Report that specifically ask for accrual information (i.e. accounts receivable, accounts payable); however, unless specifically requested, all information should be reported on the cash basis.

**Do I need to include copies of insurance policies each period?** No. Each policy's Certificate of Insurance should be included with the first Monthly Operating Report. After the initial report, certificates should be included only when there is a change (i.e. termination, change in limits, renewal, etc.).

**Should I report any receipts or disbursements that did not flow through my bank accounts?** Yes. All receipts and disbursements paid by you, or on your behalf by another party, should be included on the Monthly Operating Report. These payments include, but are not limited to, real estate closings, payment of business expenses or note payments by a principal or any other, unrelated party. Such disbursements are also subject to United States Trustee Quarterly Fees.

**Should I include a transfer of funds from one Debtor In Possession Bank account to another Debtor In Possession Bank account as a disbursement?** No. Transfers between Debtor in Possession accounts are not considered disbursements or receipts. Transfers involving other bank accounts are included as a disbursement or receipt and should be explained in detail on the Monthly Operating Report.

**Can I send my quarterly fee payment to any United States Trustee Field Office for processing?** No. Unless specifically instructed otherwise, all quarterly fee payments should be mailed to the lockbox address provided in the initial filing requirement package. On occasion you may be instructed to send a payment to the field office assigned to your case. If so, be sure to put the case number on the check so it will be properly applied to your account.

**Can I open more than three Debtor In Possession accounts?** Yes, but only after approval by the U. S. Trustee. Justification for opening additional accounts must be made (i.e., required by a lender). The accounts must also be reported on the Monthly Operating Report in the same manner as the three mandatory Debtor in Possession accounts.

**Can I open less than three Debtor In Possession accounts?** No, unless you obtain approval from the United States Trustee. In rare instances, such as when an individual files Chapter 11, there is no need for a payroll or tax account.

**I filed my case a few days before the end of the month. Can I combine these few days with the next report and just file one large report?** No. Each month should be reported separately unless special permission is obtained from the United States Trustee. Each report should include information from the first day of the month through the last day of the month. For the first report, a partial month may be reported. Similarly, the final report may be for a partial month and should report all information. Under no circumstances should the last month of a quarter be combined with the first month of a new quarter.

### **Small Business Case FAQs**

**What is a "small business" chapter 11 debtor?** Under 11 U.S.C. § 101(51D), a "small business debtor" is defined as a debtor and any debtor affiliates that hold in the aggregate no more than \$2,566,050 of noncontingent liquidated secured and unsecured debts, and that are not in the primary business of owning or operating real property. If the U.S. Trustee appoints an unsecured creditors' committee, however, such a debtor is not defined as a small business debtor unless the creditors' committee provides ineffective oversight. The dollar limitation is subject to adjustment every three years, as set out in 11 U.S.C. § 104(b)(1).

**What are the U.S. Trustee's additional duties in a small business case?** The U.S. Trustee's additional duties are set forth in 28 U.S.C. § 586. Pursuant to section 586 and in addition to any other chapter 11 duties, the U.S. Trustee must conduct an initial debtor interview (IDI) in every small business case. The IDI shall include an investigation of the debtor's viability, a review of the debtor's business plan, an explanation of financial reporting requirements, an attempt to agree on a scheduling order, and other matters. In addition, the U.S. Trustee must review and monitor the debtor's progress toward plan confirmation. The U.S. Trustee may conduct site visits at the debtor's location after reasonable written notice to the debtor.

**What are the additional duties of the trustee or debtor-in-possession in a small business case?** The additional duties of a trustee or debtor-in-possession in a small business case are set forth in 11 U.S.C. § 1116. They include: filing the most recent balance sheet, statement of operations, cash flow statement, and federal income tax return when the petition is filed; if those documents are not available, filing a statement under penalty of perjury that the documents do not exist; filing schedules and the Statement of Financial Affairs; participating in an initial debtor interview conducted by the U.S. Trustee; appearing at the section 341 meeting; appearing at meetings scheduled by the U.S. Trustee or the court; filing required post-petition reports; maintaining customary insurance; and timely filing tax returns and paying taxes. A small business debtor is also required to file a plan and disclosure statement within 300 days unless the time is extended by the court. 11 U.S.C. § 1121(e)(2). A small business debtor must also comply with all other chapter 11 duties and all other applicable laws.

**Who determines if a debtor falls within the definition of small business debtor, and how is the debtor notified?** The debtor will be required to indicate on its petition whether it believes it is a small business debtor. If the United States Trustee or another party disagrees with the debtor's statement, it may ask the court to make a determination.

**Do the small business provisions apply if the U.S. Trustee appoints an unsecured creditors' committee?** No. By definition, a small business debtor is one "in which the United States trustee has not appointed . . . a committee of unsecured creditors." 11 U.S.C. § 101(51D).

**Does the timing of the confirmation hearing change in a small business chapter 11?** The court shall confirm a plan that complies with the Bankruptcy Code within 45 days after the plan is filed.