



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

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TO: DEBTORS IN POSSESSION, TRUSTEES AND THEIR COUNSEL

FROM: PATRICK S. LAYNG, UNITED STATES TRUSTEE

SUBJECT: **CHAPTER 11 OPERATING INSTRUCTIONS
AND REPORTING REQUIREMENTS**

The United States Code, Title 28, Section 581(a)(ii) provides for the appointment of a United States Trustee for the Northern District of Illinois and the Eastern and Western Districts of Wisconsin. The United States Trustee is required to supervise the administration of chapter 11 cases pursuant to 28 U.S.C. § 586(a)(3). Sections 1106 and 1107 of Title 11 of the United States Code (“the Bankruptcy Code”) require the Trustee or Debtor in Possession (“DIP”) to furnish such information regarding the case as the United States Trustee requires. In this document the term “DIP” also shall refer to trustees appointed in Chapter 11 cases.

The operating instructions and reporting requirements (“OIRR”) in this document must be followed so that the United States Trustee can properly supervise the administration of this case. **FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN DISMISSAL OF THE CASE, CONVERSION TO ANOTHER CHAPTER OF THE BANKRUPTCY CODE, APPOINTMENT OF A CHAPTER 11 TRUSTEE OR EXAMINER, OBJECTION TO ATTORNEYS’ FEES, OBJECTION TO PLAN CONFIRMATION OR OTHER APPLICABLE RELIEF.**

1. OIRR RECEIPT AND VERIFICATION.

To ensure compliance with the OIRR, it is imperative that counsel carefully review these requirements with the DIP immediately upon receipt. The DIP and counsel shall acknowledge receipt of the OIRR and furnish to the United States Trustee verification that they have read, understand and agree to comply with the requirements by executing the enclosed verification and returning it within five (5) business days of receipt of this document. *See attached EXHIBIT A.* This receipt needs to be completed only once.

2. BANK ACCOUNTS, BOOKS AND RECORDS.

Immediately upon the filing of the Chapter 11 case, the DIP is required to close previous bank accounts and open one or more accounts designated as Debtor in Possession accounts to reflect post-petition business (“the DIP Accounts”). The DIP is also required to close the debtor’s pre-petition books and records as of the bankruptcy filing date and is

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required to maintain new books and records for the DIP.

The DIP is required to complete and sign the Bank Account Declaration of Debtor [*See Attached EXHIBIT B*].

The DIP Accounts shall be maintained subject to the following conditions, in addition to those required by the Bankruptcy Code, and Federal and Local Bankruptcy Rules:

a. All money of the bankruptcy estate must be deposited in the DIP Accounts. The DIP should (i) maintain one DIP Account solely for the purpose of setting aside estate monies required for the payment of taxes, including, but not limited to, federal, state, local and payroll taxes [*see Fed. R. Bankr. P. 2015(a)(3)*], and (ii) maintain a separate DIP Account for cash collateral in accordance with Section 363(c)(4) of the Bankruptcy Code.

b. All DIP funds and bank accounts must be collateralized in accordance with the provisions of 11 U.S.C. §345.

c. For collateralization and reporting purposes, all DIP Accounts should be maintained with financial institutions who have signed a Uniform Depository Agreement with the United States Trustee for Region 11. Please contact the United States Trustee for a list of authorized depositories if you need one.

d. All disbursements made by a DIP must be made by check or draft drawn on the DIP's account. Note that pursuant to 11 U.S.C. § 1115(a)(2), earnings from services performed by an individual debtor after the commencement of the case but before the case is closed, dismissed or converted to a case under chapter 7, 12, or 13, whichever occurs first, are property of the estate. Accordingly, such post-petition earnings must be deposited in the DIP Account. Note also that unless court approval is obtained, post-petition earnings may not be used to pay any claims against the estate outside of a confirmed plan of reorganization or court order.

e. Prior to the Initial Debtor Interview, all debtors are to provide the United States Trustee copies of the debtor's two most recently filed income tax returns, with all schedules and attachments, as well as balance sheets and profit and loss statements for the year-to-date period ending with the petition date and the two prior fiscal years.

3. TAX DEPOSITS.

The DIP shall set aside monies required to be withheld from employees or collected from others for taxes under any law of the United States or any other governmental unit during the pendency of the proceeding [*see Bankruptcy Rule 2015(a)(3)*]. The DIP shall pay all federal taxes due to the Internal Revenue Service through a bank or other authorized financial institution, as prescribed by Circular E, Employer's Tax Guide. The Debtor shall submit to the United States Trustee applicable federal payroll tax returns filed with the IRS with proof of the corresponding payroll tax payments.

Under 28 U.S.C. § 960, any officers and agents conducting any business under
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authority of a United States court are subject to all federal, state and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation. Taxes are required to be paid on or before the due date of the tax under applicable nonbankruptcy law, unless excused under a specific provision of Title 11, United States Code. If the tax is a property tax secured by a lien against property that is abandoned under section 554 of Title 11, the tax must be paid within a reasonable period of time after the lien attaches.

4. PROOF OF INSURANCE COVERAGE.

All DIPs must maintain adequate insurance as appropriate based upon the DIP's business/operations, such as general comprehensive liability, property loss from fire, theft, or water, workers' compensation, motor vehicle insurance, fidelity bonds for employees, products liability, and such other insurance coverage as is customary in the DIP's business. The DIP must make all post-petition premium payments when due.

Within five (5) business days of the filing of the petition, the DIP must furnish to the Office of the United States Trustee a certificate of insurance for each policy and a signed Insurance Statement summarizing all insurance policies. [See Attached EXHIBIT "C"]. The certificate should clearly list the DIP's name and case number. A sample Certificate of Liability is available from the United States Trustee upon request. The DIP must include the address of the United States Trustee on the cancellation notice for each insurance policy. Upon the expiration or termination of any coverage, the DIP must immediately provide the United States Trustee with proof of replacement coverage. Pursuant to section 1112(b)(4)(C), failure to maintain and/or provide proof of coverage may result in the dismissal or conversion of the case to another chapter under the Bankruptcy Code.

5. INVENTORY.

If the Bankruptcy Court so orders, the DIP shall conduct a physical inventory of all its real and personal property as of the filing of the petition. The DIP must file the complete inventory with the Bankruptcy Court and transmit a copy to the United States Trustee within 30 days. See Fed. R. Bankr. P. 2015(a)(1).

6. USE OF ESTATE PROPERTY.

Section 363 of the Bankruptcy Code permits the DIP to use estate property in the ordinary course of business. Estate property may *not* be used to pay professional fees, including those of attorneys and accountants or *pre-petition* debts, including claims of secured creditors and landlords, except pursuant to order of Court. Further, to the extent that a secured creditor has a lien on cash or its equivalent in the DIP's possession, the DIP may not use such cash except with the secured creditor's consent or pursuant to order of the Court. Failure to abide by these requirements may result in the dismissal or conversion of the case to another chapter under the Bankruptcy Code, or the appointment of a chapter 11 trustee.

7. OPERATING REPORTS.

A. REPORTING REQUIREMENTS IN NON-SMALL BUSINESS

AND NON-SUBCHAPTER V CASES.

On June 21, 2021, the United States Trustee Program's rule entitled *Uniform Periodic Reports in Cases Filed Under Chapter 11 of Title 11*, published at 28 C.F.R. § 58.8 (the "Final Rule") became effective. The Final Rule, mandated by 28 U.S.C. § 589b, requires that chapter 11 debtors-in-possession and trustees, other than in small business and subchapter V cases, file monthly operating reports and post-confirmation reports using streamlined, data-embedded, uniform forms in every judicial district where the U.S. Trustee Program operates.

UST Form 11-MOR, Monthly Operating Report ("MOR"), is the periodic financial report that must be filed on a calendar monthly basis from the petition date to the earlier of the effective date of a confirmed plan, the conversion date of the case to another chapter, or the dismissal of the case.

UST Form 11-PCR, Post-confirmation Report ("PCR"), is the periodic financial report that must be filed on a calendar quarterly basis once the effective date of a confirmed plan occurs by any post-confirmation entities, which would include the reorganized debtor and any other "authorized parties" charged with administering the confirmed plan, until the earlier of the date the case is closed, dismissed, or converted to another chapter.

Report filers must refer to the Final Rule and instructions for the MOR and PCR forms for important information, including who must file each report, when the reports must be filed, who the reports must be served upon and what documentation must be filed along with each report. United States Trustee personnel will instruct the DIP as to which supplemental statements are also required in the DIP's case.

To access the latest version of the MOR and PCR forms, instructions for their use and filing, and other important information related to periodic reporting under the Final Rule, please navigate to <https://www.justice.gov/ust/chapter-11-operating-reports>. While at that webpage, please subscribe to the "Chapter 11 Operating Reports E-mail Updates" feature to automatically receive email updates about periodic reporting under the Final Rule.

B. REPORTING REQUIREMENTS FOR SMALL BUSINESS DEBTORS.

In cases where the DIP is a "small business debtor" as defined by 11 U.S.C. § 101 (51D), monthly operating reports must be filed on Official Form B 425C, which is available at <http://www.uscourts.gov/forms/bankruptcy-forms>. United States Trustee personnel will instruct the DIP as to which supplemental statements are also required in the DIP's case.

The initial Report filed by a DIP in its Chapter 11 case shall cover the period from the date of the commencement of the bankruptcy case to the end of the month in which the case was commenced. However, if the case is filed after the 15th day of the month, the activity for the remainder of the first month can be included in the report for the next calendar month, pursuant to Interim Bankruptcy Rule 2015. The opening balance for inventory, cash and receivables in the initial Report should reflect the DIP's financial condition as of the date the case commenced. Liabilities of the DIP should always start at zero since the DIP is a "new"

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reporting entity. Pre-petition liabilities should not be included in the DIP Reports.

The MOR must be dated and signed by the DIP. Reports with the scanned original signature of an officer, member, or owner of the DIP shall be filed with the Court, using the Electronic Case Filing (ECF) System. Neither electronic nor stamp signatures are acceptable. MORs shall be filed not later than the 21st of each month following the period covered by that report. Reports are required for every month the case is open, until the case has been closed, converted, or dismissed unless the case status changes such that quarterly reports are due instead. **Reports must be complete, signed, contain all necessary attachments, and be properly filed with the Court before they will be deemed to have met the reporting requirements.**

For post-confirmation quarterly reporting, small business debtors as defined by 11 U.S.C. § 101(51D) must file a Post-Confirmation Quarterly Summary Report. After a plan's effective date, the "Post-Confirmation Quarterly Summary Report" allows the United States Trustee to monitor the appropriate receipt of quarterly fees after confirmation. [*See Exhibit D*].

C. REPORTING REQUIREMENTS IN SUBCHAPTER V CASES.

In cases where the DIP has elected to proceed under subchapter V of chapter 11, monthly operating reports should be filed on Official Form B 425C, which is available at <http://www.uscourts.gov/forms/bankruptcy-forms>. United States Trustee personnel will instruct the DIP as to which supplemental statements are also required in the DIP's case.

The initial Report filed by a DIP in its Chapter 11 case is governed by Rule 2015(a)(6) and (b) of the Federal Rules of Bankruptcy Procedure. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. The opening balance for inventory, cash and receivables in the initial Report should reflect the DIP's financial condition as of the date the case commenced. Liabilities of the DIP should always start at zero since the DIP is a "new" reporting entity. Pre-petition liabilities should not be included in the DIP Reports.

The MOR must be dated and signed by the DIP. Reports with the scanned original signature of an officer, member, or owner of the DIP shall be filed with the Court, using the Electronic Case Filing (ECF) System. Neither electronic nor stamp signatures are acceptable. MORs shall be filed not later than the 21st of each month following the period covered by that report. Reports are required for every month the case is open, until the case has been closed, converted, or dismissed unless the case status changes such that quarterly reports are due instead. **Reports must be complete, signed, contain all necessary attachments, and be properly filed with the Court before they will be deemed to have met the reporting requirements.**

Because subchapter V debtors are not required to pay quarterly fees, subchapter V debtors are not required to file post-confirmation quarterly reports of disbursements, unless ordered to do so by the Bankruptcy Court.

8. REPORTS OF FINANCIAL INFORMATION ON ENTITIES IN WHICH THE ESTATE HOLDS A CONTROLLING OR SUBSTANTIAL INTEREST.

Pursuant to Rule 2015.3(a) of the Federal Rules of Bankruptcy Procedure, if a DIP holds a substantial or controlling interest in an entity described therein, it “shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11...” using Official Form B 426 which is available at <http://www.uscourts.gov/forms/bankruptcy-forms>. In the event this requirement applies to this case, the DIP’s first report must be filed no later than seven days before the first date set for the Section 341(a) meeting of creditors. Subsequent reports must be filed no less frequently than every six months thereafter, until the effective date of a plan or the case is dismissed or converted.

9. UNITED STATES TRUSTEE QUARTERLY FEES.

DIPs in chapter 11, other than cases pending under subchapter V of chapter 11, 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 case is converted, dismissed, or closed.

A. PRE-CONFIRMATION.

The quarterly fee is calculated by totaling the reported disbursements for the three-month calendar quarter, or portion thereof, according to the fee schedule published at <https://www.justice.gov/ust/chapter-11-quarterly-fees>. 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) the reported disbursement history, b) the DIP’s initial financial data submitted when the case was filed, or c) the United States Trustee’s estimate. If there is a disagreement with the estimated quarterly fee noted on the billing statement, then Monthly Operating Reports or actual disbursement reports supporting a different calculation must be filed with the bankruptcy court and served on the United States Trustee office. The applicable minimum fee is due even if there were no disbursements during a calendar quarter. The fee is not prorated.

B. POST-CONFIRMATION.

On January 26, 1996, Congress enacted Public Law 104-99, which extended the accrual of quarterly fees beyond confirmation until a case is converted, dismissed, or closed. The required remittance is based on all disbursements made by the debtor during each quarter. The fee schedule set forth at <https://www.justice.gov/ust/chapter-11-quarterly-fees> equally applies to post-confirmation disbursements. After a plan’s effective date, the UST Form 11-PCR quarterly filing referenced in the “Reporting Requirements” section herein allows the United States Trustee to monitor the appropriate receipt of quarterly fees after confirmation.

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C. PAYMENT DEADLINES

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 the case is converted, dismissed, or closed. Failure to pay these fees may result in a motion by the United States Trustee to convert the case to a chapter 7 case.

D. PAYMENT OPTIONS

A "Chapter 11 Quarterly Fee Statement" from the United States Trustee is mailed to the debtor or other designated party for each calendar quarter before the payment due date. Chapter 11 quarterly fees may be paid online at <https://www.pay.gov/public/form/start/672415208> or by mailing the tear off portion of the statement and a check, made payable to "United States Trustee."

The address to use to mail quarterly fee payments is:

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

The address to use for overnight delivery is:

U.S. Bank
Attn: Government Lockbox – U.S. Trustee Payment Center 6200-19
17650 N.E. Sandy Blvd.
Portland, OR 97230-5000

The addresses shown above are a lockbox at a bank. Do not use these addresses for service of process, correspondence, or any purpose other than paying quarterly fees. Any other correspondence or documents sent to the lockbox other than the payment form will be destroyed.

Each quarterly fee must be paid timely. Failure to receive a "Chapter 11 Quarterly Fee Statement" from the United States Trustee Program does not excuse 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.

Payment of the quarterly fee by check will be converted to an electronic funds transfer ("EFT"). This means we will copy the check and use the account information on it to electronically debit the DIP's account for the amount of the check. The debit from the DIP's account will usually occur within 24 hours and will be shown on the DIP's regular account statement.

The original check will not be returned. We will destroy the original check, but we will

keep the copy of it. If the EFT cannot be processed for technical reasons, the DIP authorizes us to process the copy in place of the original check. If the EFT cannot be completed because of insufficient funds, we may try to make a transfer up to two (2) times.

PLEASE NOTE: If you make a payment using the online, pay.gov system, the confirmation email you will receive is **NOT a confirmation of your payment being received**, it is only a confirmation that you have requested a payment be made. You must check your bank account to ensure that the funds were withdrawn in the amount requested and the payment was successful.

E. NOTICE OF INTEREST ASSESSMENT.

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.

F. VOLUNTARY DISMISSAL

If you seek to voluntarily dismiss your case, you must tender a copy of the check (or proof of a completed, online pay.gov payment) representing payment of the quarterly fee together with a completed U.S. Trustee Quarterly Fee Statement to the United States Trustee prior to your case being dismissed.

G. DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C. §1930(a)(6).

Please be advised that, pursuant to the Debt Collection Improvement 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 any 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.

10. UNITED STATES TRUSTEE STAFF CONTACT WITH DIPs.

Regulations promulgated by the Attorney General restrict direct communication between employees of the Office of the United States Trustee and the represented DIP without the permission from the DIP's counsel. Most communication occurring between Program non-attorney employees and DIPs is administrative in nature relating to the United States Trustee's statutory duty to supervise the administration of bankruptcy cases, and relates to insurance coverage, bank account information, monthly operating reports, quarterly fees and post-confirmation reports. To comply with these regulations, we ask that the DIP counsel of record sign an authorization to allow us to communicate directly with the DIP. This authorization can be found at *Exhibit E* and should be returned to the United States Trustee as soon as possible. The authorization may be rescinded at any time by giving the United States Trustee written notice of rescission. In the absence of authorization, all communications on all administrative matters will be directed to counsel. If a DIP initiates contact with our Office, we will advise them that we may communicate only with counsel unless authorization is provided.

Questions regarding these instructions and reporting requirements should be referred to the Trial Attorney or Analyst assigned to the DIP's case. The United States Trustee reserves the right to require additional information as may be necessary to the administration of the case.

PATRICK S. LAYNG
UNITED STATES TRUSTEE

Attachments:

- Exhibit A – Receipt and Verification of OIRR
- Exhibit B – Bank Account Declaration Form
- Exhibit C – Insurance Statement
- Exhibit D – Post Confirmation Report Form for Small Business Cases (2 pages)
- Exhibit E – Direction for UST/DIP Communications