



U.S. Department of Justice

*Office of the United States Trustee
District of South Carolina*

1835 Assembly Street, Suite 953
Columbia, South Carolina 29201

(803) 765-5250
Fax: (803) 765-5260

**OPERATING GUIDELINES AND REPORTING REQUIREMENTS
OF THE UNITED STATES TRUSTEE
(Revised 9/1/2022)**

FOR CHAPTER 11 DEBTORS-IN-POSSESSION

United States Trustee's Authority to Supervise the Debtor-In-Possession

The United States Trustee (the UST) is a component of the United States Department of Justice and is charged with many supervisory and administrative responsibilities in cases filed under the Bankruptcy Code. Pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 704(a)(8)¹, the UST has established these **Operating Guidelines and Reporting Requirements** (the guidelines) for chapter 11 debtors-in-possession (the debtor or debtors). Under these guidelines, debtors must establish and follow certain operating procedures and file certain financial reports with the Bankruptcy Court, and provide copies to the UST², any creditors committee appointed in the case by the UST, and any other party as required by the Court. Counsel should carefully review these requirements with the debtor upon receipt.

Compliance, Amendments or Modifications

Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with any requirement may result in the dismissal of the case or conversion of the case to chapter 7 pursuant to the provisions of 11 U.S.C. § 1112(b), the appointment of a chapter 11 trustee or examiner under 11 U.S.C. § 1104, or the imposition of sanctions.

Any request to amend or modify these requirements for a particular chapter 11 case must be made in writing to the UST and approval is effective only if in writing.

¹ Title 11 U.S.C. § 704(a)(8) is made applicable to a chapter 11 debtor by 11 U.S.C. §§ 1106(a)(1) and 1107(a).

² All documents filed with the Court are provided to the UST electronically. With a few exceptions, debtors are not required to serve documents on the UST.

Duties of Debtor

With the filing of a chapter 11 petition, a debtor has new duties and is often called a debtor-in-possession. The debtor has fiduciary and statutory responsibilities to preserve and maintain the estate and to operate its business as efficiently as possible in order to maximize ultimate payments on pre-petition debts while keeping post-petition obligations current. *See* 11 U.S.C. §§ 1106 and 1107. The debtor is required to comply in all respects with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and Local Rules.

Bankruptcy law allows you to operate your business in its ordinary course. Some business actions, however, require specific Court authorization, including the following:

- Using "cash collateral" (cash, receivables, proceeds subject to liens) (*See* 11 U.S.C. § 363; Federal Rule of Bankruptcy Procedure 4001)
- Employing or compensating an attorney, accountant, or other professional. (*See* 11 U.S.C. § 327 and § 330 and Federal Rule of Bankruptcy Procedure 2014)
- Paying pre-petition unsecured debts
- Borrowing money
- Selling assets outside the ordinary course of business

It is the debtor's responsibility to notify the UST and Bankruptcy Court through CM/ECF of any change of address within 10 days after the change. The debtor should notify the UST in writing if there is a change to their telephone number.

The debtor's schedules, statements and other documents must be filed within 14 days following the filing of a voluntary petition for relief. (Federal Rule of Bankruptcy Procedure 1007(c)). Local Rule 1017-2 provides that a case may be dismissed without further notice or hearing for failure to file these documents timely.

The list of 20 largest unsecured creditors must provide the telephone numbers, e-mail, and fax numbers of those creditors along with the information required by Federal Rule of Bankruptcy Procedure 1007(d).

Initial debtor interview

The UST will schedule an Initial Debtor Interview (IDI) with the debtor and counsel shortly after the case is filed. (*See* 11 U.S.C. § 1116(2) for specific requirements in small business cases.) The IDI will generally be telephonically, unless the UST instructs the parties otherwise, and the debtor and counsel should provide the UST with a call-in number for the telephonic conference. At the IDI, an attorney or other representative from the office of the UST will seek to become familiar with the debtor's case as well as with the debtor's business plan and operations, assets, liabilities, and accounting methods. The UST's representative will also discuss the role of the UST, explain the guidelines, and discuss scheduling matters. The debtor's representative(s) at the IDI must have personal knowledge and information regarding the debtor's pre-petition and post-petition operations, accounting records, tax returns, and financial statements.

The IDI will be held within 30 days after the petition is filed and prior to the meeting of creditors. IDIs in cases in which chapter 11 debtors have elected to proceed under subchapter V are required to be held within a shorter timeframe. Failure by the debtor to attend meetings reasonably requested by the UST is cause for conversion or dismissal of the bankruptcy case. *See* 11 U.S.C. § 1112(b)(4)(H).

At least one business day prior to the scheduled IDI, and in no event later than 14 days after the petition is filed, the Debtor should provide the UST with the following documents:

- Completed Information for Initial Debtor Interview (a copy of which is attached hereto)
- Executed Initial Debtor in Possession report
- Receipt and Certification of Understanding Operating Guidelines
- Copies of previous 2 years tax returns and all applicable schedules
- Most recent audited or unaudited financial statement (business cases only)
- Balance sheet as of date of filing (business cases only)
- Initial 6-month income and expense projections (business cases only)
- Information regarding rent roll (if applicable) set forth below in "Rental Property Records"

Meeting of Creditors

A meeting of creditors will generally be held within 25 to 60 days after the petition is filed. The debtor or one of the debtor's officers, directors, senior management personnel, or general partners as well as the debtor's attorney must attend and respond, under oath, to questions from the UST and creditors regarding the debtor's business and financial affairs, the cause of the bankruptcy, and the status of the debtor's reorganization efforts. *See* 11 U.S.C. §§ 341 and 343. Failure by the debtor to attend the meeting of creditors without good cause shown is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(G).

Debtor's Books and Records

Upon filing of the case the debtor must immediately close the debtor's existing financial books and records and open new books and records. The debtor must keep proper records of the debtor's earnings, expenses, receipts, disbursements, and all obligations incurred and transactions made in the operation of the business and in the management, preservation and protection of the debtor's property. The old books and records must be retained and be available to the UST.

Bank Accounts/Money of the Estate

Upon filing of the case, the debtor must immediately close pre-petition bank accounts and open new "Debtor-in-Possession" bank accounts. All receipts must flow through the debtor-in-possession account(s). All disbursements should be by check or debit transaction. Operating without a bank account is not permitted.

The account name on the bank's records should include the words "Debtor-in-Possession." Checks for the new accounts must be pre-numbered by the printer and must be imprinted with the words "Debtor-in-Possession." Handwritten, typewritten, or hand-stamped versions are not acceptable.

All money of the estate must be deposited or invested in accordance with 11 U.S.C. § 345. Examples of deposits and investments that comply with § 345(b) include, but may not be limited to, the following:

1. Deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
2. Investments in United States Treasury securities.
3. Deposits and investments with an entity that has posted a surety bond in favor of the United States, or pledged securities of the kind specified in 31 U.S.C. § 9303, to secure the funds invested or on deposit.

Generally, the UST will ensure that a debtor establishes three accounts: (a) a general expense account, (b) a payroll account, and (c) a tax escrow account. A determination regarding the number and type of authorized accounts will depend on the nature of the debtor's financial activity. Unless otherwise authorized by the UST or the bankruptcy court, the categories of debtors and their authorized accounts are as follows:

- Individuals/non-business debtors are authorized to establish: a general account for ordinary disbursements/expenses, and, in the event estate property is sold, an escrow account to deposit proceeds resulting from the sale of estate property.
- Individuals/business debtors who receive income from sources other than employment and interest (e.g., from rental property) are authorized to establish: a general account; a

cash collateral account, if applicable; and other accounts, if applicable.

- Single asset/non-operating debtors are authorized to establish: a general account for ordinary disbursements/expenses; a tax escrow account for real property taxes; and, in the event estate property is sold, an escrow account to deposit proceeds resulting from the sale of estate property.
- Corporations/operating partnerships/proprietorships are authorized to establish: an operating account; a tax escrow account; an escrow account; a cash collateral account, if applicable; and a merchant credit card account (for deposit of credit card receipts), if applicable.

All tax-related funds required to be escrowed under state or federal law should be deposited in the tax escrow account. Trust funds may be disbursed only for the purpose for which they are set aside.

The attached Bank Account Report must be provided to the UST for each account before the original date set for the meeting of creditors. Verification that all pre-petition accounts have been closed shall be required in the form of the “Declaration of Pre-Petition Account Closings and Opening of Debtor In Possession Bank Accounts” attached hereto.

Authorized Depositories

The UST maintains a list of financial institutions which are unable or unwilling to comply with the UST's requirements and 11 U.S.C. § 345 concerning collateralization of bankruptcy estate funds. A listing of all “Non-Complying Institutions” is provided at our website at http://www.justice.gov/ust/r04/reg_info.htm. The debtor-in-possession is prohibited from maintaining accounts or opening new accounts with these institutions.

The UST also maintains a list of financial institutions which have entered into an agreement with the UST pledging compliance with the above-referenced requirements. This listing of “Complying Institutions” is also provided at http://www.justice.gov/ust/r04/reg_info.htm. The debtor-in-possession is encouraged to establish accounts with these institutions, if feasible.

If the debtor-in-possession prefers to use a financial institution which is not included in the complying or non-complying lists, the UST will attempt to establish an agreement with that institution. Should the institution decline, the debtor-in-possession would be required to remove all funds and deposit them with another financial institution and bear any costs associated with the transfer.

Insurance

The debtor must maintain without interruption all insurance customarily carried in the debtor's line of business or required by law or regulation. In most cases, the debtor will be required to carry liability, workers' compensation, and property insurance, (i.e., fire and

extended coverage). The property insurance coverage must be for no less than the fair market value or replacement cost of the insured assets. The debtor must immediately notify the UST of any lapse, cancellation, modification, or renewal of insurance coverage. Failure by the debtor to maintain appropriate insurance that poses a risk to the estate or to the public is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(C).

Before the original date set for the meeting of creditors, the debtor must submit to the UST an insurance report, in the form attached hereto, for each policy owned by the debtor. All reports must be submitted using the form attached. If the debtor has no insurance coverage, the debtor must submit a statement to the UST so stating. Failure to provide this form to the UST in a timely manner may result in dismissal of the case or conversion of the case to chapter 7.

Insurance coverage must be kept current throughout the Chapter 11 case. Additional reports of insurance coverage are required each time a renewal, change, or lapse of coverage occurs. The debtor should instruct its insurance companies and agents to include the Office of the United States Trustee as a notice party on any insurance policies so that the United States Trustee receives prior notification regarding any change, cancellation, or expiration of a debtor's insurance policy. A debtor is also required to provide separate notice to the United States Trustee regarding any change in insurance coverage.

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. 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, (6) name, address, and phone number of the management company, if any, and (6) the monthly management fee.

Quarterly Fees Paid to the UST

Under 28 U.S.C. § 1930(a)(6), a quarterly fee shall be paid to the United States Trustee System Fund at Treasury in each case under chapter 11 (except small business cases under filed under Subchapter V of chapter 11) for each calendar quarter, or portion thereof, between the date a bankruptcy petition is filed 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 chapter 11 quarterly fee schedule established by 28 U.S.C. § 1930(a)(6) was revised by the Bankruptcy Administration Improvement Act of 2020 (the Act), Pub. L. No. 116-325, which was enacted on January 12, 2021. The Act made the new schedule effective on the first day of the first quarter after its enactment date, which was April 1, 2021. The quarterly fee is calculated by totaling the reported disbursements for the three-month calendar quarter, or portion thereof, according to the current fee schedule. The disbursement ranges and quarterly fees under the new quarterly fee schedule for the calendar quarters beginning April 1, 2021, through December 31, 2025, can be found 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 debtor'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. A minimum fee of \$250.00 is due even if there were no disbursements during a calendar quarter. The fee is not prorated.

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 dismiss or convert the case to a chapter 7 case.

A billing statement from the United States Trustee Program is mailed to the debtor or other designated party for each calendar quarter before the payment due date. Effective January 1, 2020, chapter 11 quarterly fees may be paid either 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 Pay.gov site will only accept payments made by electronic funds transfer from a bank account. Payments using a debit card, credit card, or other types of online payments such as PayPal will NOT be accepted.

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 timely paid. Failure to receive a bill from the Executive Office for United States Trustees 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(b)(4)(K). Interest is charged on delinquent quarterly fees. 31 U.S.C. § 3717. The failure to receive a statement for the fee or questions regarding the fee should be addressed with the UST's Columbia office.

Notice to Debtors Making Payment by Check

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times.

NOTICE

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)

The UST 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.

Taxes

The debtor must remain current on the payment of all post-petition federal, state, and local taxes and file all tax returns on a timely basis. If the debtor has payroll tax obligations, the debtor may be required to open a special tax account and report payroll tax deposits to the appropriate taxing authority. Failure by the debtor to timely pay post-petition taxes or to file post-petition tax returns is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(I). Prior to the meeting of creditors, the debtor shall provide the UST with copies of the debtor's federal and state income tax returns for the two years prior to the filing.

Periodic Financial Reporting

All debtors must file with the Court not later than the 21st day of the month in which it is due, a written financial report for the entire preceding calendar month or quarter, as appropriate. *See* Local Rule 2015-3. This report must be filed in an electronic format and must conform to the formats prescribed by these guidelines. There are three periodic financial report forms, copies of which are available at the website links noted below. Debtors must complete the correct form based on the following criteria:

A. 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.

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. Small Business Cases and Subchapter V Cases:

Debtors in cases in which the debtor is a “small business debtor” pursuant to the definitions set forth in 11 U.S.C. § 101 (51) or in which the debtor elects to file under Subchapter V of chapter 11 are not subject to the Final Rule and must use the Official Form B 425C monthly report, to be filed on a monthly basis. A copy of this report form is provided at <https://www.uscourts.gov/forms/small-business-forms/monthly-operating-report-small-business-under-chapter-11>.

Debtors should provide their reports to their attorneys early enough to allow for filing in electronic format by the 21st day of the month following the report end date. Failure to file these reports with the Court in a timely manner may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(F,H).

Other Periodic Reports

A chapter 11 debtor must also file periodic financial reports using Official Form B 426 to report the value, operations, and profitability of each entity in which the debtor has a substantial or controlling interest unless the entity is publically traded or also a debtor in bankruptcy. This requirement applies mostly to debtor corporations which control or own at least 20 percent of another entity. *See* Fed. R. Bankr. P. 2015.3. A copy of this form is available at the U. S. Bankruptcy Court’s website at <http://www.uscourts.gov/bkforms/index.html>.

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.

Unsecured Creditors Committee

The Bankruptcy Code requires the UST to appoint a creditors committee composed of unsecured creditors willing to serve. *See* 11 U.S.C. § 1102. The committee is usually appointed from the list of the 20 largest unsecured creditors submitted with the petition. Unless the Court orders otherwise, a committee of creditors may not be appointed in a small business case or a case filed under Subchapter V of chapter 11. The appointment of a committee, pursuant to such

an order, may result in a change in the debtor's designation as a small business case. *See* Fed. R. Bankr. P. 1020(c).

Shortly after the filing of the petition, the UST usually invites between ten and twenty of the debtor's largest unsecured creditors to serve on the unsecured creditors committee. Potential committee members receive information explaining the duties and responsibilities of the creditors committee. If at least two creditors respond affirmatively, the UST may appoint an unsecured creditors committee, at the UST's discretion. The report of selection of the creditors' committee is filed with the Court with copies sent to the debtor, counsel for the debtor, and the members chosen to serve on the committee. If no committee is appointed, a report of non-appointment is filed with the Court. Section 1103(d) requires the debtor to meet with the creditors' committee as soon as practicable after the appointment of the committee to transact such business as may be necessary and proper.

Section 1102 authorizes the UST to appoint a committee of other creditors of a common type or class if such appointment is necessary to assure their adequate representation. For example, under certain circumstances, the UST may appoint a committee of timeshare holders, limited partners, or bondholders.

Disclosure Statement and Plan of Reorganization/Liquidation

The disclosure and plan process is the heart of the reorganization under chapter 11. The debtor is required to file a disclosure statement and plan of reorganization/liquidation within 180 days after the case is filed, except in a statutorily defined small business case, a Subchapter V case, or unless otherwise ordered by the Court. Failure to do so may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(E, J); Local Rule 3016-1. In single asset real estate cases, unless the debtor has either (a) filed a plan of reorganization that has a reasonable possibility of being confirmed by no later than the date that is 90 days after the petition is filed or 30 days after the court determines that the debtor is subject to this requirement under 11 U.S.C. § 362(d)(3) or (b) has commenced monthly payments, the court may grant a creditor's request for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(3).

A disclosure statement should contain adequate information to allow creditors to make an informed decision as to whether the confirmation of the plan is in their best interests. The disclosure statement should be meaningful and easily understood. While circumstances will vary widely from one chapter 11 case to the next, and, therefore, the parameters of "adequate information" may also vary, the following information is considered to be critical to an evaluation of the adequacy of a disclosure statement.

1. The necessary financial information, data and projections relevant to the creditors' decision to accept or reject the Chapter 11 plan.
2. The assets and liabilities of the business. Provide current balance sheet information and the source of appraisal values.

3. The events leading to the filing of the petition and the financial difficulties of the debtor.
4. The operating condition and success of the debtor while in Chapter 11.
5. An estimate of the return to creditors under a Chapter 7 liquidation (brief liquidation analysis).
6. A list of all claims against the debtor, if practicable, showing the claims to which objections are anticipated and the reasons for the objections. A list of claims to be recognized under the plan.
7. A statement regarding the debtor's compliance with all responsibilities to file tax returns and pay taxes due both pre and post-petition.
8. An analysis of the potential tax consequences to the debtor and other parties-in-interest resulting from the implementation of the plan.
9. The parties responsible for the future management of the debtor (controlling persons), and the rate or amount of compensation to be paid for their services.
10. A detailed estimate of the administrative expenses contemplated under the plan, including, but not limited to, attorneys' fees, accountants' fees and other professional fees and expenses. This includes quarterly fees to the UST.
11. The estimated collectability of the debtor's accounts receivable.
12. The risks posed to creditors under the plan.
13. An analysis of potential preferential or otherwise voidable transfers and the debtor's plan, if any, to pursue such recoveries.
14. Anticipated future litigation (bankruptcy and non-bankruptcy contexts) and the estimated cost and source of revenue to fund this litigation.
15. A statement that the plan represents a legally binding arrangement and should be read in its entirety, as opposed to relying on the summary in the disclosure statement.
16. The designation of impaired classes under the plan. Include a layman's definition of impairment.
17. A statement that approval of the disclosure statement by the Bankruptcy Court does not constitute approval of the plan.

18. Whether any creditors' committee exists and, if so, whether it participated in negotiating the terms of the plan.
19. An explanation of the voting requirements for acceptance of the plan.

Qualifying small business debtors may use the form plan and disclosure statements known as Official Forms B 425A and B 425B which are available at the U. S. Bankruptcy Court's website at <http://www.uscourts.gov/bkforms/index.html>. Debtors who elect to proceed under Subchapter V of chapter 11 are not required to file a disclosure statement pursuant to 11 U.S.C. § 1181(b), unless the Court, for cause, orders otherwise.

Failure by the debtor to file a disclosure statement and plan of reorganization/liquidation within 180 days after the entry of the order for relief, or 300 days for small business debtors, may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(J); Local Rule 3016-1.

If a plan or disclosure statement is not confirmed or approved, any amendment, modification or supplement necessary to correct the deficiency must be filed within 14 days of the hearing or whatever time period the Court may require. *See* Local Rule 3016-1.

Additional Requirements and Considerations for Small Business Debtors

A “small business case” is a case in which the debtor is a “small business debtor” and has not elected to proceed under Subchapter V of chapter 11 pursuant to the definitions set forth in 11 U.S.C. § 101 (51C) and (51D). Title 11 U.S.C. § 1116 sets out a number of specific requirements in small business cases:

1. The debtor must append to the voluntary petition its most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or a statement made under penalty of perjury that the financial statements have not been prepared or the tax return has not been filed.
2. The debtor must attend, through its senior management personnel and counsel, meetings scheduled by the UST, including an initial debtor interview and the meeting of creditors, unless the Court waives the requirement upon a finding of extraordinary and compelling circumstances.
3. The debtor must timely file all schedules and statements unless the Court grants an extension of time, which shall not extend beyond 30 days after the order for relief absent extraordinary and compelling circumstances.
4. The debtor must file all post-petition financial and other reports required by the Federal Rules of Bankruptcy Procedure or Local Bankruptcy Rules.

5. The debtor must maintain insurance customary and appropriate to the industry, subject to 11 U.S.C. § 363(c)(2) concerning use of cash collateral.
6. The debtor must timely file tax returns and other required governmental filings and timely pay all taxes entitled to administrative expense priority, except those being appropriately and diligently contested, and subject to 11 U.S.C. § 363(c)(2) concerning use of cash collateral.
7. The debtor must allow the UST or a designated representative to inspect the debtor's business premises, books, and records at reasonable times, and after reasonable prior written notice, unless the debtor waives notice.

In a small business case, the Court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary. *See* 11 U.S.C. § 1125(f)(1). Presumably, such a determination will be made by the Court upon the request of the debtor. Additionally, in a small business case, the plan and disclosure statement shall be filed not later than 300 days after the date of the order for relief, unless such time period is extended by the Court. *See* 11 U.S.C. § 1121(e).

Provisions Specific to Subchapter V Debtors

Title 11 includes a number of provisions and deadlines that apply specifically to chapter 11 cases in which the debtor elects to proceed under Subchapter V of chapter 11. Specifically –

- The Bankruptcy Court will hold a status conference not later than 60 days after the case is filed “to further the expeditious and economical resolution” of the Subchapter V case. *See* 11 U.S.C. § 1188(a).
- Not later than 14 days before the status conference, “the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.” *See* 11 U.S.C. § 1188(c).
- The Subchapter V debtor shall file a plan not later than 90 days after the petition date, except that the court may extend the period “if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.” *See* 11 U.S.C. § 1189(b).
- The duties and reporting requirements of a debtor under Subchapter V include each of the seven requirements set forth in 11 U.S.C. § 1116, as outlined above. *See* 11 U.S.C. § 1187.

Provisions Specific to Debtors Who Are Individuals

Title 11 includes a number of provisions that apply specifically to chapter 11 cases in which the debtor is an individual³, including the following:

- Property of the bankruptcy estate includes property acquired post-petition. *See* 11 U.S.C. § 1115(a)(1).
- Property of the bankruptcy estate includes post-petition earnings from personal services. *See* 11 U.S.C. § 1115(a)(2).
- The plan must provide for the debtor to pay creditors all or such portion of earnings from personal services or other future income of the debtor as is necessary for the execution of the plan. *See* 11 U.S.C. § 1123(a)(8).
- If a holder of an allowed unsecured claim objects to confirmation of the plan, the plan must either provide for payment of the full value of the claim as of the effective date, or for payment of the projected disposable income of the debtor for five years or for the term of the plan, whichever is longer. Disposable income is defined in 11 U.S.C. §§ 1325(b)(2), 1129(a)(15).
- At the request of the debtor, the trustee, the UST, or the holder of an allowed unsecured claim, the plan may be modified at any time after confirmation but before completion of payments to a) increase or reduce the amount of payments to a particular class; b) extend or reduce the time period for payments; or c) change the amount to be paid to a creditor to the extent necessary to take account of any payments made other than under the plan. *See* 11 U.S.C. § 1127(e).
- At the request of the Court, the UST, or any party in interest, the debtor must file with the Court a copy of any post-petition federal income tax returns at the same time they are filed with the taxing authorities, and certain pre-petition federal income tax returns that had not been filed with the taxing authorities on the petition date. *See* 11 U.S.C. § 521(f).
- An individual debtor does not receive a discharge until completion of all payments under the plan, unless the debtor has elected to proceed under Subchapter V of chapter 11 and has had a consensual plan confirmed by the Court. The Court may grant a discharge to an individual debtor who has not completed all plan payments if the Court finds that the value of the property actually distributed to unsecured creditors as of the effective date is not less than the amount that would have been paid in a chapter 7 case if the estate had been liquidated on the effective date, and if the Court also finds that modification of the plan under 11 U.S.C. § 1127 is not practicable. *See* 11 U.S.C. § 1141(d)(5); Local Rule 4004-1.

³ Individual debtors may also be small business debtors or debtors who elect to proceed under Subchapter V of chapter 11.

- An individual debtor owing a “domestic support obligation” as defined at 11 U.S.C. § 101(14A) (alimony, child support, etc.), must provide written notice of the bankruptcy filing to the holder of the obligation and to the appropriate state child support enforcement agency. The initial notices of a debtor’s bankruptcy filing must be sent by the meeting of creditors, and proof of service must be furnished to the UST within ten days. Notification of receiving a bankruptcy discharge should be sent to these same parties after a discharge is obtained. The forms attached to these guidelines should be used to send notices to the appropriate parties. These notices are served by the Subchapter V trustee in cases filed under Subchapter V of chapter 11.

In addition, a chapter 11 debtor’s reorganization may have significant tax consequences to the debtor and/or the estate and therefore may require legal and/or tax counsel to make a determination regarding the establishment of a separate tax I.D. number and tax year for the estate. It is the debtor’s responsibility to comply with applicable tax laws and the UST cannot provide specific advice to them in this matter. It is, however, strongly recommended that the debtor and counsel review IRS Notice 2006-83 as it relates to taxable entities and bankruptcy estates. This notice is available online at IRS.gov.

INFORMATION FOR INITIAL DEBTOR INTERVIEW

Case Name: _____
Case Number _____

Business cases only

Type of business: _____

Date Started/Incorporated: _____

What is the business accounting method? _____

What accounting software, if any, does the business use? _____

Specific conditions which caused the Chapter 11 petition to be filed?

Plan for Reorganization or Liquidation?

Who will prepare the monthly operating reports? _____

Have you provided the following to the U.S. Trustee?

- ___ Executed Initial Debtor in Possession report.
- ___ Receipt and Certification of Understanding Operating Guidelines.
- ___ Copies of previous 2 years tax returns and all applicable schedules.
- ___ Most recent audited or unaudited financial statement (business cases only).
- ___ Balance sheet as of date of filing (business cases only).
- ___ Initial 6-month income and expense projections (business cases only).
- ___ Rent Roll Information

**DECLARATION OF PRE-PETITION ACCOUNT CLOSINGS
AND OPENING OF DEBTOR IN POSSESSION BANK ACCOUNTS**

CASE NAME: _____

CASE NUMBER: _____

All pre-petition bank accounts of _____, as listed
(Debtor)
below, were closed on _____:
(Date)

Depository Name	Account Name	Account Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

On _____, all monies were transferred to the following chapter
(Date)
11 debtor in possession bank accounts:

Depository Name	Account Name	Account Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Attach proof that prepetition accounts have been closed and Debtor In Possession accounts opened.

The average post-petition monthly disbursements are estimated to be \$ _____ each month.

PURSUANT TO 28 U.S.C. SECTION 1746, I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on: _____
(Date)

(Debtor)

(Title)

(Printed Name of Signatory)

* Attach additional sheets if necessary.

**INITIAL LETTER TO STATE CHILD SUPPORT ENFORCEMENT AGENCY
REGARDING A CLAIM FOR A DOMESTIC SUPPORT OBLIGATION
Chapter 11**

[Name of State Agency]
[Address of State Agency]
Attn: [Contact person at State Agency]

Re: Support Obligation Owed to [Name of Person Owed Support]
By [Name of Debtor, Bankruptcy Case No. 19-xxxxx]

Dear [Contact person at State Agency]:

I filed a Chapter 11 case on [Date of Filing] in the United States Bankruptcy Court for the _____ District of _____. The following person has a claim for support against me:

Name of Holder of Claim:
Address of Holder of Claim:
Telephone Number of Holder of Claim:

In addition, please be advised that I have sent [Holder of Claim] a letter which explains that your agency will assist in collecting child support from me.

Finally, if I successfully complete this bankruptcy case and receive a discharge from other debts, I will send you another letter with additional information that may help your agency assist [Name of Holder of Claim] get paid any support still owed.

Sincerely,

Individual Chapter 11 Debtor in Possession

**INITIAL LETTER TO HOLDER OF CLAIM
FOR A DOMESTIC SUPPORT OBLIGATION
Chapter 11**

[Name of Person Owed Support]
[Address of Person Owed Support]

In re: Name of Debtor
Case No: 19-xxxxx

Dear [Name of Person Owed Support]:

On [Date of Filing] I filed a chapter 11 case in the United States Bankruptcy Court for the _____ District of _____. I listed you as being owed money for a domestic support obligation. If this domestic support obligation includes child support, you have the right to ask your state child support enforcement agency to assist you in collecting this child support during and after the bankruptcy case. The name, address and telephone number of this agency in your state are listed below:

[Name of Child Support Enforcement Agency]
[Address of CSEA]
[Telephone No. of CSEA]

If this letter has reached you, but you have moved to another state, you may wish to visit the internet web site of the Office of the U.S. Trustee at www.usdoj.gov/ust for a complete listing of the child support enforcement agencies for all states.

If I successfully complete this bankruptcy case and receive a discharge from other debts, I will send you another letter with additional information that may help you get paid any domestic support obligations you are owed.

Sincerely yours,

Chapter 11 Individual Debtor

**DISCHARGE NOTIFICATION TO
STATE CHILD SUPPORT ENFORCEMENT AGENCY REGARDING
A CLAIM FOR A DOMESTIC SUPPORT OBLIGATION
Chapter 11**

[Name of State Agency]
[Address of State Agency]
Attn: [Contact person at State Agency]

Re: Domestic Support Obligation Owed to [Name and Address of Person Owed Support]
By [Name of Debtor, Bankruptcy Case No. 19-xxxxx]

Dear [Contact Person at State Agency]:

Please be advised that I was granted a discharge in bankruptcy on [Date of Discharge]. The following information is being provided to assist in your efforts to collect any domestic support obligation which I may still owe to [Name of Person Owed Support]:

My Current Address:

My Current Employer:

Address of My Current Employer:

I am obligated to provide you the names and addresses of certain creditors whose debts were reaffirmed or not discharged. These creditors are as follows:

These creditors may be a source of information regarding any future address I may have. If you request information from these creditors, they are allowed by law to disclose to you my last known address.

Sincerely,

Chapter 11 Debtor in Possession

**DISCHARGE NOTIFICATION TO HOLDER OF CLAIM FOR A DOMESTIC
SUPPORT OBLIGATION
Chapter 11**

[Name of Holder of Claim]
[Address of Holder of Claim]

Re: [Name of Debtor]
[Case No. 19-xxxxx]

Dear [Name of Holder of Claim]:

Please be advised that I was granted a discharge in bankruptcy on [Date of Discharge]. The following information is being provided to assist in your efforts to collect any support which I may still owe you:

My Current Address:

My Current Employer:

Address of My Current Employer:

I am obligated to provide you the names and addresses of certain creditors whose debts were reaffirmed or not discharged. These creditors are as follows:

These creditors may be a source of information regarding any future address I may have. If you request information from these creditors, they are allowed by law to disclose to you my last known address.

Sincerely,

Debtor in Possession (Ch 11)

**RECEIPT AND CERTIFICATION OF UNDERSTANDING
UNITED STATES TRUSTEE
OPERATING GUIDELINES AND REPORTING REQUIREMENTS**

CASE NAME: _____

CASE NUMBER: _____

I hereby certify that I have read and understand the United States Trustee Chapter 11 "Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees". Further, I hereby agree to perform in accordance with said guidelines and requirements.

(Date)

(Debtor)

(Title)

(Printed Name of Signatory)

The undersigned, as counsel for the debtor, has read and reviewed with the debtor the operating guidelines and reporting requirements discussed above.

(Date)

(Attorney for Debtor)