



U.S. Department of Justice

Office of the United States Trustee

Western District of Michigan

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## **OPERATING INSTRUCTIONS AND REPORTING REQUIREMENTS FOR CHAPTER 11 CASES**

Section 586(a)(3) of Title 28 of the United States Code provides that the United States Trustee shall supervise the administration of chapter 11 cases within the region for which such United States Trustee is appointed. Pursuant to that section, Andrew R. Vara, the United States Trustee for Region 9, Ohio/Michigan, has issued the following requirements for chapter 11 debtors and trustees.

**Timely compliance with each of the following requirements is mandatory. Failure to comply with any requirement may result in the filing of a motion for dismissal or conversion of the case or a motion for appointment of a chapter 11 trustee or examiner.**

**Any request for amendment to or modification of any of these requirements must be made in writing and approved in writing by the Office of the United States Trustee.**

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## 1. GENERAL REQUIREMENTS

a. The debtor is required to comply in all respects with the Bankruptcy Code and the Bankruptcy Rules and any applicable local rules promulgated by the United States Bankruptcy Court.

b. Notices and copies of all pleadings, stipulations and proposed orders must be served upon the United States Trustee as required by Federal Rules of Bankruptcy Procedure (“FRBP”) and the local rules. Documents should be sent to the Office of the United States Trustee, The Ledyard Building, 125 Ottawa Avenue NW, Suite 200R, Grand Rapids, Michigan 49503.

c. The debtor must pay, in full when due, all obligations arising after the filing of the petition (“postpetition”). This includes not only general business expenses, but all postpetition obligations including:

- (1) Wages;
- (2) FICA taxes, both employees' and employers' portions;
- (3) Withheld federal, state and local payroll taxes, and
- (4) All other taxes.
- (5) United States Trustee Quarterly Fees and Court Costs.

d. In addition to the items in subparagraph c. above, 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 Subchapter V) 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.

e. The debtor shall file all federal, state and local tax returns when due, or shall procure an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or by order of the Court.

f. The debtor may not employ or pay any professionals (*i.e.* attorneys, accountants, or appraisers) pursuant to 11 U.S.C. §§ 327 and 330 respectively without a court order. The fee guidelines promulgated by the Office of the United States Trustee shall be applicable to all professionals retained in the case.

g. The debtor may not pay obligations arising before the date of filing of the petition (“prepetition”), except as allowed by the Bankruptcy Code, local rules, or by order of the Court.

h. The debtor shall promptly notify the United States Trustee, in writing, of any and all changes of address of the debtor during the pendency of the case.

## 2. BOOKS AND RECORDS

The books and records of the debtor should be closed as of the date of the filing of the petition. Provision must be made for separate accounting with respect to prepetition and postpetition accounts and transactions.

### 3. BANK ACCOUNT REQUIREMENTS

a. All prepetition bank accounts over which the debtor has possession, custody, control, ownership or access must be closed immediately upon the filing of the chapter 11 petition. At the initial debtor interview, the debtor shall deliver to the United States Trustee attached **Form A**, which lists all prepetition bank accounts used by the debtor whether in the name of the debtor or in some other name. Copies of the final statements for closed accounts, the initial statements for the required newly opened accounts and a voided copy of the first check from each account shall also be provided to the United States Trustee.

b. Immediately upon the filing of the petition, a minimum of three new bank accounts must be opened by the debtor at an authorized depository (see subsection (e) of this section). The new accounts should be detailed on attached **Form A**. The three mandatory new accounts are the general and tax accounts as follows:

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

**2.) Tax Account:** Sufficient funds to cover tax liabilities must be deposited into this account from the General Account as they accrue. They must be timely paid in the manner specified by the appropriate taxing authorities. If requested by the United States Trustee.

**3.) Payroll Account:** At the time payroll is due to be paid, an amount equal to the net payroll should be transferred from the General Account to this account, from which payroll is to be made.

c. The signature cards for the new bank accounts shall clearly indicate that the debtor is a “debtor in possession”. The face of the checks must contain the case name and number, must clearly indicate that the debtor is a “debtor in possession,” and this same information should be on the bank statement issued on each account. The debtor is obligated to ensure that the bank is directed to send a copy of the monthly bank statements (only) to the United States Trustee. **Banks refusing to perform this service may not hold the funds of bankruptcy estates subject to these requirements.**

d. After the opening of the initial debtor in possession accounts as specified in (b) above, no additional debtor in possession bank accounts or any other bank accounts shall be opened by or on behalf of the debtor during the pendency of the chapter 11 proceedings without the prior authorization of the Office of the United States Trustee and/or the United States Bankruptcy Court.

e. It is the responsibility of the debtor to insure that all accounts or investments in excess of \$250,000 are adequately protected by the pledge of securities or purchase of bonds by the financial institution in compliance with Section 345 of the Bankruptcy Code. Proof of such bonds or pledges must be supplied by the financial institution along with copies of the monthly bank statements.

#### 4. COMPENSATION OF PRINCIPALS, OFFICERS AND DIRECTORS

a. All compensation or other consideration paid or to be paid from the assets of the estate to principals, officers, directors and insiders, as that term is defined under 11 U.S.C. § 101(31), must be disclosed to the United States Trustee at the initial debtor interview. The disclosure should detail the name and position of the individual employed along with a detailed description of the duties. Attached **Form B** should be utilized to provide this information. A separate Form B is to be used for each officer, director and/or insider.

b. The disclosure should detail the individual's salary history and the amount of compensation paid on a weekly or monthly basis and all perquisites, benefits and considerations of any kind the individual will receive (*e.g.* use of company vehicles, payment of life or health insurance premiums, reimbursement of expenses, etc.).

c. The disclosure should also detail the individual's salary history for the year immediately preceding the filing of the chapter 11 petition.

#### 5. INSURANCE REQUIREMENTS

a. Unless the United States Trustee otherwise directs, the following types of insurance must be maintained and premiums paid when due:

(1) If the debtor has tangible assets susceptible to casualty loss (fire, theft, weather, vandalism, etc.), casualty insurance must be maintained.

(2) If the debtor has employees, workers' compensation insurance and unemployment insurance must be maintained.

(3) If the debtor conducts business operations, general liability and, if appropriate, product liability insurance must be maintained.

(4) Any other coverage customary in the industry or business, including liquor liability coverage.

b. The United States Trustee must be provided with proof that the required insurance is being maintained. In fulfillment of this requirement, the debtor shall provide the United States Trustee with a copy of the first page of the binder of all policies at the initial interview. A certificate of insurance from the insurance agent must be provided, indicating the expiration date of each policy and naming the United States Trustee as certificate holder.

c. The loss/payee beneficiary should be changed to add: "name, debtor in possession". Affirmations that insurance coverage remains current must be filed with the monthly operating reports.

**d. The debtor shall provide notice to the United States Trustee of any change, cancellation or expiration of insurance coverage.**

## 6. INITIAL DEBTOR INTERVIEW

a. The debtor and counsel must attend an initial interview as soon as practicable after the filing of the petition or appointment of the trustee. See the appendix for the list of the items for list of items to bring to the initial interview. The designated principal(s) most familiar with the debtor's financial affairs must attend the initial meeting.

b. The purpose of the initial interview is to afford the United States Trustee an early opportunity to ascertain the nature and status of the proceeding, establish the financial reporting requirements appropriate for the case, and to answer questions pertaining to these requirements.

c. This interview will be scheduled by the United States Trustee generally within ten working days after the filing or appointment of the trustee. The meetings normally shall be held at the Office of the U.S. Trustee, or other location at the discretion of the Office of the U.S. Trustee.

d. At the conclusion of the meeting, the debtor and counsel will be required to sign a certification (**Form C**) indicating that they have received, understand and agree to comply with the requirements of the United States Trustee. Counsel also will sign **Form D** and indicate whether or not the Office of the United States Trustee may communicate directly with the debtor-in-possession regarding administrative matters.

e. In some instances, the United States Trustee may arrange for the debtor and counsel to meet with the creditors' committee, in order to facilitate the administration of the case.

f. In addition to **Forms C and D**, the debtor is required to produce the following at the initial interview:

- 1). Proof of the establishment of new bank accounts:
  - (a) General Operating Account
  - (b) Tax Account
  - (c) Payroll Account
- 2). A declaration from the debtor (**Form A**) verifying the closing of all prepetition bank accounts and stating the date each account was closed and that all monies were transferred to the new accounts.
- 3). Proof of the following insurance coverage (*i.e.*, certificates):
  - (a) General Comprehensive Public Liability Insurance
  - (b) Fire and Theft Insurance
  - (c) Workers' Compensation Insurance
  - (d) Vehicle Insurance
  - (e) Any Other Insurance Coverage Customary in the Business or Industry

- 4). All federal income tax returns and personal property tax returns (last two years) with all schedules and attachments.
- 5). Copies of the current year-to-date financial statements and copies of financial statements for the last two fiscal years.
- 6). Disclosure statement of compensation paid to principals, officers and directors (Form B).

## 7. BUSINESS PLAN AND CASH PROJECTION

The debtor may be required to provide the United States Trustee with a detailed written strategy for effectuating successful business reorganization. The debtor's plan of action must include a 90-day projection of cash receipts and disbursements.

## 8. LISTS OF CREDITORS, SCHEDULES AND STATEMENT OF AFFAIRS.

a. The debtor must comply with FRBP 1007. This rule requires the debtor to file schedules and a statement of financial affairs with the Clerk of the U. S. Bankruptcy Court. A complete list of all creditors and their addresses should be set forth in Schedules D and E/F.

b. Failure to file all required bankruptcy schedules and the statement of financial affairs within **15 days** of the date of filing or to obtain an extension of time from the court may result in the filing of a motion to dismiss or convert the case or, in the alternative, the appointment of a trustee or examiner.

c. The debtor must file a separate list with the petition containing the names, addresses, e-mail addresses, telephone numbers, fax numbers, and amounts of claims of the twenty largest unsecured creditors. FRBP 1007(d). This list should **NOT** contain the names of creditors who are "insiders," as that term is defined in 11 U.S.C. § 101(31). In addition, the debtor must file a list of all equity security holders of the debtor including complete names, addresses e-mail addresses, telephone numbers, and fax numbers.

## 9. CREDITORS' MEETINGS

a. Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. Notice of this meeting, which is scheduled by the United States Trustee, is sent to all creditors by the clerk of court. Where the debtor remains in possession, all principals, officers, directors and employees familiar with the financial affairs and operations must attend. Corporate debtors must be accompanied by legal counsel conversant in the proceeding. **Please note: The debtor in possession must bring to the Section 341 first meeting of creditors the original signed corporate resolution authorizing the filing of the bankruptcy and the original signed bankruptcy petition, schedules, and Statement of Financial Affairs.**

b. After notice has been mailed, a meeting may not be cancelled or rescheduled to accommodate conflicts with the schedules of debtors, their counsel and other individuals required to attend the meeting. After the initial creditors' meeting, the United States Trustee

may continue the meeting to another date and time until the case is dismissed or converted or a plan is confirmed.

## 10. PERIODIC STATUS CONFERENCES

After the creditors' meeting, the United States Trustee may conduct periodic status conferences with the debtor, their counsel, the creditors' committee and their counsel. The purpose of these conferences is to ascertain the financial status of the debtor in possession, to determine what progress is being made with respect to formulating a plan of reorganization, and to determine when a plan may be filed.

## 11. PREPETITION AND POSTPETITION TAXES

a. **Prepetition.** Any prepetition tax return due, but not filed, as of the date of the petition for which there is any tax due, must be filed with the appropriate taxing authority. It is the responsibility of the debtor to ascertain whether there are such unfiled returns and to amend schedules to reflect them as is appropriate.

b. **Postpetition.** All postpetition taxes required to be paid and all postpetition tax returns required to be filed by the laws of the United States or any other state or political subdivision thereof, must be paid and filed by the debtor in a timely manner as required by the respective taxing authorities. With respect to postpetition taxes accruing during the pendency of a case for which there is no specific prepayment requirement, but which enjoy a priority lien or encumbrance against assets of the estate as they accrue (most notably real estate taxes), a cash deposit must be made to the tax account on a monthly prorated basis.

## 12. OPERATING REPORTS

a. **Operating reports must be filed with the Court and served on the Office of the United States Trustee by the 20th day of each month.** The reports shall cover the preceding month. FRBP 2015. In addition, copies of such reports should be served upon the chairperson of creditors' committee(s) and counsel for the committee(s). **All reports must be prepared on the accrual basis of accounting.**

b. The operating reports are used by the United States Trustee to monitor the progress of cases. Also, they enable interested parties to assess whether the business is operating at a sufficient level of profitability to demonstrate feasibility of reorganization.

c. The United States Trustee reserves the right to require the filing of more detailed or additional reports in order to monitor their financial affairs. 28 U.S.C. § 586(a)(3) and FRBP 2015. This determination will be made at the initial meeting with the United States Trustee and throughout the progress of the case. Such decisions will be based on the overall complexity or other factors present in the case which, in the judgment of the United States Trustee, warrant imposition of additional reporting requirements.

d. After the confirmation of a chapter 11 plan, the reorganized debtor shall provide the United States Trustee quarterly post confirmation financial reports, until an order closing, dismissing, or converting the case is entered by the court.

### 13. QUARTERLY FEES

a. Until a chapter 11 case is **closed, dismissed or converted by the Court**, the United States Trustee Quarterly Fees under 28 U.S.C. § 1930(a)(6) shall be paid as set forth in the schedule published at: <https://www.justice.gov/ust/chapter-11-quarterly-fees>.

b. The fee must be paid to the United States Trustee for every quarter (including any fraction thereof) from the time the petition is filed until the date of entry of an order dismissing or converting the case, or closing a confirmed case. The fee is applicable to each and every case commenced under chapter 11 regardless of whether the case has been administratively consolidated with any other case.

c. Cases pending during even one day during a quarter will be required to pay the fee applicable to that entire quarter.

d. The amount varies depending upon the dollar amount of **all disbursements** made during the calendar quarter; however, a minimum fee of \$325 is due each quarter even if no disbursements are made during the quarter.

e. All quarterly fees must be paid before a chapter 11 plan can be confirmed under 11 U.S.C. § 1129(a)(12).

f. Each case will receive a bill regarding the fee approximately two weeks prior to each of the due dates noted below. Each bill contains a “tear off” payment stub which should be returned along with a check to the following address:

U.S. Trustee Payment Center  
P.O. Box 6200-19  
Portland, OR 97228-6200

Note: If the amount billed is not correct based on the disbursement range for that quarter, please pay the correct amount and note the actual disbursement for that quarter on the payment stub to be mailed.

g. Please make all checks payable to the “U. S. Trustee”. The account number for the case, which can be obtained from the statement, should be written on the face of the check. Direct all correspondence and questions regarding your account to Mr. Daniel Ebright at (616) 456-2002.

h. If any check is returned marked “*Insufficient Funds*,” all future quarterly fee payments must be made by cashier's check, certified funds or postal money order.

i. Effective January 1, 2020, quarterly fees may be paid online through Pay.gov at <https://www.pay.gov/public/form/start/672415208>.

## QUARTERLY FEE SCHEDULE

The Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, amended the calculation of chapter 11 quarterly fees effective January 1, 2018. Under this amendment, during each of fiscal years 2018 through 2022, if the balance in the United States Trustee System Fund (Fund) as of September 30 of the most recent full fiscal year is less than \$200 million, the quarterly fee payable for a calendar quarter in which disbursements equal or exceed \$1 million shall be the lesser of 1 percent of such disbursements or \$250,000.

The balance in the Fund as of September 30, 2017, was less than \$15 million. Accordingly, the amended chapter 11 quarterly fee schedule below applies for calendar quarters beginning January 1, 2018 through September 30, 2018.

The balance in the Fund as of September 30, 2018, was less than \$45 million. Accordingly, the amended chapter 11 quarterly fee schedule below will continue to apply for calendar quarters beginning October 1, 2018 through September 30, 2019.

The balance in the Fund as of September 30, 2019, was less than \$135 million. Accordingly, the amended chapter 11 quarterly fee schedule below applies for the calendar quarters beginning October 1, 2019 through September 30, 2020.

TOTAL QUARTERLY DISBURSEMENTS	QUARTERLY FEE
\$0 to \$14,999.99	\$325.00
\$15,000 to \$74,999.99	\$650.00
\$75,000 to \$149,999.99	\$975.00
\$150,000 to \$224,999.99	\$1,625.00
\$225,000 to \$299,999.99	\$1,950.00
\$300,000 to \$999,999.99	\$4,875.00
\$1,000,000 or more	1% of quarterly disbursements or \$250,000, whichever is less

## QUARTERLY FEE DUE DATES

Quarter	Quarter Ending Date	Due Date for Payment
1st (Jan-Feb-Mar)	March 31	April 30
2nd (Apr-May-Jun)	June 30	July 31
3rd (Jul-Aug-Sep)	September 30	October 31
4th (Oct-Nov-Dec)	December 31	January 31

### **PENALTIES:**

**FAILURE TO TIMELY PAY THE QUARTERLY FEE IS CAUSE FOR CONVERSION OR DISMISSAL OF THE CASE UNDER 11 U.S.C. § 1112(b)(4)(K).**

**FILING A FALSE REPORT MAY SUBJECT YOU TO CIVIL LIABILITY UNDER 31 U.S.C. § 3729(a) AND TO CRIMINAL PENALTIES UNDER 18 U.S.C. § 1621.**

Finally, please take notice that failure to pay quarterly fees to the United States Trustee pursuant to 28 U.S.C. § 1930 has additional significant legal consequences. Please be advised that, pursuant to the Debt Collection Improvement Act of 1996, Public law 104-134, Title III, Section 31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, as amended, unless a different number of a responsible entity is provided, the United States Trustee intends to use the debtor's Taxpayer Identification 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 delinquencies, including chapter 11 quarterly fees, that are owed to the United States Trustee.

The United States Trustee will provide the 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 Offset Program so that the amount owed may be deducted from any payment owing by the federal government, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices; (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.

### **14. OTHER REQUIREMENTS**

In addition to the requirements of the United States Trustee detailed above, your attention is called to the following provisions of the Bankruptcy Code and Rules that may impact upon the viability of this proceeding.

a. **Use of Cash Collateral.** Cash collateral may not be used by the debtor without procuring the consent of the secured creditor or court authorization after notice and hearing. 11 U.S.C. § 363(c)(2). Cash collateral is defined as cash, negotiable instruments, documents of

title, securities, deposit accounts, or other cash equivalents in which the estate and an entity other than the estate have an interest. 11 U.S.C. § 363(a). Separate cash collateral accounts must be established and maintained by the debtor. 11 U.S.C. § 363(c)(4).

b. **Obtaining Credit.** The debtor may not obtain credit or incur unsecured debt, other than in the ordinary course of business, without court authorization after notice and hearing. 11 U.S.C. Sec. 364(b). Section 364(c) of the Bankruptcy Code requires court authorization after notice and hearing before obtaining credit or the incurring of debt with priority over certain administrative expenses. Section 364(c) and (d) of the Bankruptcy Code requires court authorization after notice and hearing before obtaining credit or the incurring of debt to be secured by a lien on property of the estate.

c. **Use, Sale or Lease of Property of the Estate.** Section 363(b) of the Bankruptcy Code provides for the use, sale, or lease of property of the estate when such use, sale or lease is not in the ordinary course of business, only after notice and hearing.

**Please note that the United States Trustee requires service of a copy of any and all such pleadings, stipulations and proposed orders filed with the Court. FRBP 9034(f).**

#### 15. **WEB SITE**

Additional information may appear on the United States Trustee's web site:

<https://www.justice.gov/ust>