

CHAPTER 11: OPERATING GUIDELINES and REPORTING REQUIREMENTS

Office of the United States Trustee Eastern District of Wisconsin



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General Information and Requirements

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). Under these guidelines, the debtor 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.

Duties of the Debtor

With the filing of a chapter 11 petition, a debtor becomes a new entity called a debtor-in-possession and has new duties. 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 - 1107. The debtor is required to comply in all respects with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and Local Rules. Some of the debtor's obligations are as follows:

- Debtor must pay all obligations arising after the filing of the petition in full when due. This includes quarterly fee payments to the UST (see Quarterly Fee Paid to UST) and all post-petition taxes.
- Debtor must file all Federal, State and Local tax returns when due or obtain an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or Court order.
- Debtor may not pay pre-petition obligations except as allowed by the Bankruptcy Code or by order of the Court.
- Debtor must comply with 11 U.S.C. § 363 of the Bankruptcy Code regarding the use of cash collateral.
- Debtor may not make new loans, give post-petition guarantees, or borrow funds without Court approval unless otherwise permitted by the Bankruptcy Code.

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

- Debtor may not sell or lease property outside the ordinary course of business without Court approval unless otherwise permitted by the Bankruptcy Code.

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 its telephone number.

The debtor's schedules, statements and other documents must be filed within 14 days after the filing of a voluntary petition for relief (Federal Rule of Bankruptcy Procedure 1007(c)).

The list of the 20 largest unsecured creditors must provide the telephone numbers, email, 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 is generally conducted at the office of the UST but may be conducted on debtor's premises or by telephone. 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 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 and Section 341 Meeting of Creditors must have personal knowledge and information regarding the debtor's pre-petition and post-petition operations, accounting records, tax returns and financial statements.

The debtor will be contacted by the UST Office to schedule the IDI on a date after the petition is filed and prior to the meeting of creditors. 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 (attached)
- Executed Initial Debtor in Possession Report (attached)
- Bank Account Report (attached)
- Declaration of Pre-Petition Account Closing and Opening of D-I-P Accounts (attached)
- An original voided check for each DIP account.
- Insurance Statement (attached)
- Insurance Declarations showing the UST is named as a certificate holder
- Receipt and Certification of Understanding Operating Guidelines (attached)
- Copies of previous 2 years tax returns including 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, 343. Failure by the debtor to attend the meeting of creditors without good cause shown is cause for the conversion or dismissal of the case. See 11 U.S.C. §1112(b)(4)(G). In individual cases the debtor is required to provide proof of identification and social security number, as well as details and the status of any domestic support obligations.

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.

Shortly after the filing of the petition, the UST usually invites 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 three creditors respond affirmatively, the UST may appoint an unsecured creditors committee. 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 a committee. 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.

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 at least one new "Debtor-In-Possession" bank account. A determination regarding the number and type of authorized Debtor-In-Possession accounts will depend on the nature of the debtor's financial activity. 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. Note that outstanding checks that have not cleared pre-petition bank accounts at the time of filing should not be permitted to clear.

The account on the bank's records must 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" and the case number on all permanent checks. Handwritten, typewritten, or hand stamped

versions are not acceptable. A “voided” sample of the pre-printed check should be provided to the United States Trustee. See sample, on following page.

The Company Name, Inc. Debtor-in-Possession, Case #18-12345 1278 Any Street Sometown, WI 532XX		1001
PAY TO THE ORDER OF	_____	\$ <input type="text"/>
_____		Dollars
Memo _____		
: 123456789	13579	1001

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 11 U.S.C. § 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.

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 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.”

Authorized Depositories

If the debtor has more than \$250,000 in a single financial institution prior to plan confirmation, those funds must be deposited with an authorized depository. The UST 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 authorized depositories may be obtained from the Office of the United States Trustee – Eastern District of Wisconsin.

If the debtor-in-possession prefers to use a financial institution which is not included in the authorized depositories list, 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 an authorized depository or otherwise comply with 11 U.S.C. § 345.

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 the 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 an additional certificate holder on any insurance policies so that the UST receives prior notification regarding any change, cancellation, or expiration of a debtor's insurance policy. A debtor should also be required to provide separate notice to the UST regarding any change in insurance coverage.

Rental Property Records

Debtors who own commercial or residential rental property shall provide the UST 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, (5) name, address, and phone number of the management company, and (6) the monthly management fee.

Quarterly Fee Paid to the UST

Title 11 U.S.C. § 1930(a)(6) requires that in addition to the filing fee which is paid to the Court, a quarterly fee must be paid to the UST for each quarter (including any fraction of a quarter the debtor is under chapter 11 protection) until the case is closed, dismissed, or converted to another chapter. The quarterly fee is based on the amount of disbursements made by the debtor during the quarter with a minimum fee of \$325, even when there are no disbursements in a quarter. The complete current quarterly fee schedule can be found at: <https://www.justice.gov/ust/chapter-11-quarterly-fees> .

Quarterly fee statements are mailed to the debtor by the UST at the end of each quarter with instructions on how to determine the fee and make proper payment of the fee. The fee is due on the last day of the calendar month following the calendar quarter for which the fee is incurred. Any debtor not receiving a statement for the fee or having questions about the fee should contact the UST's office. Failure to timely pay quarterly fees may result in dismissal of the case or conversion of the case to chapter 7. See 11 U.S.C. § 1112(b)(4)(K).

Interest is charged on delinquent fees. See 31 U.S.C. § 3717.

The current address for chapter 11 quarterly fee payments is:

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

For overnight delivery, send payments to:

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

Payments sent to the above address **must be** accompanied by the Quarterly Fee Payment Stub that is found at the bottom of the Quarterly Fee Statement. Failure to enclose the payment stub may result in the improper processing of the payment and cause delay in crediting the debtor's account. The address above are only for use in sending payments. Do not include any extraneous material or correspondence with the payment. Extraneous materials sent to the payment addresses will be destroyed. Checks should be made payable to "United States Trustee."

Fees also may be paid online at <https://www.pay.gov/public/form/start/672415208>

The site will only accept payments made by electronic funds transfer from a bank account. Payments using a debit card, credit card, or other type of online payment such as PayPal will not be accepted.

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).

Pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, §31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the UST 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 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.

Employment and Payment of Professionals

Attorneys and other professionals (e.g. accountants, brokers, real estate agents, etc.) who assist the debtor in connection with the chapter 11 case must obtain court authority to represent the debtor. Applicants to employ these professionals must be filed with the court.

The debtor may not pay professional persons without court authority. In order to pay a professional person for services rendered, an application must be filed with the Bankruptcy Court and the Court must approve the fees and other expenses requested.

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)(1). 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 filing.

Monthly Operating Reports

All debtors must file with the Court no later than the 21st day of each month a financial report for the entire preceding calendar month. This report must be filed in electronic format and must conform to the format prescribed by these guidelines. There are two monthly operating report forms, copies of which are available from the UST. Debtors must complete the correct form based on the following criteria:

- (1) Non-small business and individual debtors must use the UST FORM 11-MOR. This form can be found on the UST Region 11 – Eastern District of Wisconsin website at: <https://www.justice.gov/ust-regions-r11/region-11-chapter-11>. Required forms and documents to be included in each report will be determined by the UST at the Initial Debtor Interview and verified in writing prior to the submission of the first report.
- (2) Debtors in cases in which the debtor is a “small business debtor” pursuant to the definition set forth in 11 U.S.C. § 101(51) must use the Official Form B 425C monthly report, a copy of which is provided at the U.S. Bankruptcy Court's website at: <http://www.uscourts.gov/forms/bankruptcy-forms>.

Debtors may attach additional documentation to the operating report but cannot substitute pages unless authorized in writing by the UST. All fields in the operating report must be completed. If a particular field is not applicable, it should not be left blank. The operating report must be filed even if there was no financial activity in a month.

Debtors should provide their reports to their attorneys early enough to allow for filing in electronic format by the 21st day of the month. 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).

If the debtor filed a bankruptcy petition more than ten days prior to the end of the any calendar month, a monthly report must be filed for that portion of the calendar month no later than the 21st day of the following month. A debtor who files ten days or less prior to the end of a calendar month must include these days in the report for the following month.

A debtor is required to file monthly operating reports until the case is dismissed, converted, or confirmed. Following confirmation and before the case is closed, a debtor must file quarterly operating reports on the status of disbursements. See U.S. Trustee Quarterly Report on Status of Plan Payments on the Region 11 –

Eastern District of Wisconsin website at: <https://www.justice.gov/ust-regions-r11/region-11-chapter-11>. These reports are due 30 days after the calendar quarter ends and should be sent to:

Office of the U.S. Trustee
Eastern District of Wisconsin
517 East Wisconsin Avenue
Suite 430
Milwaukee, WI 53202

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/forms/bankruptcy-forms>.

Additional Notice Requirements

The UST must be advised immediately of any significant changes 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.

Disclosure Statement and Plan of Reorganization/Liquidation

The debtor has an exclusivity period where only the debtor-in-possession can file a disclosure statement and plan of reorganization, for 120 days after the petition date or order for relief. A small business debtor has an exclusivity period of 180 days. If you qualify as a single asset real estate case, the exclusivity period is 90 days.

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/forms/bankruptcy-forms>.

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. § 1121(e)(2).

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