



## U.S. Department of Justice

United States Trustee  
Region 13  
Arkansas, Missouri and Nebraska  
Western District of Missouri

United States Courthouse  
400 East 9<sup>th</sup> Street, #3440  
Kansas City, MO 64106  
TEL (816) 512-1940  
FAX (816) 512-1967

---

# CHAPTER 11 GUIDELINES FOR DEBTORS-IN-POSSESSION

These guidelines are provided to chapter 11 debtors in possession to assist them with the administration of their bankruptcy case.

The United States Trustee is required to supervise the administration of chapter 11 cases pursuant to 28 U.S.C. § 586(a)(3). These operating guidelines and reporting requirements for chapter 11 cases must be followed so that the United States Trustee can properly supervise the administration of this case. Accordingly, the debtor's failure to comply with the operating and/or reporting requirements set forth below may result in the dismissal or conversion of this case to a case under chapter 7 of the Bankruptcy Code.

The United States Trustee reserves the right to modify these guidelines from time to time. Any request for a waiver of any requirement must be in writing stating the reasons for the request. The United States Trustee will determine whether a waiver should be granted or denied based upon the circumstances of the case.

## **I. GENERAL GUIDANCE AND CHAPTER 11 DEBTOR OBLIGATIONS**

- A. The debtor is required to comply in all respects with Title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules of Practice for the United States Bankruptcy Court for the Western District of Missouri ("Local Rules").
- B. The debtor shall appear at the initial debtor interview prior to the Section 341(a) initial meeting of creditors and shall also appear at the Section 341(a) initial meeting of creditors.
- C. The debtor must pay all obligations arising after the filing of the petition ("post petition") in full when due. This includes not only general business expenses, but all post-petition obligations in the ordinary course of business including but not limited to:
  - a. Wages
  - b. United States Trustee quarterly fees and court costs

- c. FICA, both employee and employer share
  - d. Tax deposits withheld from wages
  - e. Any other taxes
- D. The debtor may not pay pre-petition obligations except as allowed by the Bankruptcy Code or by order of the court.
- E. The debtor shall obtain court approval to obtain secured credit and unsecured credit outside the ordinary course of business.
- F. The debtor shall obtain court approval to use cash collateral.
- G. The debtor shall obtain court approval to sell, use or lease property outside of the ordinary course of business.
- H. The debtor shall obtain court approval to employ and pay professionals.
- I. The debtor shall maintain adequate insurance on estate assets.
- J. The debtor shall close pre-petition banking/depository accounts and open banking/depository debtor-in-possession accounts.
- K. The debtor shall timely file all federal, state and local tax returns when due, or shall procure an extension from the appropriate taxing authority, unless otherwise provided by applicable law or by order of the court. Individual debtors shall obtain a tax EIN for the bankruptcy estate.
- L. Individual chapter 11 debtors shall provide appropriate notices in connection with domestic support obligations to such claim holders and appropriate state agencies.

## **II. MAINTENANCE AND PROOF OF INSURANCE**

- A. All debtors must maintain insurance, make all premium payments thereon when due and provide proof thereof to the United States Trustee pursuant to Local Rule 4070-1.
- B. The debtor is required to maintain the following insurance coverage, as appropriate: general comprehensive liability; property loss from fire, theft, water, or other extended coverage; workers' compensation; vehicle, products liability; fidelity bonds for employees; and such other coverage as is customary for such a debtor, the debtor's property and the debtor's business.
- C. Within 15 days after the filing of the petition, the debtor shall provide to the United States Trustee proof of its insurance coverage. Such proof of coverage shall consist of certificates of insurance or other verified documents showing that each policy of insurance required for the estate is in full force and effect, and shall disclose the names of the insured, the type and extent of coverage, effective dates (including date of expiration),

name of insurance carrier, and name, address, and telephone number of agent. Failure to provide proof of insurance presumes no insurance is in effect.

- D. The debtor is responsible for making arrangements with all insurers to provide notice to the United States Trustee of any payments made on cancellations, lapses or modifications of any of its insurance policies by including the United States Trustee as a notice certificateholder on each policy. The debtor is responsible for including the address of the United States Trustee on the cancellation notice for each insurance policy. Upon the expiration or other termination of any coverage, the debtor shall immediately provide the United States Trustee with proof of replacement coverage.

### **III. BANK ACCOUNTS – CLOSING PRE-PETITION ACCOUNTS AND OPENING “DIP” ACCOUNTS**

- A. The debtor will be responsible to immediately close all of its existing bank accounts and to open new bank accounts that must be designated as “Debtor-In-Possession” bank accounts (commonly referred to as “DIP” accounts). These DIP accounts may include: operating, payroll, tax escrow or such other accounts as is appropriate for such a debtor, the debtor’s industry or debtor’s business. The United States Trustee will provide you with the forms necessary to open these DIP accounts. Upon consultation with the United States Trustee, the DIP accounts shall be maintained with an authorized depository (see authorized depository list provided by the United States Trustee and on the United States Trustee’s website at the following web address: <https://www.justice.gov/ust-regions-r13/region-13-chapter-11>).
- B. The debtor must provide the United States Trustee with a sample of a voided check from such accounts which shall be imprinted with the debtor’s name, bankruptcy case number and “Debtor-In-Possession”.
- C. The debtor should **deposit all receipts and make all disbursements through the debtor in possession account(s)**, unless otherwise approved by order of the court or the United States Trustee. In the case of an individual debtor operating a business, the debtor should maintain funds in separate household and business debtor-in-possession accounts.
- D. The debtor must transmit copies of all monthly bank statements (including copies of cancelled checks) to the United States Trustee within fifteen (15) days of receipt from the bank.

### **IV. CREDITORS MEETING**

Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. This meeting is scheduled by the United States Trustee, and notice of the meeting is sent by the Bankruptcy Court to all creditors. A representative of the debtor as well as debtor’s counsel, are required to attend.

## **V. MONTHLY OPERATING REPORTS AND SUMMARIES AND POST-CONFIRMATION REPORTING**

Two separate monthly operating reports are required: (1) a detailed multi-page monthly operating report required to be submitted to the United States Trustee in the format provided by the United States Trustee (or if designated a small business debtor, the federal Small Business Monthly Operating Report) and (2) a one-page summary monthly operating report required to be filed with the Court:

(1) Pursuant to Sections 1107(a), 1106(a)(1), and 704(8) of the Bankruptcy Code and Local Rule 2015-2 (D), debtors-in-possession and chapter 11 trustees are required to submit periodic reports and summaries of the operation of the business. The United States Trustee program requires such reports to be submitted on a monthly basis at the beginning of the case and on a quarterly basis after confirmation of a plan of reorganization. The United States Trustee provides an approved format of these reports for completion by debtors on the United States Trustee's website at the following web address: <https://www.justice.gov/ust-regions-r13/region-13-chapter-11>.

The Monthly Operating Reports (MORs) required to be completed and submitted by debtors include: balance sheets; income statements; statement of cash flow; schedules of aging accounts receivable, fixed assets and post-petition debts; and a summary of significant items such as the debtor's insurance coverage, payments to secured creditors, tax entities, professionals and compensation and a record of monthly disbursements and payments of quarterly fees due and paid to the United States Trustee. Debtors that are individuals must additionally include an individual statement of household activity to report receipts and disbursements of the household, separate from the operation of any business. Copies of monthly bank reconciliations to the bank statements must be included with each of the MORs in the provided format. Unless otherwise advised by the United States Trustee, all MORs must be submitted to: (i) the United States Trustee; (ii) if appointed, a chairman of any creditors' committee; and (iii) any other requesting party in interest as indicated by the United States Trustee, no later than the 20<sup>th</sup> day of the month following the end of the month covered by the report. The first report shall include all transactions for the period of the first month the debtor is in bankruptcy. It is recognized that in almost all cases, the first report will only be for a partial month. The partial month report should not be combined with that of the first full month.

Generally the basis for accounting used in preparing MORs should be the accrual basis if the cash basis method of accounting was not used prior to the bankruptcy. However, if the cash basis method of accounting was used prior to the bankruptcy filing, the debtor can continue to use that method to prepare the MORs. Regardless of which accounting method, there still must be aged accounts receivables and payables reported, unless an exception is made. Additionally, unless permitted otherwise by the United States Trustee, Generally Accepted Accounting Principles should be used and supporting schedules should comply with accounting standards, such as Statement of Position 90-7, Financial Reporting by Entities in Reorganization Under the Bankruptcy Code, issued by the AICPA on November 19, 1990, as amended, and all related organization accounting

requirements as currently included in the Financial Accounting Standards Board's Accounting Standards Codification Section 852, Reorganization, as amended.

In a chapter 11 small business case (see Section VII. Small Business Debtor Designation, below), instead of completing and submitting the MORs on the United Trustee's form, the debtor must use the official federal Small Business Monthly Operating report form (this is Official Form 425C, available on the website containing Official Bankruptcy Forms [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#official](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official)). These Small Business Monthly Operating Reports must be filed and transmitted to the United States Trustee, no later than the 21st day of the month following the end of the month covered by the report (see Federal Rule of Bankruptcy Procedure 2015(a)(6)).

(2) Additionally, Local Rule 2015-2 (C) requires that debtors-in-possession file with the Court on or before the 15<sup>th</sup> day of each month a one-page Monthly Operating Report Summary. (See Local Forms - MOW 2015-2.1, Monthly Operating Report Summary (Debtor-in-possession) which is available for download at the Court's website <http://www.mow.uscourts.gov/forms>.) Filing this Monthly Operating Report Summary with the Court is a separate requirement from the submission of the detailed MORs to the United States Trustee and the United States Trustee's office cannot extend the time required to file this summary required by Bankruptcy Court.

A failure to file either one of the two separate monthly reports is cause for dismissal or conversion of the case as set forth in Local Rule 2015-2 (E).

After confirmation of the plan of reorganization, the reorganized debtor is no longer required to submit MORs to the United States Trustee, but must instead submit quarterly post-confirmation reports to the United States Trustee twenty days after the conclusion of each calendar quarter; (i.e., April 20th, July 20th, October 20th and January 20th.) These "Chapter 11 Post Confirmation Reports" are required until such time as substantial consummation of the Plan has occurred and the Court has entered a final decree closing the case pursuant to Federal Rule of Bankruptcy Procedure 3022 and Section 350 of the Bankruptcy Code. The Chapter 11 Post Confirmation Report form is available on the United States Trustee's website at the following web address: <https://www.justice.gov/ust-regions-r13/region-13-chapter-11>

All MORs with bank statements and cancelled checks and Chapter 11 Post Confirmation Reports can be transmitted by e-mail to the United States Trustee at the following e-mail address: [kcmor@usdoj.gov](mailto:kcmor@usdoj.gov).

**VI. PERIODIC REPORTING REQUIRED ON NON-DEBTOR ENTITIES  
(IN WHICH THE DEBTOR HOLDS A SUBSTANTIAL OR CONTROLLING  
INTEREST)**

In a chapter 11 case where the debtor holds a substantial or controlling interest in other entities, the debtor is required to file a Periodic Report Regarding Value, Operations And Profitability Of Entities In Which The Estate Of Debtor Holds A Substantial Or Controlling Interest (this is Official Form 426, available on the website containing Official Bankruptcy Forms [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#official](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official)). This form is required to be filed under Federal Rule of Bankruptcy Procedure 2015.3 with the first forms filed no later than five (5) days before the first date set for the meeting of creditors under Section 341 of the Code. Subsequent reports shall be filed no less frequently than every six (6) months thereafter, until the effective date of a plan or the case is dismissed or converted.

**VII. THE SMALL BUSINESS DEBTOR DESIGNATION**

A debtor must declare on the face of its petition whether it is a small business debtor pursuant to Bankruptcy Rule 1020(a) and, in a small business case, the debtor must comply with filing requirements of Section 1116(1) of the Bankruptcy Code and Local Rule 1002-3(B)(1). A small business debtor is defined under Section 101(51D) of the Bankruptcy Code. If the primary activity of the debtor is the business of owning or operating real property or activities incident thereto, the debtor is not a small business debtor. A debtor's case will not be treated as a small business case if a creditors' committee is appointed. A small business debtor, as indicated above, must use the Small Business Monthly Operating report, Official Form 425C. Additionally, the exclusivity period for the debtor to file a plan and the plan deadlines and requirements are different in a small business case, as the case is placed on a "fast track" under Section 1121(e) of the Bankruptcy Code. A sample Plan of Reorganization and Disclosure Statement for a small business, Official Form 25A and Official Form 425B, respectively, are available on the website containing Official Bankruptcy Forms [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#official](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official).

**VIII. QUARTERLY FEES**

Pursuant to 28 U.S.C. § Section 1930(a)(6), each debtor in a case pending under the provisions of chapter 11 is responsible for pay a fee to the United States Trustee. The fee must be paid on a quarterly basis from time that a petition is filed until such time as the case is dismissed, converted, or closed with a Final Order. Fees must continue to be paid post-confirmation of any plan. The amount of fees due to the United States Trustee program is calculated under the aforesaid statute on all disbursements, including plan disbursements of the debtor in the billable quarter. The amount of the fee will vary based upon the amount of money disbursed by the debtor during a quarter. The chapter 11 quarterly fee schedule is available on the United States Trustee's website at web address: <https://www.justice.gov/ust/chapter-11-quarterly-fees>.

Any other correspondence can be mailed to the local Office of United States Trustee.

Office of United States Trustee  
Charles Whittaker U.S. Courthouse  
400 E. 9<sup>th</sup> Street, Ste #3440  
Kansas City, MO 64106

Failure to submit actual data on disbursements will cause the billing center to estimate the fee owed for the quarter in question. Failure to provide disbursements and/or fees timely may cause difficulties in converting, dismissing, or closing the case.

Please note that in writing a Plan for confirmation, the debtor must include the information concerning the requirement to pay post-confirmation United States Trustee quarterly fees. During the post-confirmation period the debtor will be billed the same as during the pre-confirmation period.

Pursuant to 31 U.S.C. §3717 the United States Trustee Program assesses interest on unpaid chapter 11 quarterly fees charged in accordance with 28 U.S.C. §1930(a)(6). Interest assessed on past due amounts will appear on the quarterly statements mailed to debtors. The interest rate charged is the rate in effect as determined by the Treasury Department at the time the chapter 11 account becomes past due. If payment of the full past due amount is received within 30 days of the date of the notice of the initial interest assessment, the interest will be waived.

**Disclosure Of Intent To Use Taxpayer Identification Number.** Please be advised that, 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 United States Trustee intends to use the debtor's Taxpayer Identifying Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on all delinquent debt, including chapter 11 quarterly fees, that are owed to the United States Trustee.

The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies, (3) send collection notices to the debtor, (4) engage private collection agencies to collect the debt, and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

## **IX. TAXES**

Copies of all tax returns filed post-petition must be provided to the United States Trustee. Tax returns provided to the United States Trustee are confidential and no tax information is revealed to other parties in the case and the tax returns provided to the United States Trustee are destroyed after the case is dismissed or closed. If the case is converted to another chapter, the returns will be delivered to the appropriate trustee.

All tax returns and reports for postpetition obligations shall be timely filed and accompanied by payment in full of any liability. Such taxes include, but are not limited to, federal and state payroll withholding taxes, FICA taxes, federal and state unemployment insurance, real property taxes, and sales and use taxes. The debtor shall timely deposit sufficient funds in the DIP tax account to pay any payroll tax liability. The debtor shall timely file all prepetition tax returns, but shall not pay the tax due.

Relevant tax information for chapter 11 debtors who are individuals is set forth in Internal Revenue Bulletin dated October 2, 2006, IRS Notice 2006-83 (available on the IRS website: [http://www.irs.gov/irb/2006-40\\_IRB/ar12.html](http://www.irs.gov/irb/2006-40_IRB/ar12.html)). The bulletin sets forth that the bankruptcy estate of a chapter 11 debtor who is an individual is a separate taxable entity and that gross earnings from post-petition services and gross income generated from property acquired by the debtor post-petition must be included in gross income of the bankruptcy estate. This information shall not be deemed tax advice from the Office of the United States Trustee. Questions about your obligations under the tax law should be addressed to your accountant or attorney.

## **X. EMPLOYMENT AND COMPENSATION OF PROFESSIONALS**

The employment of professionals (including, but not limited to lawyers, accountants, appraisers, or auctioneers) must be approved by the Court pursuant to Section 327 of the Bankruptcy Code. Generally, professionals will not be compensated for services rendered prior to Court approval. No payments may be made to such professionals without Court authorization after notice to creditors and a hearing 11 U.S.C. §330. The United States Trustee Guidelines For Reviewing Applications For Compensation and Reimbursement of Expenses Filed Under Section 330 of the Bankruptcy Code is posted on the United States Trustee's website at the following web address: <https://www.justice.gov/ust-regions-r13/region-13-chapter-11>. A corporate debtor must be represented by an attorney; such debtor may not appear pro se.

## **XI. DOMESTIC SUPPORT NOTICES IN INDIVIDUAL CHAPTER 11 CASES**

If with respect to the debtor there is a claim for a domestic support obligation (DSO) under a domestic support order, the debtor must provide the appropriate notices to such DSO claim holders and any such respective state child support enforcement agencies as required under Section 704(c) of the Bankruptcy Code. Section 101 of the Bankruptcy Code defines a domestic support order as a debt or obligation to pay a spouse, former

spouse, parent, child, or someone on the child's behalf, including a government entity, alimony, maintenance or support under a court order or separation agreement. Notices must be provided to (1) the DSO claim holders and (2) respective state child support agencies. The initial notices should be provided within fourteen (14) days of the commencement of the bankruptcy case, but in any event no later than three (3) days after the commencement of the Section 341(a) initial meeting of creditors.

The notices to DSO claim holders must include: (i) the right of such claim holder to use the services of the state child support enforcement agencies in the State in which such holder resides, for assistance in collecting child support during and after the bankruptcy case; (ii) the address and telephone number of such state child support enforcement agencies; and (iii) an explanation of the rights of such holder to payment of such claim in the context of the bankruptcy case.

The notices to the respective state child support enforcement agencies for such claims must include the name, address and telephone number of such claim holders. In order to assist state child support enforcement agencies in identifying debtors with DSOs, the debtor must include the debtor's full Social Security number on those notices going to the state child support enforcement agency, except where prohibited by state law or regulation. The United States Trustee must be notified immediately if the debtor is not in compliance with this requirement based upon a state statute or regulation that prohibits the full disclosure of Social Security numbers. The debtor's full Social Security number is *not* to be included on the notices going to the DSO claim holder. If the debtor chooses to file the notice with the court, the debtor should ensure that the first five digits of the debtor's Social Security number are redacted from the notice.

A second notice to each DSO claim holder and to such state child support enforcement agencies should be sent by the debtor when a discharge is granted and include the following: (i) the last known address of the debtor; (ii) the last known address of the debtor's employer; and (iii) the name of each creditor that holds a claim that is not discharged or that was reaffirmed (i.e., a debt the debtor agreed to remain responsible for, such as a car payment).

Copies of all of the aforementioned notices should be provided to the United States Trustee.

## **XII. CHANGE OF ADDRESS OR TELEPHONE NUMBER**

The debtor must notify the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number within ten (10) days of the change.

### **XIII. GENERAL AND ADDITIONAL BANKRUPTCY INFORMATION**

Please note that the United States Trustee should not be consulted for legal advice. All debtors, creditors and other interested parties should consult their own attorneys for legal advice.

Bankruptcy case documents and information are available through the Case Management/Electronic Case Files system (CM/ECF). This and other Bankruptcy Court information, including the Local Rules and local bankruptcy forms, can be obtained at the website maintained by United States Bankruptcy Court for the Western District of Missouri located at the following web address:

<http://www.mow.uscourts.gov/bankruptcy/index.html>. Those appropriately registered and maintaining authorized accounts through the PACER service center (<https://www.pacer.gov>) can access and file documents electronically through CM/ECF.

The United States Trustee provides additional information at the website maintained by United States Trustee for Region 13, Kansas City office, the regional office that covers the Western District of Missouri, at the following web address:

[http://www.justice.gov/ust/r13/kansas\\_city/index.htm](http://www.justice.gov/ust/r13/kansas_city/index.htm). A copy of these guidelines and other pertinent information for chapter 11 cases filed in the Western District of Missouri can be found at the following web address: <https://www.justice.gov/ust-regions-r13/region-13-chapter-11>. Additionally, links to some of the official U.S. bankruptcy forms are included on this website, but can also be found on the website containing Official Bankruptcy Forms [http://www.uscourts.gov/bkforms/bankruptcy\\_forms.html#official](http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official).

For general background information, but not bankruptcy advice, about chapter 11 bankruptcy cases, the U.S. courts maintain their own website which provides helpful general information at the following web address:

<http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/chapter11.html>.

**FAILURE TO COMPLY WITH ANY OF THE ABOVE GUIDELINES, INCLUDING, BUT NOT LIMITED TO, PAYMENT OF POST-PETITION OBLIGATIONS SUCH AS TAXES AND U.S. TRUSTEE QUARTERLY FEES, MAINTANENCE OF INSURANCE AND SUBMISSION OF MONTHLY OPERATING REPORTS IS CAUSE FOR CONVERSION OR DISMISSAL OF A CHAPTER 11 CASE, PURSUANT TO 11 U.S.C. §1112(b)(4).**