



U.S. Department of Justice

*Office of the United States Trustee
Eastern District of Virginia
District of Columbia*

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**OPERATING GUIDELINES AND REPORTING REQUIREMENTS OF THE
UNITED STATES TRUSTEE
Eastern District of Virginia
District of Columbia**

FOR CHAPTER 11 DEBTORS IN POSSESSION and CHAPTER 11 TRUSTEES

Revised August 09, 2021

TO: CHAPTER 11 DEBTORS, ATTORNEYS, AND TRUSTEES

The United States Trustee Program is a component of the U.S. Department of Justice responsible for overseeing the administration of bankruptcy cases. As part of the United States Trustee's oversight responsibility, these Chapter 11 Guidelines are promulgated to assist debtors in meeting their obligations while in Chapter 11.

In addition to the following requirements, all applicable provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules, General Orders, and other orders of the court must be observed in Chapter 11 cases. Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with any requirement may result in a motion by the United States Trustee or another party to dismiss or convert a case to Chapter 7, to appoint a Chapter 11 trustee or examiner or to request other relief.

THE DEBTOR IN POSSESSION IS A FIDUCIARY

Chapter 11 provides an opportunity for a debtor to reorganize its debts while continuing to operate. With the filing of a voluntary Chapter 11 petition, a debtor becomes a new entity called a debtor in possession. The debtor in possession, often with the participation of creditors, develops a plan of reorganization of its business and financial affairs and for payment of its debts. The debtor in possession may continue to operate pending approval of its plan of reorganization unless the court orders the appointment of a trustee under Chapter 11. A debtor in possession has a fiduciary duty to its creditors, much the same as a Chapter 11 trustee, to preserve and maintain the bankruptcy estate and to operate its business (or themselves if an individual) efficiently to maximize ultimate payments on pre-petition debts while keeping post-petition debts current. Under these requirements, debtors must establish and observe certain operating procedures and file certain financial reports with the Bankruptcy Court and any committee appointed in the case by the United States Trustee. To ensure appropriate compliance with these Guidelines, it is extremely important that Debtor's counsel review these requirements with the debtor immediately upon receipt.

COURT APPROVAL REQUIRED FOR CERTAIN TRANSACTIONS

The United States Trustee's staff shall not provide legal advice to a debtor. **The debtor should consult with its counsel when a question arises about whether court approval is required for a specific action.** The following matters generally require court approval but this list is not exhaustive:

- Making a payment on a pre-petition unsecured debt,
- Obtaining a loan or financing from an insider or an outside source,
- Entering into a settlement agreement with another party,
- Selling or transferring any of the debtor's assets out of the ordinary course of business,
- Paying pre-petition wages after the petition date,
- Using cash collateral (funds encumbered by a security interest),
- Hiring a professional, such as an attorney, accountant, realtor, appraiser, auctioneer, business consultant, engineer, or other professional, and
- Employing and /or making a payment to a professional, such as an attorney, accountant, realtor, appraiser, auctioneer, business consultant, engineer, or other professional,

DUTY TO KEEP RECORDS AND FILE REPORTS

The debtor's accounting records must establish a clear cut-off between financial transactions that occur before the Chapter 11 filing, and those that occur on and after the date of filing.

BANK ACCOUNTS / MONEY OF THE ESTATE

Section 345(b) of the Bankruptcy Code requires a Chapter 11 debtor to protect its creditors' interests by depositing bankruptcy funds in a financial institution that will collateralize or bond the debtor's funds in favor of the United States. The debtor must immediately close pre-petition bank accounts and open new "debtor in possession" bank accounts. Accounts must be opened in a financial institution approved by the U.S. Trustee. "Authorized Depositories – Eastern District of Virginia & District of Columbia" listings can be found on our website under the respective districts. (Note: Each division may have different authorized depositories.) <https://www.justice.gov/ust-regions-r04/region-4-general-information-0.>)

The debtor must inform the U.S. Trustee of each financial institution in which estate funds are maintained and execute an authorization for the release of information pertaining to estate accounts. A Statement of Depository and Authorization for Release of Information Form is provided. (See **Exhibit 1.**) This report and authorization

is due within 15 days after the date of the petition in a voluntary case, the order for relief in an involuntary case, or the appointment of a trustee. **This document should be sent only to the Office of the U.S. Trustee. It should not be filed with the court.**

ALL receipts must be deposited into the debtor in possession account(s). The debtor may NOT use any bank accounts other than its disclosed debtor in possession accounts without an order of the court approving the debtor's use of such bank account. These accounts may include, but not be limited to, a general expense account, a payroll account and a taxes/special escrow account. For business entities, all disbursements should be made by check, debit card, electronic transfer or wire; individual debtors may use ATM/debit cards and checks.

The debtor's bank statements must report account activity on a full calendar month basis. The debtor is required to notify the United States Trustee within five business days of any change of bank accounts and must provide proof of compliance with section 345(b) for each new account.

INSURANCE

The debtor is required to maintain adequate insurance to preserve the interests of its creditors by protecting estate assets. The insurance must include coverage customary in debtor's business and may include a combination of commercial, liquor, automobile, or product liability; property insurance; worker's compensation; malpractice insurance; or contractor or employee fidelity bonds. The debtor's failure to maintain appropriate insurance is cause for dismissal of the case or conversion to Chapter 7. 11 U.S.C. §1112(b)(4)(C).

All documents provided as evidence of insurance must clearly indicate the policy expiration date, the types and amounts of coverage, the location(s) covered, the deductible, the named insured, the insurer, and the name, address, and telephone number of the local agent.

The debtor is to provide a certificate of insurance to the Office of the U.S. Trustee within 15 days which must indicate that the U.S. Trustee is to be notified in the event of any change, cancellation, or expiration of the policy. The certificate of insurance should provide the following notification information:

Alexandria & District of Columbia	Newport News/Norfolk	Richmond
<u>For Notice Purposes Only:</u> Department of Justice Office of the United States Trustee 1725 Duke St., Suite 650 Alexandria, Virginia 22314 Fax: (703) 557-7279	<u>For Notice Purposes Only:</u> Department of Justice Office of the United States Trustee 200 Granby Street, Room 625 Norfolk, Virginia 23510 Fax: (757) 441-3266	<u>For Notice Purposes Only:</u> Department of Justice Office of the United States Trustee 701 East Broad Street, Suite 4304 Richmond, Virginia 23219 Fax: (804) 771-2330

TAXES

The debtor in possession must remain current on all post-petition federal, state and local taxes and file all tax returns on a timely basis. The debtor's failure to timely pay post-petition taxes or to file post-petition tax returns is cause for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(I).

For individual Chapter 11 debtors, after filing bankruptcy, earnings for services are property of the bankruptcy estate. 11 U.S.C. § 1115. An individual Chapter 11 debtor should review IRS Publication 908, Bankruptcy Tax Guide, for further details. This publication can be viewed and downloaded from the IRS website (www.irs.gov) using the Forms and Publications search function.

TYPES OF DEBTORS

There are four types of debtors.

- Small Business
- Small Business electing subchapter V status
- Individuals
- Business (any non-Small Business)

Some specific differences:

Small Business Debtors

1. A “small business case” is a case in which the debtor is a “small business debtor.” See 11 U.S.C. § 101 (51C) and (51D).
2. The debtor must file with the Court at the start of the case 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 no later than 7 days after filing.
3. The debtor must provide the Office of the U.S. Trustee a six month projection of receipts and disbursements. The debtor must use Form 425C to report its monthly position until the case is confirmed and then after the effective date will use Form 11-PCR to report its quarterly information which is the same form as a regular business case.

Small Business Debtors electing subchapter V status

1. The debtor has a subchapter V trustee appointed to the case and the debtor has a duty to cooperate with the trustee.
2. The debtor must file with the Court at the start of the case 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 no later than 7 days after filing.
3. The debtor must use Form 425C to report its monthly position until the case is confirmed. No post confirmation reports are required unless the approved plan requires that a report be filed.
4. The debtor does not pay quarterly fees.
5. The debtor must comply with deadlines not imposed in other chapter 11 cases:
 - a. The Initial Debtor Interview is to be held within 10 days of the filing of the petition.
 - b. The Meeting of Creditors is to be held within 21 days of the filing of the petition.
 - c. The Court will hold a status conference not later than 60 days after the case is filed.
 - d. 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.” 11 U.S.C. § 1188(c).
 - e. The debtor shall file a plan not later than 90 days after the petition date, except that the court may extend the period.

Individuals

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

1. Property of the bankruptcy estate includes property acquired post-petition. 11 U.S.C. § 1115(a)(1).

2. Property of the bankruptcy estate includes post-petition earnings from personal services. 11 U.S.C. § 1115(a)(2).
3. The filing of an Individual Chapter 11 case creates a separate taxable entity under Section 1398 of the Internal Revenue Code. The individual chapter 11 debtor in possession must obtain an Employer Identification Number (EIN) for the estate. In the case of married, joint debtors, each debtor must obtain his or her own EIN. The IRS treats the estates as two separate entities for tax purposes. The debtor in possession must prepare and file estate income tax returns (Form 1041) and attach a statement indicating that the individual debtor filed a chapter 11 bankruptcy case. See IRS Notice 2006-83 and Publication 908 for further guidance. It is strongly recommended that the debtor in possession consult a tax professional.
4. 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 within three days of the meeting of creditors, and certification must then be filed with the court. Notification of receiving a bankruptcy discharge should be sent to these same parties after a discharge is obtained. Individual debtors who owe a domestic support obligation must continue to make those payments and keep said obligations current post petition.

Business (any non-Small Business)

1. All other Chapter 11 cases which are not (a) considered a “small business debtor” pursuant to 11 U.S.C. § 101 (51C) and (51D) shall be considered non-Small Business.
2. The debtor must use UST Form 11-MOR to report its monthly position until the case is confirmed. These reports are due by the 21st of each month for all activity in the preceding month. The reports and instructions can be obtained at: <https://www.justice.gov/ust/chapter-11-operating-reports>.
3. The debtor must comply with deadlines imposed in other chapter 11 cases:
 - a. The Initial Debtor Interview is to be held within 14 days of the filing of the petition.
 - b. The Meeting of Creditors is to be held within 21 to 40 days of the filing of the petition.
 - c. The debtor shall file a plan not later than 120 days after the petition date, except that the court may extend the period.

INITIAL REPORTING REQUIREMENTS

The debtor must submit the Initial Reporting Requirements to the United States Trustee **at least 24 hours prior to the Initial Debtor Interview in electronic format**. The debtor’s Initial Reporting Requirements are not filed with the court. They are intended to provide the United States Trustee with information about the debtor and to ensure the debtor meets its bankruptcy requirements.

1. Last two filed Federal tax returns, and a copy of an extension request (if applicable),
2. Previous three months of bank statements for all accounts held by debtor,
3. Check register for 90 days prepetition,
4. Copies of the declaration page for all insurance policies,
5. Certificate of insurance listing Office of U.S. Trustee as a notice holder (to include all asset and liability coverages of the debtor),
6. Copies of last year’s financial statements,
7. Copies of last month and YTD Income Statement and Balance Sheet,
8. Copies of all business licenses,

9. Payroll register for businesses,
10. Recent paystub and most recent w2 for individuals,
11. Debtor in possession bank information (**Exhibit 1** of the Guidelines completed) and
12. If debtor has at least a 20% ownership interest in any entity, copies of prior year and YTD financial statements for that entity.

INITIAL DEBTOR INTERVIEW

The United States Trustee will schedule an initial debtor interview (IDI) with the debtor and the debtor's counsel to be conducted as soon as practicable after the petition is filed and before the meeting of creditors. The IDI will occur at the debtor's place of business, the office of the United States Trustee or virtually. A person knowledgeable about the debtor's accounting operations should attend the IDI. During the IDI, the United States Trustee's representative will ask questions about the debtor's accounting records, bank accounts, insurance, and other administrative matters. The United States Trustee's representative will explain the monthly operating report requirements, payment of statutory fees and the debtor's other obligations.

The debtor should review the information contained in these Guidelines thoroughly before the IDI so that any administrative questions can be addressed at that time. The debtor's failure to attend meetings reasonably requested by the United States Trustee, without good cause shown, is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(H).

MEETING OF CREDITORS

The United States Trustee will convene and preside over a meeting of creditors in accordance with the timeline set forth in Fed. R. Bankr. P. 2003(a) usually between 20 to 40 days after the petition was filed. (Small Business subchapter V cases will be held by the 21st day.) Unless otherwise noticed, all chapter 11 meetings are held at:

ALEXANDRIA DIVISION:

Office of the U.S. Trustee
1725 Duke St., Suite 650
Alexandria, VA 22314

DISTRICT OF COLUMBIA

United States Courthouse
Third and Constitution Avenue, N.W.
Room 1207 (first floor)
Washington, DC 20001

RICHMOND DIVISION:

Office of the U.S. Trustee
701 East Broad Street, Suite 4300
Richmond, VA 23219

NEWPORT NEWS DIVISION:

U.S. Trustee's Hearing Room
11751 Rock Landing Drive
Newport News, VA 23606

NORFOLK DIVISION:

Office of the U.S. Trustee
200 Granby Street, Room 625
Norfolk, VA 23510

The debtor or debtor's representative will be examined under oath by the United States Trustee and creditors, with the debtor's counsel present. Attendance by the debtor is mandatory, and both spouses must appear if the case is a joint filing. In the case of a corporate debtor, an officer or director of the corporation and the debtor's attorney must appear. If the debtor is a partnership or limited liability company, one of the general partners or managing members must appear and the debtor's attorney must appear.

If the debtor is an individual, the debtor must provide proof of identification and social security number at the meeting of creditors. Fed. R. Bankr. P. 4002(b). If the meeting is conducted virtually, then the debtor must provide

such documents to their counsel who will have to provide the United States Trustee with a Declaration of Identification.

The debtor's failure to attend the meeting of creditors without good cause shown is cause for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(G). If necessary, the U.S. Trustee may continue a meeting to a later date to resolve open matters. Failure by the debtor to submit bank authorizations, insurance certificates and other required documents may result in a continuation of the hearing.

CREDITORS' COMMITTEES

Section 1102 of Title 11 U.S.C. requires the United States Trustee to appoint a creditors' committee in all chapter 11 cases that are not small business or subchapter V cases. The creditors' committee is composed of unsecured creditors willing to serve. Shortly after the filing of the petition, the United States Trustee solicits 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 a minimum of two creditors respond affirmatively, the United States Trustee appoints an unsecured creditors committee, usually of up to seven creditors. The report of selection of the creditors' committee is filed with the Court. Section 1103(d) of the Bankruptcy Code 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 also authorizes the United States Trustee to appoint a committee of equity holders or of other creditors of a common type or class if such appointment is necessary to assure their adequate representation. Request for the appointment of other committees should be addressed to the United States Trustee's office.

MONTHLY OPERATING REPORTS

There are two versions of the monthly operating report (MOR) and the type of Chapter 11 debtor in possession or trustee will determine which MOR is used.

UST Form 11-MOR: Before a plan's effective date, every chapter 11 debtor in possession or trustee categorized as an **Individual** or a **non-Small Business** case is required to file this data enabled report on a monthly basis via CM/ECF along with a separate attachment for supporting documentation. A Monthly Operating Report must be submitted for each month (or portion thereof) after the petition is filed until the plan's effective date or the case is dismissed or converted. This form and its instructions are publicly available at: <https://www.justice.gov/ust/chapter-11-operating-reports>

Official Form 425C: Small Business debtors as defined by 11 U.S.C. § 101(51d) shall file Official Form 425C, the Small Business Monthly Operating Report. Reports should also include basic financial information (report of receipts and disbursements, balance sheet, profit and loss statement, copies of bank statements and bank reconciliations.) A Monthly Operating Report must be submitted for each month (or portion thereof) after the petition is filed until the plan's effective date or the case is dismissed or converted.

Official Form 425C will also be used by those **Small Business debtors electing subchapter V status**. This report must be submitted for each month (or portion thereof) after the petition is filed until the case is confirmed or the case is dismissed or converted.

The Monthly Operating Report for both UST Form 11-MOR and Official Form 425C is due on the 21st day of the month for all activity in the preceding calendar month. The debtor's unexcused failure to satisfy timely any filing or reporting requirement is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(F).

PERIODIC REPORTS REGARDING ENTITIES IN WHICH THE DEBTOR HAS A SUBSTANTIAL OR CONTROLLING INTEREST

The debtor must file periodic reports of the value and profitability of any entity in which the debtor has a substantial or controlling interest. Fed. R. Bankr. P. 2015.3. The debtor's first report must be filed no later than seven days before the first date set for the meeting of creditors. Subsequent reports must be filed no less frequently than every six months (July 1st and January 1st), until the effective date of a plan or the case is dismissed or converted. The periodic reports required by Fed. R. Bankr. P. 2015.3(a) must be prepared on Official Form 426.

REPORTS IN CASES CONVERTED TO CHAPTER 7

The debtor must file a schedule of unpaid debts incurred after commencement of the chapter 11 case within fourteen days after entry of an order converting the case to a case under chapter 7, and a final report and account, within 30 days after entry of the order converting the case. Fed.R.Bankr.P. 1019(5)

POST CONFIRMATION REPORTS

As authorized by 28 U.S.C. § 589b, chapter 11 debtors in possession and trustees must file quarterly post-confirmation reports (PCRs) using streamlined, data-embedded, uniform forms (UST Form 11-PCR) with the first report due after the effective date of the plan. Each data-embedded report must be filed with the bankruptcy court no later than the 21st day of the month immediately following the end of the calendar quarter. Small business debtors (other than subchapter V debtors) will also use this form. The United States Trustee may send an email shortly after confirmation of the debtor's plan to refer the debtor to the quarterly reports that will need to be completed.

The UST Form 11-PCR and its associated instructions can be found on the United States Trustee's website at: <https://www.justice.gov/ust/chapter-11-operating-reports>

STATUTORY QUARTERLY FEES

A Chapter 11 debtor (with the exception of a subchapter V debtor) must pay to the United States Trustee a quarterly fee for each quarter, or fraction thereof, until the case is dismissed, converted or closed by final decree 28 U.S.C. § 1930(a)(6). The Code further provides that for a plan to be confirmed, all quarterly fees must be paid timely or the plan must provide for payment of all fees on the effective date of the plan 11 U.S.C § 1129(a)(12). The debtor's failure to timely pay quarterly fees is cause for conversion or dismissal of a Chapter 11 case. 11 U.S.C § 1112(b)(4)(K).

The fee for each calendar quarter is based on total payments or disbursements made by the debtor's estate during the quarter, including payments made by another party for the debtor. The fee is due on the last day of the calendar month following the calendar quarter for which the fee is owed. Interest will be charged on unpaid quarterly fees, pursuant to 31 U.S.C. § 3717.

Chapter 11 quarterly fees may be paid online at <https://www.pay.gov/public/form/start/672415208>. Payments using a debit card, credit card, or other types of on-line payments such as PayPal will not be accepted. Payment may also be made by mailing the tear-off portion of the billing statement and a check, made payable to "United States Trustee" to the address listed on the payment stub. Additional information concerning fees and the fee structure may be found at: <https://www.justice.gov/ust/chapter-11-quarterly-fees>

CONSENT ORDER CONDITIONING RIGHTS OF DEBTOR(S) IN POSSESSION

For cases in which the debtor does not seek first day court orders, the United States Trustee requires that the debtor enter into a consent order conditioning the rights of the debtor-in-possession. This form will be sent to the debtor's counsel or debtor's representative, if *pro se*, prior to the Initial Debtor Interview via e-mail for review and endorsement.

IN GENERAL

The debtor should be aware that in addition to the requirements of the Bankruptcy Code, there are many requirements for debtors found in the Federal Rules of Bankruptcy Procedure, as well as Local Bankruptcy Rules and Standing Orders for the District in which the debtor filed its bankruptcy case. The website for the Eastern District of Virginia is: <https://www.vaeb.uscourts.gov/wordpress/>. The website for the District of Columbia is: <https://www.dcb.uscourts.gov/>.

Any request to amend or modify these requirements for a particular chapter 11 case must be made in writing. To be effective, any modification must be approved by the United States Trustee in writing.

**DEBTOR-IN-POSSESSION STATEMENT OF DEPOSITORY AND AUTHORIZATION FOR RELEASE
OF INFORMATION**

(DO NOT FILE THIS DOCUMENT WITH THE COURT)

RE:

Case Name:
d/b/a:
Case Number:

This will confirm that the above referenced Debtor in Possession has established the following account(s) at _____.

That said account(s) have been designated as Debtor in Possession and are federally insured.

That said account(s) have been titled:

Debtor's Name

Debtor In Possession

Optional: Type of Account such as Operating, Payroll, etc.

Address

City, State, Zip

All Debtor in Possession opened accounts at this depository are as follows:

ACCOUNT NUMBER	ACCOUNT TYPE	BALANCE / DATE	WHO CAN SIGN CHECKS

I hereby authorize the release to the United States Trustee of any information and for copies of documents pertaining to funds or accounts that are property of the above-referenced bankruptcy estate, including, but not limited to checking accounts, savings accounts, trust, and investment accounts.

Was the Debtor provided a debit card with the above Debtor in Possession Account(s)? _____

Was the Debtor provided a month-end bank statement cutoff date, which the Office of the US Trustee requests? _____ If no, then what is the cutoff date for the above account(s)? _____

This form is to be completed and signed by the depository bank and debtor and the original returned to the Office of the United States Trustee.

Debtor Signature

Bank Authority Signature

Print Name and Title

Print Name and Title

Date: _____

Date: _____

Co-Debtor Signature (if applicable)

Bank Name: _____

Address: _____

Print Name and Title

Telephone No.: _____

Date: _____

Fax No.: _____