



U.S. Department of Justice

*Office of the United States Trustee
Eastern District of Kentucky*

Operating Guidelines and Reporting Requirements in Chapter 11 Cases for the Eastern District of Kentucky

I. Introduction

Section 586(a)(3) of Title 28, United States Code, directs the United States Trustee to supervise the administration of chapter 11 cases. These Guidelines assist the United States Trustee Program in supervision and should assist you in progressing toward confirmation of a Plan. These Guidelines do not set forth comprehensively the requirements imposed upon you by the United States Bankruptcy Code, Local Rules of Bankruptcy Court, or any order of the Court.

Your failure to comply timely with these Guidelines, the provisions of the United States Bankruptcy Code, applicable local rules, or any orders of the United States Bankruptcy Court, will likely result in the United States Trustee filing a motion to dismiss your case, convert it to a chapter 7 liquidation, or displace existing management in favor of a trustee.

II. General Requirements

The individual or entity filing for bankruptcy relief is known as the "Debtor." In chapter 11 a new and separate entity called a "Debtor-in-Possession" is created. As the Debtor-in-Possession, you have fiduciary and statutory responsibilities to preserve and maintain assets of the bankruptcy estate and to operate efficiently to maximize recovery to pre-petition creditors. These fiduciary responsibilities include:

- a. Paying pre-petition obligations only when allowed by the Bankruptcy Code or order of the Court;
- b. Complying with Section 363 of the Bankruptcy Code regarding the use of property of the estate, including cash collateral;

- c. Paying in full all obligations arising after the filing of the petition when due, especially tax obligations;
- d. Filing all federal, state, and local tax returns when due (including extensions);
- e. Obtaining credit outside the ordinary course of business only when permitted by the Bankruptcy Code or order of the Court;
- f. Selling or leasing property outside the ordinary course of business only when permitted by the Bankruptcy Code or order of the Court;
- g. Using cash collateral (funds that are subject to a security interest) only with the consent of the secured creditor or pursuant to court order;
- h. Obtaining court approval to employ, and to pay professionals such as attorneys, accountants, and auctioneers; and
- i. Providing appropriate notice to holders of domestic support obligations and appropriate state agencies.

If you have selected subchapter V of chapter 11, the United States Trustee will appoint a subchapter V trustee in this case. One of the subchapter V trustee's duties is to facilitate the development of a consensual plan of reorganization. Absent further order of the bankruptcy court, you will continue to operate your business as a Debtor-in-Possession.

You will need to propose, obtain court approval of, and substantially consummate a chapter 11 plan to succeed in chapter 11. A failure to do so will lead to dismissal of your case, or conversion to a chapter 7 liquidation.

Finally, the Court will enter an Operating Order in your case. These Guidelines only highlight some of these additional requirements.

If you have any questions regarding these guidelines, or need to report information to the local Office of the United States Trustee, please contact:

J. Todd Wright, Bankruptcy Auditor
Office of the United States Trustee
100 E. Vine St., Suite 500, Lexington, KY 40507
John.t.wright@usdoj.gov
(859) 233-2822

If you are represented by an attorney, we are only allowed to communicate with your attorney. Your attorney can authorize us to communicate directly with you. You can find a form authorization at <https://www.justice.gov/ust-regions-r08/region-8-chapter-11-2>.

III. Books and Records

You must close all existing bank accounts as soon as practicable upon the filing of the petition. Going forward, your accounting records must establish a clear division between liabilities and financial transactions that occur before the chapter 11 filing, and those that occur on or after the date of filing. You must also obtain an employer identification number (EIN) because the bankruptcy estate in an individual case is a separate taxable entity.

IV. Banking

You must close existing bank accounts and open new debtor-in-possession bank account(s) at an authorized depository. You can find the list of Authorized Depositories for the Eastern District of Kentucky at <https://www.justice.gov/ust-regions-r08/region-8-chapter-11-2>. You should have separate bank accounts for general transactions, for payroll, and for tax withholding. You may also open additional bank accounts to segregate cash collateral and other funds. You are responsible for ensuring that all monies and investments of the estate are adequately protected through federal deposit insurance, bonding, or the deposit of securities. *See* 11 U.S.C. § 345.

Within seven days from the date of Operating Order, you must provide the Office of the United States Trustee with a signed declaration that you have closed all pre-petition bank accounts and transferred the balances to new debtor in possession bank accounts that you have identified. A copy of this form is located at <https://www.justice.gov/ust-regions-r08/region-8-chapter-11-2>.

Within 20 days after the close of each calendar quarter, you must inform the Office of the United States Trustee of each bank and investment account holding funds of the estate greater than \$250,000.

V. Insurance

You must provide the Office of the United States Trustee with proof of insurance showing that each policy of insurance is in full force and effect and in your name as the insured party. All policies must list the Debtor as the insured party and list the local Office of the United States Trustee as a party to be notified of any change, cancellation, or expiration of each policy.

Generally, you must maintain adequate casualty insurance for all tangible assets subject to casualty loss (*e.g.*, fire, theft, weather, vandalism), motor vehicle insurance, and general liability insurance. You may also need to provide workers' compensation, product liability, or any other coverage customary in the Debtor's industry or business (*e.g.*, professional liability insurance for a physician or lawyer).

If you receive a notice of cancellation or of non-renewal on any of these insurance policies, or you decide not to renew any policy, you must notify the local Office of the U.S. Trustee in writing.

VI. Required Meetings

You must attend meetings scheduled by the United States Trustee. If you primarily speak a language other than English or require accommodation for a hearing impairment or physical disability, please contact the local Office of the United States Trustee so that it can arrange reasonable accommodations.

A. Initial Debtor Interview

You and your attorney must attend an Initial Debtor Interview ("IDI") conducted by personnel from the local Office of the U.S. Trustee. The IDI will generally be held within fifteen days after the filing of the bankruptcy petition.

The purpose of the IDI is to discuss your financial situation and explain the chapter 11 administrative requirements. At a minimum, you need to provide:

- Proof that you have opened new bank accounts;
- Proof of insurance, as discussed above;
- Financial statements, if available; and
- Federal income tax returns filed for the two most recent tax years.

B. Meeting of Creditors

You and your attorney are required to attend a meeting of creditors in this case. If you filed this case jointly with your spouse, you both must attend the meeting. If you are an entity (such as a corporation, LLC, or partnership), you will appear through senior management that has personal knowledge and familiar with its operations.

All creditors and other parties in interest are notified of the meeting by the Clerk of the Bankruptcy Court. A representative of the United States Trustee, the Subchapter V trustee if one is appointed, creditors, and other parties in interest, may examine you under oath at this meeting. The United States Trustee records the meeting of creditors. After the Clerk schedules the meeting of creditors, if you unable to attend the meeting for good cause such as illness, your attorney must contact the local Office of the U.S. Trustee to request that the meeting be rescheduled. If granted, your attorney must serve notice of the rescheduled meeting of creditors upon all parties listed in the creditors matrix and file a certificate of service with the court.

The United States Trustee can also call a special meeting of creditors.

C. Status Conferences

The court may require you and your attorney to attend one or more status conferences. If you have selected Subchapter V, you must attend a status conference set by the court no later than 60 days after you filed your case. No later than 14 days before this Status Conference, you must file a report with the

court detailing the efforts you have made and will make to attain a consensual plan or reorganization

D. Other Meetings

If your case is a small business case, the United States Trustee may conduct an on-site inspection of your premises upon prior notice to ascertain your books and records and review that you have filed all tax returns. The United States Trustee may also seek a court order for additional inspections and examinations.

VII. Periodic Reporting

A. Monthly Operating Reports

You must file a monthly operating report with the court for every month you remain in chapter 11 until one of the following occurs: (1) the effective date of a confirmed plan of reorganization; (2) the conversion of your case to a case under another chapter; or (3) dismissal of your case. You must file each report with the court no later than 21 days after the end of the reporting month, unless modified by Local Rules or Order of the court.

1. Cases that are not Small Business Cases

If you fall into this category, pursuant to 28 C.F.R. § 58.8, you must complete correctly and file the newest version of UST Form 11-MOR, Monthly Operating Report (“MOR”). You can access the latest version of this form, along with instructions for completion and filing, at <https://www.justice.gov/ust/chapter-11-operating-reports>. While at that webpage, you or the person who is preparing the report should subscribe to the “Chapter 11 Operating Reports E-mail Updates” on that webpage to receive email updates about changes to the MOR form.

2. Small Business Cases

If you are considered a Small Business Debtor you must complete and file Official Form B 425C located on the website of the Administrative Office of the U.S. Courts at <https://uscourts.gov/forms/bankruptcy-forms>.

B. Post-confirmation Reports

Unless you are proceeding under Subchapter V, you must file a statement of disbursements for each calendar quarter, including a partial quarter, no later than the end of the following month, for every calendar quarter until (1) entry of a final decree, (2) conversion of your case to another chapter, or (3) dismissal of your case. You must file each report with the court no later than 21 days after the end of the reporting quarter, unless modified by Local Rules or Order of the court.

If you are not a Small Business Debtor, you must use UST Form 11-PCR, Post-confirmation Report (“PCR”). You can access the latest version of this form, along with instructions for completion and filing, at <https://www.justice.gov/ust/chapter-11-operating-reports>. If you are a Small Business Debtor, no form of report is prescribed.

C. Other Reports

If you hold a substantial or controlling interest (presumed to be at least a 20 percent interest) in another entity that is not a publicly traded corporation, you must file periodic reports using Official Form B 426 located on the website of the Administrative Office of the U.S. Courts at <https://uscourts.gov/forms/bankruptcy-forms>. You must file the first form no later than seven days after the first date set for the meeting of creditors, and then periodically every six months thereafter until the effective date of your plan, or if your case is dismissed or converted to another chapter. *See Fed. R. Bankr. P. 2015.3.*

If you sell property not in the ordinary course of business (which needs court approval), you must file a Report of Sale after completion of the sale. *See Fed. R. Bankr. P. 6004(f).*

Local Rule 3071-1 requires you to file a progress report on the actions taken and your progress made toward completion of a plan within 45 days after entry of an order confirming your plan, and every six months thereafter until entry of the final decree closing the case.

VIII. Quarterly Fees

A. Duty to pay

Unless you are proceeding under Subchapter V, you must pay a fee quarterly to the United States Trustee System Fund for every calendar quarter, or portion thereof, between the date you filed a bankruptcy petition (or entry of an order for relief in an involuntary bankruptcy filing) and when the court enters a final decree closing the case, dismisses the case, or converts the case to another chapter in bankruptcy.

The United States Trustee calculates the quarterly fee by totaling your disbursements as reported on your Monthly Operating Reports for the three-month calendar quarter, or portion thereof. Quarterly fees are due no later than one month following the end of each calendar quarter. The current table of quarterly fees, and instructions on where to send quarterly fees, is located at <https://www.justice.gov/ust/chapter-11-quarterly-fees>.

If you have not filed Monthly Operating Reports, the United States Trustee will estimate a fee. You still owe a minimum quarterly fee due even if you had no disbursements during a calendar quarter. The United States Trustee assesses interest on unpaid balances. Your failure to pay quarterly fees is cause for conversion or dismissal of your case.

B. Collection of Delinquent Fees

Pursuant to 31 U.S.C. § 3701, the United States Trustee intends to use your taxpayer identification number (“TIN”) as reported by you or your attorney in connection with the chapter 11 bankruptcy case for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees, that you owe to the United States Trustee.

The United States Trustee will provide your TIN to the U.S. 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 you, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to you; (4) engage private collection agencies to collect the debt; and (5) engage the United States Attorney's office to sue for collection. The Department of Treasury will add collection costs to the total amount of the debt.

IX. Modifications and Disclaimer

You may request to modify these requirements in writing. No modification is valid unless it is approved by your local Office of the United States Trustee in writing or made by court order.

Finally, nothing in these Operating Guidelines has any separate force or effect of law, and nothing stated herein imposes on parties other than the United States Trustee Program any obligations that go beyond those set forth in the Bankruptcy Code and Rules, Local Rules, or orders of court.

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