



U.S. DEPARTMENT OF JUSTICE

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

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**Operating Guidelines and Reporting Requirements  
for Debtors in Possession in Chapter 11 Cases**

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 in his supervision, and should assist the Debtor in Possession in progressing toward confirmation of a plan. These Guidelines do not set forth the only requirements imposed upon the Debtor in Possession by the United States Bankruptcy Code, the Local Rules of the United States Bankruptcy Court for Western District of Kentucky, or any order of the Court.

The failure of the Debtor in Possession to timely comply with these Guidelines, the provisions of the United States Bankruptcy Code, or any orders of the United States Bankruptcy Court, will likely result in the filing of a motion to dismiss your case, to convert it to a chapter 7 liquidation, or to appoint a trustee or examiner.

*1. Books, Records, and Accounts*

The Debtor in Possession must close its books and records as of the petition date and open new books and records. The Debtor in Possession must separately account for pre- and post-petition accounts receivable and payable in all reporting.

*2. Bank Accounts*

A list of Authorized Depositories in the Western District of Kentucky accompanies these Guidelines. The Debtor in Possession must either: A) close all existing bank accounts as soon as practicable upon the filing of the petition, and open one or more new debtor in possession bank accounts at an Authorized Depository or B) if already banking at an Authorized Depository, have the bank internally code the account as Debtor in Possession account for purposes of reporting to our office.

The Debtor in Possession is responsible for ensuring that all monies of the estate are adequately protected. *See* 11 U.S.C. § 345.

### *3. Taxes*

The Debtor in Possession shall timely file all federal, state, and local tax returns or other required filings when due. The Debtor in Possession is also responsible for timely paying all taxes when they come due.

An individual debtor in possession's income earned after commencement of the bankruptcy case is gross income of the bankruptcy estate. *See* 26 U.S.C. § 1398(e). Individual debtors in possession should consult with a tax professional to ensure compliance with additional tax reporting requirements.

### *4. Insurance*

At least seven days prior to the Initial Debtor Interview, the Debtor in Possession shall provide the United States Trustee with certificates of insurance showing that each policy of insurance required for the estate is in full force and effect. The loss payee or beneficiary should read "[Debtor], debtor in possession" and **the United States Trustee should be listed as a party to be notified of any change, cancellation, or expiration of each policy.**

The Debtor in Possession must maintain appropriate casualty insurance for all tangible assets subject to casualty loss (e.g., fire, theft, weather, vandalism). If the Debtor in Possession conducts business operations, the Debtor in Possession must have general liability insurance, and, if appropriate, product liability insurance. A Debtor in Possession with employees must maintain workers' compensation insurance. In addition, a Debtor in Possession must maintain any other coverage customary in its industry or business (e.g., professional liability insurance for a physician or lawyer).

### *5. Initial Debtor Interview*

The Debtor in Possession and its attorney must attend an Initial Debtor Interview ("IDI") prior to the first date set for the meeting of creditors. The United States Trustee will schedule the IDI through counsel for the Debtor in Possession. The IDI is usually held at the Debtor in Possession's place of business but may be conducted at the Office of the United States subject to the United States Trustee's discretion. Due to Covid-19, the IDI's are currently being conducted via MS Teams Videoconference.

The Debtor in Possession must provide the United States Trustee with copies of requested documents at least seven days prior to the IDI. Do not submit original documents.

#### *6. Monthly Operating Reports and Quarterly Disbursement Reports*

The Debtor in Possession is required to file an operating report for each month the Debtor in Possession remains in chapter 11. If the Debtor in Possession confirms a Plan, the Debtor in Possession's successor, as well as any post-confirmation entities created under the plan, are all required to file Quarterly Post-Confirmation Reports until a Final Decree is entered, or the case is converted or dismissed.

Monthly Operating Reports are due no later than 21 days after the end of the month reported. Quarterly Post-Confirmation Reports are due no later than 21 days after the end of the quarter reported.

The form of Monthly Operating Report appropriate to the Debtor in Possession accompanies these Guidelines.

#### *7. Controlling Interest Reporting*

If applicable, the Debtor in Possession is also required to file periodic reports of the value, operations, and profitability of any entity (that is not publicly traded) in which the estate holds a "substantially or controlling interest" Fed. R. Bankr. P. 2015.3. A substantial or controlling interest is presumed when the Debtor in Possession owns or controls at least a 20 percent interest in the other entity.

The first report is due no later than seven days before the first date set for the meeting of creditors. Subsequent reports are due semiannually thereafter. The United States Trustee will consult with the Debtor in Possession in setting the applicable reporting periods covered by these reports.

#### *8. Quarterly Fees*

The Debtor in Possession is required to pay quarterly fees in all pending chapter 11 cases pursuant to 28 U.S.C. § 1930(a). These fees are paid to the United States Trustee for each quarter until the case is dismissed, converted to another chapter, or closed by the Bankruptcy Court. The fee due is based upon the total disbursements made by the Debtor in Possession and its successor during the applicable quarter without proration, as follows:

<u>Quarterly Disbursement Range</u>	<u>Quarterly Fee</u>
\$0 to \$62,624	\$250
\$62,625 to \$999,999	0.4% of quarterly disbursements
\$1,000,000 to \$31,249,937	0.8% of quarterly disbursements
\$31,249,938 or more	\$250,000

Quarterly fees are due no later than one month following the end of each calendar quarter. If the amount due is not paid by that time, interest as determined by the U.S. Department of the Treasury will be assessed on all past due amounts. Failure to pay quarterly fees may result in the conversion or dismissal of the case. Payment of all outstanding quarterly fees must be made before confirmation of a Plan of Reorganization.

A billing statement from the United States Trustee Program is mailed to the debtor or other designated party for each calendar quarter before the payment due date. Failure to receive a statement *does not* excuse the Debtor in Possession or its successor from payment. Chapter 11 quarterly fees may be paid online at <https://www.pay.gov/public/form/start/672415208> or by mailing the tear off portion of the statement and a check, made payable to "United States Trustee".

The address to use to mail quarterly fee payments is:

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

The address shown above is a bank lockbox. It may not be used for service of process, correspondence or any purpose other than payment of quarterly fees. If any check is returned for insufficient funds, the Debtor in Possession or its successor must make all future payments by cashiers' check, certified funds, or money order.

All checks received will be converted to an electronic funds transfer that will usually take place within 24 hours of receipt. The original check will be destroyed once it is converted to an electronic funds transfer. By filing for chapter 11 relief, the Debtor in Possession authorizes the United States Trustee to process a copy of the Debtor in Possession's original check should the initial electronic funds transfer fail for technical reasons. If an electronic funds transfer cannot be completed because of insufficient funds, the United States Trustee will try to make the transfer up to two times.

**Disclosure of intent to use Taxpayer Identification Number ("TIN") to collect and report delinquent Quarterly Fees**

Pursuant to 31 U.S.C. §3701, the United States Trustee intends to use the Debtor's TIN for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees that are owed the United States Trustee.

The United States Trustee will provide the Debtor's TIN to the U.S. Department of the 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.

