



U.S. DEPARTMENT OF JUSTICE

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

**Operating Guidelines and Reporting Requirements
for Debtors in Possession in Chapter 11 Small
Business Debtor 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, its Attorney, (and any Subchapter 5 Trustee appointed), must attend an Initial Debtor Interview ("IDI") within ten days of the date of the filing of the petition. 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 it 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 (and any Subchapter 5 Panel Trustee appointed) with copies of requested documents at least two days prior to the Initial Debtor Interview. **Do not submit original documents.**

6. Monthly Operating Reports and Quarterly Disbursement Reports

The Debtor in Possession is required to file a monthly operating report for each month the Debtor in Possession remains in chapter 11, and quarterly post-confirmation reports will be filed until the case is closed or dismissed. Post-confirmation reports are not required for Sub-V debtors pursuant to Interim Bankruptcy Rule 2015(a)(5).

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.

A small business debtor shall file monthly reports using Official Form 425C along with all supporting attachments.

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 report shall be filed on Official Form 426.

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. Individual Debtors—Approval of Budget

Income earned by an individual debtor in possession after commencement of the bankruptcy case from services performed is property of the bankruptcy estate. 11 U.S.C. § 1115(a)(2). Therefore, an individual debtor in possession must provide “notice and a hearing” before using any income for personal living expenses. See 11 U.S.C. § 363(b)(1). The United States Trustee recommends that all individual debtors in possession seek Court approval of a budget for living expenses as soon as practicable. The United States Trustee may file a motion to convert your case, dismiss the case, or appoint a trustee if estate property is used without authorization.

9. Important Deadlines

Subchapter V debtors are required to comply with deadlines not imposed in other chapter 11 cases. Specifically –

- The Bankruptcy Court will hold a status conference not later than 60 days after the case is filed “to further the expeditious and economical resolution” of the subchapter V case. 11 U.S.C. § 1188(a).

- 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).

- The subchapter V debtor shall file a plan not later than 90 days after the petition date, except that the court may extend the period “if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.” 11 U.S.C. § 1189(b).

10. Duty to Cooperate

The subchapter V debtor also has a duty to cooperate with the subchapter V trustee in the trustee’s performance of his/her statutory duties, under 11 U.S.C. § 521(a)(3).

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