

**UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF UNITED STATES TRUSTEE**

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Form 10
Rev. 12/17

To: Chapter 11 Debtors, Counsel, and Appointed Chapter 11 Trustees

From: Margaret K. Garber
Assistant U.S. Trustee

Subject: Chapter 11 Debtor Instructions and Requirements

INITIAL DEBTOR CONFERENCE:

The U.S. Trustee is required by law to monitor the financial performance of Chapter 11 debtors and to insure that debtors otherwise comply with applicable provisions of the Bankruptcy Code. This is done primarily through ongoing financial review of the debtors' business activities with particular emphasis on whether the debtor is remaining current with its post-petition (after filing) obligations and whether the reorganization of the debtor's business is feasible. In order to facilitate the debtor's compliance with its reporting obligations, all Chapter 11 debtors are required to meet with the Office of the U.S. Trustee at the commencement of their case to discuss the operation of the business and the ongoing reporting requirements. Failure to attend the conference or to provide the required documentation in a timely manner may result in an immediate motion to dismiss the case.

It is the responsibility of counsel for the debtor to provide the debtor with this Guideline Package and all forms.

At the conclusion of the conference, the debtor will be required to sign a certification that the instructional package has been received and reviewed and that all guidelines, general requirements and reporting requirements are understood.

The CEO and the financial officer of the debtor are required to personally attend the conference at our offices located at First Campbell Square Building, 210 First Street, SW, Suite 120, Roanoke, Virginia. The debtor's counsel must personally attend the conference, however, if counsel is located outside of the Roanoke area, such personal appearance may be waived by the U.S. Trustee, in which event counsel **must** participate by phone on the date and time scheduled by calling our office. The U.S. Trustee will not proceed with the meeting without the participation of counsel.

Materials the Debtor must provide not less than 36 hours before the conference:

1. Copies of bank statements for all pre-petition bank accounts for the preceding one (1) year;
2. Copies of tax returns for the preceding three (3) years or copies of currently valid filed requests for extension;

3. Financial Statements

The books and records of the debtor must be closed out as of the date of filing of the petition and a new set of books and records should be opened thereafter for the Debtor-in-Possession. Copies of all general financial reports for the period of one year preceding the bankruptcy must be provided by the debtor at the conference. Backup documentation such as ledgers and cancelled checks is not required unless specifically requested by the U.S. Trustee. In the event that reproduction of any of the referenced materials is voluminous, the U.S. Trustee should be contacted prior to the conference.

4. Bank Accounts

The Debtor in Possession Order requires that new post-petition bank accounts be opened. The debtor must furnish the Court and the Office of the United States Trustee with evidence that all existing accounts have been closed and that it has opened new accounts. The debtor must establish a separate general operating account for the purpose of paying bills incurred during the administration of the case, a separate tax trust account into which escrow funds are to be deposited for the payment of post-petition taxes and, if necessary, a payroll account.

The U.S. Trustee must be notified in advance of Debtor in Possession accounts being moved to another depository.

The Bankruptcy Code requires that all accounts must be in an account authorized by the U.S. Trustee, regardless of where they were pre-petition. See the attachment for a list of authorized depositories.

On the face of the checks for each new account, the words "Debtor-in-Possession" and the bankruptcy case number must appear. The debtor must submit a copy or sample blank check marked "VOID" for each new account that shows compliance with this requirement. (The abbreviation "DIP" is not acceptable.)

The U.S. Trustee's Office cannot waive this requirement. Appropriate pleadings must be filed with the Court to waive this requirement.

You should ensure that the account is set up on a calendar month; that is, the first day of the month through the last day of the month.

5. Proof of Insurance

The debtor must file with the United States Trustee's Office evidence that the debtor is insured by workers' compensation, liability, auto, fire and theft, and any other insurance customarily maintained in the business in which the debtor is engaged. The fair market value of the estate's property must be insured against loss. Said evidence will consist of a copy of the insurance binder or certificate of insurance. It must show the type and amount of insurance, the property insured, effective date and policy period, and that the debtor is an insured party. The debtor must instruct insurance companies and agents to provide the United States Trustee with prior notification regarding any change, cancellation or expiration of a debtor's insurance policy. **The Office of the United States Trustee must be added as Certificate Holder.**

In the event of termination or lapse of insurance, the debtor must immediately report the termination to the United States Trustee and immediately obtain replacement coverage.

Failure to provide correct and adequate proof of full insurance coverage will result in a Motion to dismiss the case.

6. Employee Information

The debtor must provide the Office of United States Trustee with a statement detailing the number of employees, total amount of the gross payroll per month, salary of officers, director and principals of the debtor, and a statement that the post-petition payroll is current, or if not current, the reason.

7. Cash Flow Projection

The debtor must provide a six-month cash flow projection beginning with the first full month after filing and containing projected receipts, disbursements, and cash balance for each month. For individuals, the Schedule of Current Income and Expenses (bankruptcy schedules I and J) will suffice unless it differs materially from month to month.

I. **GENERAL REQUIREMENTS FOR ALL CHAPTER 11 DEBTORS**

- A. Compliance with the law -- the debtor must comply with the Bankruptcy Code, the Bankruptcy Rules, Local Rules and any court order.
- B. Debts -- the debtor must pay all post-petition debts on a current basis.
- C. The debtor must serve the United States Trustee with a copy of any motion, application, request or adversary proceeding filed by the debtor with the Bankruptcy Court.
- D. It is the debtor's responsibility to notify the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number within ten (10) days after the change occurs.
- E. Employment and compensation of all Professionals (including attorneys, accountants, appraisers, auctioneers, real estate agents and other professionals) must have prior approval of the Court. No professional fees can be paid until the Court has approved the requested compensation by written Court Order.

II. **MONTHLY REPORTING INSTRUCTIONS**

The Office of the U. S. Trustee is unable to assist Chapter 11 debtors in the preparation of the Chapter 11 monthly reports other than to provide general instructions at the Initial Debtor Conference or to answer occasional general questions that may arise. The U.S. Trustee's Office cannot provide specific advice in the preparation of these reports.

If the debtor is unable to fully and completely prepare the monthly reports, the debtor must contact counsel or other competent professionals for assistance.

An electronic copy of the monthly operating report must be sent to the Office of the United States Trustee and the Chair of any creditors' committee appointed to serve in the case as well as **electronically** filed with the Clerk's Office of the United States Bankruptcy Court, by the 15th day of the following month.

The contents of the monthly report depend upon the debtor's business status and accounting basis, whether cash or accrual. At the initial debtor conference a determination will be made by the U.S. Trustee regarding the form of the monthly operating report. **No exception to the reporting requirements shall be made except in writing signed by the U.S. Trustee.** In any event, copies of all bank statements are to be attached to each monthly report. Form 9-DS detailing disbursements on or on behalf of the debtor must be included in every monthly report, whatever the format.

The debtor is responsible for reporting to our office the accrual of professional compensation and expenses every month. If the debtor does not receive a bill each month from your professionals, the debtor must contact the professionals to obtain this amount (or a good faith estimate) so that it can be reported in the monthly report. Professionals are required to keep track of the time spent in the debtor's case, so this should not present a problem. Both the Large Business Debtor Monthly Report (accrual form series 9) and the Small Business Debtor Report have exhibits that address this. See page 3 of the Small Business Debtor Report and Exhibit 9-AB-6 for the Large Business Debtor Report.

Upon written authorization from the Roanoke office, computer or otherwise prepared Balance Sheets, Income Statements, Disbursements Ledgers, and Cash Reconciliation Reports may be substituted. In the event that use of the debtor's in house balance sheet has been authorized, post-petition liabilities and earnings (losses) must be broken out separately.

The debtor must provide a schedule of all post-petition obligations. Post-petition debts must be paid on a current basis.

Trust fund withholdings are those monies which the employer (debtor) does not own, but, the debtor as a fiduciary must withhold, collect and deposit for the benefit of the Internal Revenue Service or State Taxing Authority. They include employees' federal income taxes, employees' portion of FICA, sales taxes, etc. **It is not permissible to take any amounts from those funds to be used as a source of ready cash.** Trust fund and withholding taxes must be paid or deposited on the same day as paying any portion of compensation to the employee. Evidence of payment or deposit of these taxes must be provided with each monthly operating report. The tax liability must be paid by the end of each month. Such evidence must be a receipted copy of IRS Form 6123 (enclosed), or a bank receipted copy of the invoice coupon and check. The evidence of deposit **must** show the gross salaries, deductions, net pay, amount of deposit, and pay period.

Additional reports may be required in supervising the administration of the estate.

All disbursements must be made by check and disbursements by cash (currency) are prohibited. The payee name must appear on the face of the check. The check cannot be made payable to cash.

Failure to comply with United States Trustee requirements or failure to file timely and complete reports may result in a motion for conversion or dismissal of the bankruptcy case.

III. FIRST MEETING OF CREDITORS

The Chief Executive Officer and the person(s) who signed the schedules and the other employees generally responsible the debtor's financial affairs are all required to personally appear at the scheduled Section 341 meeting of creditors.

IV. U.S. TRUSTEE QUARTERLY FEE

Section 1930(a)(6) of Title 28 of the United States Code requires that all debtors in Chapter 11 Bankruptcy proceedings pay a quarterly fee for each quarter or fraction thereof until the case is closed by court order¹, or otherwise dismissed or converted to another Chapter. In accordance with the Bankruptcy Judgeship Act of 2017, Pub.L. No. 115-72, the following amended Chapter 11 quarterly fee schedule will apply for the calendar quarters beginning January 1, 2018 through September 30, 2018.

The amount of the fee varies depending upon the amount of money disbursed by or on behalf of the debtor during the calendar quarter. A minimum fee of \$325.00 is due each quarter even if no disbursements are made. The fee schedule can be found at: <https://www.justice.gov/ust/chapter-11-quarterly-fees>.

The fee is due on the last day of the month following the calendar quarter. **If the fee is not received in the payment center by that date, a motion to convert the case to a liquidating case under chapter 7, or to dismiss the case, may be filed.**

A preprinted filing report will be mailed to the debtor from the U.S. Trustee's Office by the 15th of the month following the quarter end. This form is to accompany the payment for each quarter. If payment is made for multiple quarters by one check, prepare and mail the Report for each quarter along with your check. If you fail to receive the preprinted report in the mail, you are still responsible for paying the fee. Report forms can be obtained from the United States Trustee's Office.

A Plan of Reorganization must provide for payment of all unpaid quarterly fees as of the effective date of the Plan or it cannot be confirmed by the Court. In addition, all unpaid

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NOTICE

DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING 1. 1. DELINQUENT QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C. §1930(a)(6). 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 any 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. If the United States is unable to collect the full amount of any debt owed on a debtor's quarterly fee obligation, an I.R.S. Form 1099-C (Cancellation of Debt) will be filed with the Internal Revenue Service as required by law.

quarterly fees must be paid prior to entry of any order dismissing a case. Failure to pay the quarterly fee is cause for conversion or dismissal of the case.

The mailing address for quarterly fee payments is:

U.S. Trustee Payment Center
P.O. Box 530202
Atlanta, GA 30353-0202

V TAX RETURNS

The debtor must file, on time, all required tax returns, including but not limited to income, withholding and sales tax.

VI U.S. TRUSTEE CONTACT PERSON

The monthly reports and any general questions relating to them should be addressed to:

Everette Mann
210 First Street, Suite 505
Roanoke, VA 24011
Telephone number: 540-857-2806
E-mail address: Everette.Mann@usdoj.gov

Legal questions must be addressed to debtor's attorney.

JOHN P. FITZGERALD, III
Acting United States Trustee for Region 4