

UNITED STATES TRUSTEE'S CHAPTER 11, SUBCHAPTER V GUIDELINES FOR DEBTORS IN POSSESSION

DISTRICT OF UTAH



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Utah: <https://www.justice.gov/ust-regions-r19/region-19-chapter-11>
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**TO: CHAPTER 11, SUBCHAPTER V DEBTORS IN POSSESSION
AND THEIR ATTORNEYS**

The United States Trustee Program is the United States Department of Justice's component responsible for overseeing the administration of bankruptcy cases. 28 U.S.C. § 586. The Region 19 United States Trustee provides these Guidelines pursuant to that responsibility.

Nothing contained in these Guidelines should be construed as legal advice. The United States Trustee's Office cannot give legal advice to debtors, trustees, creditors, or other parties in bankruptcy cases. Parties should seek advice from their own attorneys. Parties represented by an attorney must communicate with the United States Trustee's Office through their attorney.

In addition to the requirements in these Guidelines, all applicable provisions of the Bankruptcy Code (11 U.S.C. §§ 101 et seq.), Federal Rules of Bankruptcy Procedure (Fed. R. Bankr. P.), Local Bankruptcy Rules, General Orders, court orders, and other applicable law must be complied with in Chapter 11 cases. **Failure to comply with applicable requirements may result in a motion by the United States Trustee or others to dismiss or convert a case, or request other relief, including removal of the debtor from possession.**

The Initial Financial Report form, the Monthly Operating Report form, other forms, and information can be found at the United States Trustee's websites listed on the coversheet of these Guidelines. If you do not have access to the internet, the United States Trustee's Office will provide paper copies upon request. Documents filed with the court must comply with Fed. R. Bankr. P. 9037's redaction requirements.

The application of these Guidelines to debtors in possession may be affected if the court orders the removal of the debtor from possession, orders the Subchapter V trustee to perform certain duties, or orders limitations on the debtor in possession's rights and powers. See 11 U.S.C. §§ 1183, 1184, and 1185.

As used in the Guidelines, the term "post-petition" refers to the period of time after the date of filing a voluntary petition. References to the date of filing a voluntary Chapter 11 petition may also refer to the date of entry of an order for relief in an involuntary Chapter 11 case or to the date a case is converted to Chapter 11 from another chapter. See 11 U.S.C. §§ 303 and 348.

The United States Trustee reserves the right to modify these Guidelines without prior notice.

***THE DEBTOR IN
POSSESSION IS A
FIDUCIARY***

Upon filing a voluntary Chapter 11 petition, a debtor becomes a new entity called a debtor in possession. The debtor in possession may continue to operate its business unless the court orders otherwise or orders the debtor to be removed from possession. See 11 U.S.C. § 1185. A debtor in possession owes a fiduciary duty to its creditors to, among other things, preserve the bankruptcy estate, operate its business efficiently, keep post-petition debts current, and maximize payments to creditors under a Chapter 11 plan. Subchapter V debtors must comply with certain initial filing requirements, reporting requirements, a statutory deadline to file a Chapter 11 plan with the court, appear at a status conference, and other duties. See, e.g., 11 U.S.C. §§ 308(b), 1184, 1187, and 1188. The debtor in possession has a duty to cooperate with the Subchapter V trustee as necessary to enable the trustee to perform the trustee's duties. 11 U.S.C. § 521(a)(3).

***IMMEDIATE ACTION
REQUIRED
DEPOSITORY
ACCOUNTS***

Upon filing a voluntary Chapter 11 petition, the debtor must immediately ensure that funds are not disbursed from any of its depository accounts that were open before it filed its voluntary Chapter 11 petition. Unless the court orders otherwise or applicable law requires otherwise, the Debtor must freeze and / or close all such accounts and open new debtor in possession depository accounts that are collateralized or bonded in favor of the United States. See 11 U.S.C. § 345(b).

The United States Trustee's websites listed on the coversheet of these Guidelines contain a list of approved banks for cases filed in Colorado, Utah, or Wyoming. There may be an exception to using these banks if the funds deposited in the debtor in possession account are insured or guaranteed by the United States, but only if the funds on deposit do not exceed the insurance or guarantee's limits. 11 U.S.C. § 345(b). The debtor in possession is required to deposit all receipts in and make all disbursements from the debtor in possession account(s) and should never use cash to make payments, unless otherwise approved in writing by the United States Trustee or a court order.

The debtor in possession must immediately notify the United States Trustee of any change of debtor in possession accounts and must provide proof of compliance with 11 U.S.C. § 345(b) for each new account.

***COURT APPROVAL IS
REQUIRED FOR
CERTAIN
TRANSACTIONS***

The debtor in possession should consult with its counsel about whether a court order is required for a specific action. For example, a court order authorizing the following actions is generally required:

- Using cash collateral (funds encumbered by a security interest);
- Paying a pre-bankruptcy petition unsecured debt;
- Selling the debtor's business or selling an asset outside of the ordinary course of business;
- Obtaining a loan or financing outside of the ordinary course of business; and
- Entering into a settlement agreement.

**EMPLOYING AND
PAYING
PROFESSIONALS**

The debtor in possession must timely obtain a court order approving the employment of its professionals. 11 U.S.C. § 327. This includes attorneys, accountants, realtors, appraisers, auctioneers, business consultants, engineers, and other professionals. The United States Trustee may object to any post-petition fees and costs incurred before the employment application was filed with the court. The debtor in possession must also obtain a court order approving a professional's compensation before making payment. 11 U.S.C. §§ 330 and 331

INSURANCE

The debtor in possession must maintain adequate insurance to protect bankruptcy estate assets. The insurance must include coverage customary for debtor's type of business and may include a combination of commercial, liquor, automobile, product liability, property, worker's compensation, directors' and officers' insurance, and malpractice insurance. It may also include contractor or employee fidelity bonds.

The debtor in possession must provide the United States Trustee with adequate proof of insurance. The debtor in possession must ensure that the insurance provider sends any notice of cancellation of an insurance policy to the United States Trustee. Do not name the United States Trustee as an insured party. Before any insurance coverage terminates, the debtor in possession must provide the United States Trustee with proof of renewal or replacement insurance. The debtor in possession must immediately notify the United States Trustee of any lapse, cancellation, modification, or renewal of insurance coverage and provide the United States Trustee adequate proof of renewal or replacement coverage. The debtor in possession must immediately notify the United States Trustee of any lapse, cancellation, modification, or renewal of insurance coverage and provide the United States Trustee adequate proof of renewal or replacement coverage.

TAXES

The debtor in possession must timely file all post-petition federal, state, and local tax returns with applicable tax agencies and timely pay all post-petition taxes. See 11 U.S.C. § 1112(b)(4)(I). The debtor in possession should seek tax advice from a competent professional who understands the impact of bankruptcy on taxes. The IRS has publications which may be helpful. See, e.g., IRS Publication 908, Bankruptcy Tax Guide. These publications can be viewed and downloaded from the IRS' website (www.irs.gov). See also 11 U.S.C. § 1186 regarding an individual debtor's post-petition earnings. Debtors who are individuals must promptly obtain an Employer Identification Number for the bankruptcy estate.

**ACCOUNTING
RECORDS**

The debtor's accounting records must establish a clear cut-off between financial transactions that occurred before filing the voluntary Chapter 11 petition and those that occur thereafter. Fed. R. Bankr. P. 2015 contains information about required records and reports.

INITIAL FINANCIAL REPORT

The debtor in possession must submit the Initial Financial Report to the United States Trustee no later than 24 hours before the Initial Debtor Interview or 14 days after the debtor files the voluntary Chapter 11 petition, whichever is earlier, unless the court's local rules provide otherwise. The Initial Financial Report is not filed with the court. It is intended to provide the United States Trustee with information about the debtor and to ensure the debtor in possession complies with applicable requirements. Submitting an Initial Financial Report to the United States Trustee does not satisfy 11 U.S.C. § 1187(a)'s requirement to append certain documents to the voluntary Chapter 11 petition filed with the court.

MONTHLY OPERATING REPORTS

The debtor in possession is required to file with the court a detailed financial report for each calendar month (or portion of a month) after the voluntary Chapter 11 petition is filed. The report must be prepared on the official **Monthly Operating Report for Small Business Under Chapter 11** and must be filed with the court no later than **21 days** after the last day of the month covered by the report. Do not use the monthly operating report for non-small business cases. The debtor in possession's bank statements and reconciliations must be included with the Monthly Operating Report and must show all account activity on a full calendar month basis. A Subchapter V debtor should refer to Fed. R. Bankr. P. 2015(b) to determine when the first monthly operating report is due. Failure to correctly and timely file a report is cause for dismissal of the case or conversion to Chapter 7. 11 U.S.C. § 1112(b)(4)(F) and (H).

Statement of Cash Receipts: Each Monthly Operating Report should include a separate detailed Statement of Cash Receipts listing receipts in chronological order and: (1) for the date of each receipt, payer's full name, transaction purpose and (2) the total amount of receipts. This total should correspond to the amount reported in "Cash Receipts and Disbursements" section of the Monthly Operating Report.

Statement of Disbursements: Each Monthly Operating Report should include a separate detailed Statement of Disbursements listing in chronological order: (1) the date of each disbursement, check number (if any), payee's full name, transaction purpose, and the amount of the disbursement; and (2) the total amount of disbursements. This total should correspond to the amount reported in the "Cash Receipts and Disbursements" section of the Monthly Operating Report. Required data should be inputted, but do not include unnecessary alphanumeric data from online bank statements.

PERIODIC REPORTS REGARDING VALUE, OPERATIONS, AND PROFITABILITY OF ENTITIES IN WHICH THE DEBTOR HAS A SUBSTANTIAL OR CONTROLLING INTEREST ("PERIODIC REPORT")

The debtor in possession must file with the court a **Periodic Report** of the value, operations, and profitability of each entity in which the debtor has a substantial or controlling interest and which is not publicly traded. Fed. R. Bankr. P. 2015.3. The debtor's first report must be filed with the court no later than **7 days** before the first date set for the meeting of creditors. After that, reports must be filed with the court at least every **6 months**, until the confirmed plan's effective date or the case is dismissed or converted. The Periodic Report must be prepared on the official form which can be found on the United States Trustee's or court's websites.

**REPORTS IN CASES
CONVERTED TO
CHAPTER 7**

Unless the court orders otherwise, the debtor in possession must file with the court a **Schedule of Unpaid Debts** incurred after the bankruptcy petition was filed, within **14 days** after entry of an order converting the case to 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). Please note the court's local rules may contain additional requirements.

**INITIAL DEBTOR
INTERVIEW**

Shortly after the voluntary Chapter 11 petition is filed, the United States Trustee will schedule an Initial Debtor Interview with the debtor and the debtor's counsel. The Initial Debtor Interview may be conducted at the debtor's place of business, remotely, the United States Trustee's Office, or other location. Debtor's counsel and a person or persons knowledgeable about the debtor's accounting and operations should attend the Initial Debtor Interview. During the Initial Debtor Interview, the United States Trustee's representative will ask questions about the debtor's accounting records, bank accounts, insurance, operations, and other matters. The representative will also review financial reporting requirements. The debtor's failure to timely provide information or attend meetings reasonably requested by the United States Trustee is cause to dismiss or convert the case to Chapter 7. 11 U.S.C. § 1112(b)(4)(H).

**MEETING OF
CREDITORS**

The United States Trustee will convene and preside over a meeting of creditors within the time set by Fed. R. Bankr. P. 2003(a).

The debtor or debtor's representative(s) 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 when a married couple files a joint Chapter 11 petition, both spouses must appear and be examined. If the debtor is represented by counsel, debtor's counsel must also appear. 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 and the debtor's attorney must appear.

If the debtor is an individual, the debtor must provide proof of identification and social security number in conjunction with the meeting of creditors. See Fed. R. Bankr. P. 4002(b).

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