Best Practices for Debtors, Debtors' Attorneys, and Other Parties in Interest for Attending Virtual § 341(a) Meetings of Creditors in Chapter 7, 12, and 13 Cases

INTRODUCTION

Pursuant to its authority under 11 U.S.C. §§ 341(a) and 343, Federal Rule of Bankruptcy Procedure ("FRBP") 2003, and other authorities, the United States Trustee Program ("USTP") adopts these Best Practices for Debtors, Debtors' Attorneys, and Other Parties in Interest for Attending Virtual § 341(a) Meetings of Creditors in Chapter 7, 12, and 13 Cases ("Best Practices"). Upon the effective date[1] and until further notice, the § 341(a) meeting of creditors for chapter 7, 12, and 13 cases[2] will be held by video conference, which will be conducted through the Zoom platform.

The purpose of these Best Practices is to facilitate access to 341 meetings by all parties in interest while promoting efficiency, reducing travel costs and time commitments for participants, and enhancing fact-finding over telephonic meetings. Debtors generally are expected to appear by video at Zoom 341 meetings. In certain instances, including active military duty, serious illness, disability, incarceration, or other unique circumstances, the trustee may approve alternative arrangements for the debtor to appear at the 341 meeting in accordance with USTP guidance, such as telephonic appearances or interrogatories in extenuating circumstances. Nothing in these Best Practices should be construed to limit the authority or discretion of the United States Trustee ("UST") to require the in-person appearance of any debtor at a 341 meeting, although in-person 341 meetings may only be conducted by the trustee after consultation with and approval by the UST. These Best Practices are subject to change at the discretion of the UST.

This document provides information regarding the conduct of virtual 341 meetings:

- Attending 341 meetings via Zoom
- Virtual 341 meeting protocols
- Requirements for verifying debtor identification documents
- FBI investigation of bankruptcy crimes
- Additional questions

ATTENDING 341 MEETINGS VIA ZOOM

Examination of Debtors

Except as modified below, the conduct and scope of the debtor's examination at a Zoom 341 meeting is the same as for an in-person 341 meeting in accordance with the *Handbook for Chapter 7 Trustees, Handbook for Chapter 12 Standing Trustees,* and *Handbook for Chapter 13 Standing Trustees (*collectively, referred to as *"Handbooks"*), including

[1]Effective dates for each federal judicial district will be posted on their USTP district website "Local Section 341 Meeting Information" page when available. A list of these sites can be found here: https://www.justice.gov/ust/moc.
[2]Hereafter, the § 341(a) meeting of creditors is referred to as the "341 meeting" or "341 meetings".

the trustee administering the oath and asking all required questions. Preparation by the debtor and the debtor's attorney (if the debtor is represented) is important to ensure that 341 meetings are conducted as efficiently as possible.

Debtor Accessibility Services

Language interpreter services are available for debtors at virtual 341 meetings. If the debtor needs the assistance of a language interpreter for the 341 meeting, the debtor should inform the trustee either at the 341 meeting or, preferably, in advance of the 341 meeting. The trustee will contact the language interpreter service, and an interpreter will be provided at no cost to the debtor.

If a debtor has a disability, such as a hearing impairment, the debtor should contact the trustee in advance of the 341 meeting so the trustee can notify the UST that an accommodation may be necessary.[3] The UST, in consultation with the debtor and the trustee, will determine the accommodation to be made, if any, such as the use of a sign language interpreter, again at no cost to the debtor.

Contact information for all trustees is available at https://www.justice.gov/ust/private-trustee-locator.

Preparing to Participate in the 341 Meeting Via Zoom

The debtor and other participants will need an electronic device (computer, laptop, tablet, or smartphone) with a microphone, camera, and Internet access to participate in the Zoom 341 meeting.[4] Instructions on how to connect to a Zoom 341 meeting, including how to download the Zoom application, how to test and connect to a Zoom meeting, and troubleshooting tips, can be found at https://www.justice.gov/ust/moc. Online tutorials for how to connect to a Zoom meeting are also available by searching "Joining a Zoom Meeting" in Google or other Internet search engines. If possible, the debtor should test their electronic device, Internet connection, and ability to connect to a Zoom meeting prior to attending the virtual 341 meeting.

Additional Information for Debtors

The debtor should follow specific identification procedures at virtual 341 meetings which include submitting copies of a photo identification and proof of social security number, if one exists, to the trustee in advance of the 341 meeting. If the debtor fails to provide these documents in advance, the trustee will likely adjourn and continue the 341 meeting. These procedures and requirements are discussed below under the section Requirements for Verifying Debtor Identification Documents.

[3] *See* 28 U.S.C. § 586.

[4] Debtors and participants who do not have access to the Internet or to a smartphone or laptop with a camera, may call into the 341 meeting by telephone. *See* subsection Audio-Only Connection to 341 Meeting for further instructions. To ensure proper identification and safeguards are in place for the debtor's testimony, the trustee likely will reschedule the 341 meeting if the debtor appears telephonically.

In chapter 7 cases, the trustee will ask individual debtors at the 341 meeting if they have received and read the Bankruptcy Information Sheet, and whether they understand the information contained therein or have any questions about it.[5] A copy in English or several other languages is available at http://www.justice.gov/ust/bankruptcy-information-sheet-0.

VIRTUAL 341 MEETING PROTOCOLS[6]

The trustee will adopt and announce protocols to assist the debtor and other parties in interest in participating in these 341 meetings consistent with these Best Practices.

Joining the Zoom 341 Meeting

To join the 341 meeting by video, the debtor and other participants must go to Zoom.us/join and enter the Meeting ID and Passcode when prompted. The Meeting ID and Passcode are set out in section 7 of the Notice of Bankruptcy Case (Official Forms 309A, B, C, D, G, H, or I) that is mailed to the debtor and creditors after the filing of the bankruptcy case. This information also can be found at https://www.justice.gov/ust/moc. When prompted to enter a name, the debtor and other participants should enter their first and last name so each participant may be identified properly during the 341 meeting. More detailed instructions for joining a Zoom 341 meeting can be found at https://www.justice.gov/ust/moc.

The debtor and other participants should join the 341 meeting 10 minutes before the scheduled start time.

Setting for the Virtual 341 Meeting

All participants, but specifically the debtor who will be providing testimony, should connect to the 341 meeting from a quiet location, free from background noise, distractions, or disruptions, which is appropriate for their participation in a video meeting that is open to the public. Participants should mute their microphones on Zoom and on their devices until their case is called. Audio-only participants should avoid speaker phones unless two or more persons are appearing together from the same device.

The debtor and the debtor's attorney (if the debtor is represented) should ensure they can both view the video screen and be viewed by the trustee. To replicate an in-person 341 meeting, to provide the proper decorum, and to allow the trustee to perceive the interaction between the debtor and their attorney, the debtor and debtor's attorney should situate themselves so they both may be clearly viewed on the video screen.

Calling of the Case

Multiple 341 meetings may be scheduled for the same time, and the trustee may conduct periodic "roll calls" to confirm the participants (debtors, creditors, attorneys, etc.) who are present. When participants first connect to the Zoom

[5] 11 U.S.C. § 341(d).
[6] While these protocols are generally applicable to any virtual 341 meeting, i.e., where the debtor appears by video conference or by telephone using Zoom, certain of the protocols have specific application to Zoom video meetings.

meeting they also may be placed in a virtual "waiting room" until their case is called. When the case is called, the trustee will commence the 341 meeting, and the participants should unmute their microphones on Zoom and their devices, speak clearly, and ensure their cameras are on and working so the trustee can see them. If the debtor and other participants were placed in a virtual waiting room, the trustee will connect them to the 341 meeting.

Conduct During the Virtual 341 Meeting

The 341 meeting is the official forum where the debtor appears to answer under oath questions from the trustee, creditors, and other parties in interest regarding their bankruptcy case and estate, as required by the bankruptcy code. The trustee will administer the oath, and the 341 meeting is recorded. All participants should present themselves in a professional manner and respect the formality and solemnity of the bankruptcy proceedings in the same manner as if the participants were appearing at an in-person 341 meeting.[7] Meeting participants should be respectful when asking questions of the debtor.

While the debtor is sworn in and testifying: (1) the debtor should be alone unless the debtor is appearing from the same location with their attorney, employees of their attorney, or a co-debtor; (2) the debtor should have readily available a copy of the filed schedules and statement of financial affairs, and any other documents previously requested by and provided to the trustee; (3) the debtor should have their original Identification Documents (*see* the section Requirements for Verifying Debtor Identification Documents); and (4) the debtor should not communicate with any person regarding the subject of their testimony, by electronic means or otherwise.[8]

If the debtor and their attorney seek to communicate with each other regarding the subject of the debtor's testimony, either should first openly request a recess by the trustee for this purpose. If the trustee grants this recess request, the debtor and their attorney may privately confer off the record as instructed by the trustee. It is the responsibility of the debtor and their attorney to ensure these private communications are offline, not seen or heard by the trustee or by other attending parties, and not part of the audio recording of the 341 meeting, which is available to the public.

If at any time during a 341 meeting, the Internet connection becomes so poor that the trustee cannot view the debtor or hear and properly record their testimony, the trustee will try to resolve the issue with the assistance of the parties, but the meeting will need to be adjourned and continued if the trustee is unable to resolve the issue.

After the trustee determines that the business of the 341 meeting has been completed, the trustee will formally conclude the meeting, and the participants may leave the meeting by disconnecting from the Zoom platform.

Failure to follow the trustee's virtual 341 meeting protocols may result in the trustee's adjournment and continuance of the 341 meeting.

[7]The 341 meeting is open to the public and any party may join the meeting if they comply with the Best Practices and obey any other requirements of the USTP or the trustee.
[8]As noted previously, if the debtor requires a language interpreter the trustee will contact the language interpreter service and connect the interpreter to the virtual 341 meeting.

Personally Identifiable Information

Participants should avoid disclosing personally identifiable information (PII) during the 341 meeting. If it becomes necessary to share a document on the video screen during the 341 meeting, they must ensure that the document contains no PII prior to sharing it.

Official Recording of the 341 Meeting

The trustee will make an audio recording of the 341 meeting which will constitute the official recording of the 341 meeting. All other recordings, including video or audio recordings of the 341 meeting, are prohibited. No one is permitted to photograph the debtor or any other person attending the virtual 341 meeting.

Zoom Connection Issues

If any party is disconnected before the 341 meeting is concluded, they should reconnect to the Zoom meeting using the same Zoom meeting login information or meeting link to be admitted back into the 341 meeting. If they are unable to reconnect, they should contact the trustee after the meeting.

If the debtor fails to attend the virtual 341 meeting for any reason, including the inability to connect to the Zoom meeting, they should contact the trustee immediately. Failure by the debtor to attend or fully participate in their virtual 341 meeting will be treated in the same manner as a failure to attend an in-person 341 meeting and may result in dismissal of the debtor's case if further immediate action is not taken by the debtor to appear at their 341 meeting.

Audio-Only Connection to 341 Meeting

The debtor and the debtor's attorney (if the debtor is represented) are expected to appear at the virtual 341 meeting by video. However, the trustee may permit a debtor to participate by telephone on a case-by-case basis if the circumstances warrant; for example, the debtor has no technical ability to appear at a Zoom video meeting due to no access to the Internet or to a smartphone or laptop with a camera. In such circumstances, the debtor should call into the meeting using the Zoom phone number that is provided in the notice of the 341 meeting, and they should be prepared to explain to the trustee why they are unable to connect by video.

If the debtor appears telephonically, the trustee likely will reschedule the 341 meeting to ensure proper identification and safeguards are in place for their testimony. This may be called a continued or adjourned meeting. In this circumstance, the trustee will specify the manner in which the debtor should attend the continued 341 meeting.

Non-debtor participants who have no video access or who have trouble connecting by video may join the 341 meeting by audio-only without seeking approval by the trustee.

In order to join the 341 meeting via an audio-only connection, the participant should call the phone number set out in section 7 of the Notice of Bankruptcy Case (Official Forms 309A, B, C, D, G, H, or I) or provided at https://www.justice.gov/ust/moc, enter the Meeting Passcode when prompted, and provide their first and last name to the trustee when requested. More detailed instructions for joining a Zoom 341 meeting can be found at https://www.justice.gov/ust/moc.

Adjourned or Continued Meetings

The 341 meeting may be adjourned and continued to a future date and time by announcement by the trustee at the 341 meeting. In such instances, the trustee will announce the new date and time of the continued meeting on the record. Participants should use the same connection information that was contained in the original Notice of Bankruptcy Case to connect to the adjourned and continued meeting, unless the trustee indicates otherwise. In addition, the trustee will file a statement with the bankruptcy court specifying the date and time to which the 341 meeting has been adjourned.[9]

REQUIREMENTS FOR VERIFYING DEBTOR IDENTIFICATION DOCUMENTS

Every individual debtor is required to provide proof of their identity at the 341 meeting by providing a photo identification[10] and social security number ("SSN"), if one exists[11] (collectively, "ID Documents").[12] To satisfy this requirement at a virtual 341 meeting, each individual debtor should have the ID Documents available when they appear and comply with the following procedure:

- At least 14 days prior to the 341 meeting, or within the timeframe requested by the trustee, the debtor should send clear copies of the ID Documents to the trustee in a safe and secure fashion. The trustee may provide more information regarding the preferred method of transmission of the copies of these ID Documents to the trustee.[13] Copies of the ID Documents should not be sent to the trustee by unprotected email or messaging.

- If the debtor is represented, the debtor's attorney should assist the debtor in obtaining and facilitating the debtor's timely submission of the required ID Documents to the trustee. The debtor's attorney also is expected to facilitate the participation of their client in the virtual 341 meeting but should not be relied upon to make the debtor's identification on the record for the trustee when the debtor appears by video.

- If possible, the trustee will communicate with any unrepresented debtor prior to the scheduled 341 meeting and arrange for the debtor to submit copies of the ID Documents to the trustee prior to the 341 meeting. Unrepresented debtors also may contact their assigned trustee for assistance in submitting copies of their ID Documents in a safe and secure manner.

- If the debtor fails to provide copies of the ID Documents to the trustee prior to the 341 meeting, the trustee will likely adjourn and continue the 341 meeting.

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[9] *See* FRBP 2003(e).

[10] The debtor may provide copies of photo identification such as driver's license, state identification card, passport, and military identification. A list of acceptable forms of photo identification are specified in the *Handbooks* and can be found at https://www.justice.gov/ust/moc.

[11] Valid forms of SSN documentation may include SSN card, Social Security Administration statement, Individual Taxpayer Identification Number ("ITIN") card, W-2, recent payroll advice, or medical insurance card (full SSN should be present on document provided). The form of proof must conform with the requirements set out in the *Handbooks*. In addition, if the debtor states that they are not eligible to obtain an SSN, the trustee must comply with existing requirements in the *Handbooks* for obtaining documentation sufficient to verify the debtor's identity in that circumstance. Debtors are encouraged to contact their assigned trustee if they have any questions or concerns regarding the required documentation.

[12] *See* 11 U.S.C. § 521(h) and FRBP 4002(b)(1).

[13] Generally, the debtor should provide the ID Documents through the same means as they provide the trustee with their tax returns, evidence of current income such as pay advices, or any other documents requested by the trustee.

- After receiving copies of the ID Documents, the trustee will ensure that the copies are of sufficient clarity to allow the trustee to identify the debtor and confirm the SSN, if one exists, at the video 341 meeting. If they are not sufficiently clear, the trustee will promptly request new copies, and the debtor should provide them as quickly as possible. After receiving copies of the ID Documents, the trustee will protect them in the same manner as any other record that contains PII or sensitive information.

- At the beginning of the 341 meeting, the trustee will ask the debtor to identify themself, and the trustee will ask the debtor to testify that they are the individual whose name and address appears on the voluntary bankruptcy petition as the debtor or responsible party if the debtor is not an individual.[14] The trustee will review the ID Documents and verify the debtor's identity and SSN, if one exists, after obtaining the debtor's testimony.

- During the 341 meeting, the debtor should not display their ID Documents on the video screen or otherwise disclose the contents of the ID Documents, including any PII or sensitive information, during the virtual 341 meeting.

- If the trustee is unable to verify the debtor's identity or SSN (where one exists for the debtor), the 341 meeting may be continued, and the case will be referred to the UST.

FBI INVESTIGATION OF BANKRUPTCY CRIMES

All participants in the 341 meeting should be aware that federal law provides severe criminal penalties of up to five years imprisonment, a fine of not more than $250,000, or both, for bankruptcy crimes, which include bribery, concealment of assets, false statements, false claims, filing under a fictitious name, and perjury.[15] If you suspect a bankruptcy crime, please refer the matter to the local UST office or the USTP hotline email: USTP.Bankruptcy.Fraud@usdoj.gov.

ADDITIONAL QUESTIONS

These are recommended practices for debtors, debtors' attorneys, and other parties in interest. The USTP is unable to anticipate in advance all matters or issues that may arise regarding the conduct of virtual 341 meetings. If parties have additional questions, they should contact the trustee or the local UST office.

[14]These procedures apply to each debtor, including co-debtors. In addition, if the debtor is a business entity, i.e., corporation or partnership, the trustee will ask the responsible party for the debtor to identify themself and to testify that they are the responsible individual whose name appears on the voluntary petition as the responsible individual for the debtor.
[15]*See* 18 U.S.C. §§ 152 and 3571.

Acceptable Photo Identification and Social Security Number Documents

Prior to the 341 meeting all debtors must submit to the trustee: (1) a copy of their original government-issued photo Identification (ID) and (2) confirmation of their Social Security number (SSN) or Individual Tax Identification number (ITIN). Acceptable forms of photo ID and proof of SSN are listed below.

ACCEPTABLE PHOTO IDENTIFICATION DOCUMENTS

- Driver's license
- U.S. government ID
- State ID
- Student ID
- Passport or current visa, if not a U.S. citizen
- Military ID
- Resident alien card
- Identity card issued by a national government authority

ACCEPTABLE SOCIAL SECURITY NUMBER DOCUMENTS

- Social Security card
- Medical insurance card
- Pay stub
- W-2 form
- IRS Form 1099
- Social Security Administration statement
- ITIN (only if debtor is not eligible for an SSN)

*Please note that tax returns are **NOT** acceptable proof of an SSN.*

If the debtor fails to provide an acceptable identification document, Social Security number document, or both to the trustee prior to the 341 meeting, the trustee will likely adjourn and continue the 341 meeting.

If you have any questions:

Please consult the Handbook for Chapter 7 Trustees, Handbook for Chapter 12 Standing Trustees, or Handbook for Chapter 13 Standing Trustees, as applicable, or contact your trustee. All Handbooks are available at https://www.justice.gov/ust/private-trustee-handbooks-reference-materials

Office of the US Trustee

DECLARATION REGARDING ADMINISTRATION OF OATH AND CONFIRMATION OF IDENTITY AND SOCIAL SECURITY NUMBER

Debtor's Name: _____ **Case No.:** _____

§ 341(a) Meeting of Creditors Date: _____ **Trustee's Name:** _____

I declare as follows:

1. My name is: _____

2. My work address is: _____

3. My work phone number is: _____

4. The address from where I participated in the § 341(a) meeting of creditors is:

_____

5. I am a person authorized to administer oaths in the State of _____, by virtue of the following fact:

- ☐ I am a notary
- ☐ I am a court reporter
- ☐ I am a judicial officer
- ☐ I am authorized to give an oath under the Code of Military Justice
- ☐ Other (describe): _____

(Give title and **legal authority** for power to administer oath)

6. I personally verified the identity of the debtor by checking his/her original photo identification:

- Driver's License (state & number): _____
- State Identification (state & number): _____
- Passport (country, number, & expiration date): _____
- Military Identification (branch & ID number): _____
- Other (describe): _____

7. I personally inspected the following original document as proof of the debtor's social security number and orally confirmed it with the trustee:

- ☐ Social Security Card
- ☐ W-2 Form
- ☐ Employer's Health Card or Medical Insurance Card
- ☐ Social Security Administration Statement
- ☐ Recent Payroll Stub
- ☐ Other (specify): _____

8. On _____ (Date), I did administer an oath to the debtor, prior to the trustee commencing the questioning of the debtor for the telephonic or video conference interview of the debtor.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this _____ (Date) day of _____ (Month), _____ (Year), in _____ (City), _____ (State).

_____

Signature of Person Administering Oath and Verifying Identity and Social Security Number

Sign Language Interpreter Request Cheat Sheet

If you become aware of a debtor that requires a sign language interpreter, please contact your UST field office at least seven days prior to the § 341 meeting of creditors date, so that arrangements can be made well in advance of the meeting.

INFORMATION TO INCLUDE IN REQUEST

- Case number
- Case name
- Date and time of 341 meeting
- Trustee name
- Which debtor needs the interpreter in a joint debtor case
- Format of the meeting (video, audio, or in-person), and if applicable the location address

Once the interpreter has been set up, you will receive communication with the interpreter details.