



United States Department of Justice

Office of the United States Trustee

District of Oregon

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**OPERATING GUIDELINES AND
REPORTING REQUIREMENTS FOR CHAPTER 11 CASES**

TO: Debtors, their Counsel, and Chapter 11 Trustees

The United States Trustee is required to supervise the administration of Chapter 11 cases pursuant to 28 USC § 586(a)(3). All communications to or documents served upon the United States Trustee should be directed to the Office of the United States Trustee at the address shown above except for documents filed with the court that are served electronically.

In addition to the following requirements, all applicable provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules, General Orders, and other orders of the Court must be observed in Chapter 11 cases. Failure to comply with any requirement may result in a motion by the United States Trustee or another party to dismiss or convert your case or to request other relief.

The United States Trustee reserves the right to revise, modify, or amend these guidelines and requirements from time to time in general or as applied to individual cases.

1. **BOOKS AND RECORDS**

The debtor's books and records must be closed as of the end of the day prior to the petition filing date. New books and records must be set up to reflect post-petition business activity. See Local Bankruptcy Rule 2015-2(a). It is essential that the balance sheet and income statement distinguish between pre-petition and post-petition activities. All pre-petition current liabilities should be reclassified as non-current liabilities on the post-petition balance sheet.

2. **BANK ACCOUNTS**

Upon the filing of the petition, the debtor must immediately close each existing bank account and open new accounts. Pursuant to Local Bankruptcy Rule 2015-2(b), the required accounts are general, payroll, and tax accounts. New signature cards, account agreements and

checks must state that the owner is a “Debtor in Possession.” Checks must also include the bankruptcy case number and the type of account, and must be pre-numbered. The United States Trustee may require verification of the closing of the old and opening of the new bank accounts. All receipts must be deposited in the “Debtor in Possession” accounts, and all disbursements must be by checks drawn on such accounts. Depositories are to be instructed that account statements are to run for the period beginning on the first day and ending on the last day of each calendar month.

Accounts must be maintained in institutions approved by the United States Trustee, or in institutions that satisfy the requirements of 11 U.S.C. § 345 and that provide all necessary documents and agreements to the United States Trustee. A list of currently authorized depositories is attached. The debtor must contact the United States Trustee immediately if the debtor intends to use an account at an institution not on the list of authorized depositories. The United States Trustee must be promptly advised of any change in financial institutions.

3. MAINTENANCE AND PROOF OF INSURANCE

In order to protect the interests of creditors and the bankruptcy estate, the debtor is required to maintain the following insurance coverage, as appropriate: general comprehensive liability; fire and theft; workers’ compensation; vehicle; product liability; fidelity bonds for employees; and any other coverage customary in the debtor’s business. The dollar amount of the insurance coverage must be sufficient to cover the fair market value of the estate’s property.

The debtor must provide the United States Trustee proof of insurance coverage. Such proof of coverage shall consist of certificates of insurance or other verified documents showing that each policy of insurance required for the estate is in full force and effect, and shall disclose the type and extent of coverage, effective dates, name of insurance carrier, and name, address and telephone number of agent. The debtor is responsible for including the address of the United States Trustee on the cancellation notice for each insurance policy. Upon expiration or other termination of any coverage, the debtor shall immediately provide the United States Trustee with proof of replacement coverage.

4. INITIAL DEBTOR INTERVIEW

Generally, the United States Trustee will conduct an Initial Debtor Interview (IDI) within 15 days after the case is filed. A person knowledgeable about the debtor’s accounting operations should attend the IDI. During the IDI, the United States Trustee’s representative will ask questions about the debtor’s accounting records, bank accounts, insurance, internal controls, and other administrative matters. The meeting will include a brief discussion of the debtor’s obligation to file monthly financial reports and pay statutory fees. An organizational meeting of unsecured creditors may be scheduled for the same time as the IDI. In this event, the debtor will be asked to attend a portion of the organizational meeting, provide information to creditors, and respond to creditors’ questions and concerns.

5. MEETING OF CREDITORS

The debtor or debtor's representative will be examined under oath by the United States Trustee, creditors, and other parties in interest at a meeting of creditors. Generally, the meeting of creditors is conducted about 30 to 40 days after the case is filed or up to 60 days after case filing if the meeting is held at a location not regularly staffed by the United States Trustee. The debtor (or its representative, if the debtor is a corporation, partnership, or limited liability company) and the debtor's attorney are required to appear at the meeting of creditors. In the case of a joint petition filed by individuals, both spouses must appear. Individual debtors must present photographic identification and proof of their social security number. Individual debtors also must provide their last filed Federal tax return at least seven days before the meeting and must bring to the meeting evidence of their current income (e.g. pay advices) and bank/financial account statements covering the date that the case was filed.

6. NOTICING

The debtor is generally responsible for mailing all notices with the exception of the notice of the meeting of creditors conducted pursuant to 11 USC § 341(a). See Local Bankruptcy Rule 2002-1. Use of a mailing matrix provided by the Bankruptcy Court Clerk's Office is strongly recommended. If a mailing matrix is not used, the certificate of mailing pertaining to the notice must contain the names and addresses of the persons noticed. The debtor risks an ineffectual or improper notice if the parties on the court's mailing matrix are not properly noticed. Mailing expenses may normally be reimbursed as an administrative expense.

7. UNITED STATES TRUSTEE QUARTERLY FEES

In accordance with 28 USC § 1930(a)(6), Chapter 11 debtors-in-possession are required to pay quarterly fees to the United States Trustee. The amount of the quarterly fee varies depending upon the monies disbursed from the estate during any calendar quarter (or fraction thereof). However, a minimum fee of \$325 is due each quarter even if no disbursements are made. The fee schedule is as follows:

<u>Disbursement Range</u>	<u>Amount</u>
\$0 to \$14,999.99	\$ 325
\$15,000 to 74,999.99	\$ 650
\$75,000 to \$149,999.99	\$ 975
\$150,000 to \$224,999.99	\$ 1,625
\$225,000 to \$299,999.99	\$ 1,950
\$300,000 to \$999,999.99	\$ 4,875
\$1,000,000 to \$1,999,999.99	\$ 6,500
\$2,000,000 to \$2,999,999.99	\$ 9,750
\$3,000,000 to \$4,999,999.99	\$10,400
\$5,000,000 to \$14,999,999.99	\$13,000

\$15,000,000 to \$29,999,999.99	\$20,000
\$30,000,000 or more	\$30,000

Failure to pay the quarterly fee is cause for conversion or dismissal of the Chapter 11 case pursuant to 11 USC § 1112(b)(4)(K).

Fee payments are due no later than one month following the end of each quarter. The fee owed is substantiated through the debtor’s filing of monthly financial reports reflecting disbursements made by the debtor during a particular quarter. (See paragraph #9.) In order for a plan to be confirmed, all quarterly fees must be paid, or the plan must provide for payment of all fees on the effective date of the plan. 11 USC § 1129(a)(12). Quarterly fees also must be paid after plan confirmation.

Quarterly fees must be mailed with the proper transmittal form (mailed at the end of each quarter by the Executive Office for United States Trustees) to:

U S Trustee Payment Center
P.O. Box 70937
Charlotte, NC 28272-0937

If you do not have the proper form or do not timely receive a bill for quarterly fees from the Executive Office for the United States Trustees, contact the Office of United States Trustee immediately.

Pursuant to 31 USC § 3717, the United States Trustee Program assesses interest on unpaid Chapter 11 quarterly fees. The interest rate assessed is the rate in effect as determined by the Treasury Department at the time the account becomes past due.

The United States Trustee may report the debtor’s taxpayer identifying number when collecting and reporting delinquent fees as explained in the notice below.

DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING 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 et seq, the United States Trustee intends to use the debtor’s Taxpayer Identification 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 on 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.

8. PRE-PETITION AND POST-PETITION DEBT

The debtor may not pay any pre-petition obligations unless authorized by the Bankruptcy Code or by Court order. The debtor must pay all obligations rising out of its operations after the filing of the petition in full when due.

9. MONTHLY FINANCIAL REPORTS

The debtor must file monthly financial reports with the Bankruptcy Court and serve copies, **with the additional information specified in the forms**, on the United States Trustee. The monthly reports are based on a calendar month basis and are due by the 15th day of the succeeding month, Local Bankruptcy Rule 2015-1(b)(1), except in small business cases (see paragraph below). Monthly financial reports are prepared using the forms designated by the United States Trustee, Local Bankruptcy Rule 2015-1(b)(1), or for small business debtors on the required Official Form (see paragraph below).

If the debtor is a "small business debtor" as defined in 11 U.S.C. § 101(51D), the debtor must use Official Form B25C for monthly financial reports. For small business debtors, monthly reports are based on a calendar month basis and are due by the 20th day of the succeeding month. Fed. R. Bank. P. 2015(a)(6). Small business debtors should refer to Fed. R. Bankr. P. 2015(a)(6) to determine when the first monthly financial report is due.

The debtor must continue to provide financial reports to the United States Trustee after the plan is confirmed. The United States Trustee will provide the debtor with the appropriate reporting form.

10. PERIODIC REPORTS REGARDING ENTITIES IN WHICH THE DEBTOR HAS A SUBSTANTIAL OR CONTROLLING INTEREST

The debtor must file periodic reports of the value and profitability of any entity in which the debtor has a substantial or controlling interest in accordance with Fed. R. Bankr. P. 2015.3. The first report must be filed no later than five days before the first date set for the meeting of creditors. Subsequent reports must be filed no less frequently than every six months thereafter, until the effective date of a plan or the case is dismissed or converted.

Periodic reports required by Fed. R. Bankr. P. 2015.3 must be prepared on Official Form B26. Copies of the report must be served on the United States Trustee, the committee of unsecured creditors, and any parties in interest that have filed a request to receive copies of the

report.

11. TAXES

The debtor must timely file all tax returns and reports for post-petition tax obligations and contemporaneously pay any liability in full. Taxes may include, but are not limited to, federal and state payroll withholding taxes, FICA taxes, federal and state employment insurance, real/personal property taxes, and sales and use taxes. The debtor must timely deposit sufficient funds in the debtor's tax account to pay any liability associated with the payroll. The debtor should timely file reports for, but not pay (unless authorized by court order), all pre-petition taxes.

12. COURT APPROVAL AND/OR NOTICE REQUIREMENTS

Court approval and/or a notice to creditors and interested parties is required for many transactions in Chapter 11 bankruptcy cases. The debtor should consult with counsel when a question arises about whether or not court approval and/or a notice is required for a specific transaction. The following transactions generally require court approval and/or a notice:

- Using cash collateral (funds encumbered by a security interest).
- Hiring a professional, such as an attorney, accountant, realtor, appraiser, auctioneer, or business consultant.
- Making a payment to a professional.
- Selling the debtor's business, or selling an asset out of the ordinary course of business.
- Accepting a loan from a principal or general partner of the debtor.
- Obtaining a loan or financing from an outside source.
- Entering into a settlement agreement with another party.
- Assuming or rejecting a lease or contract.

13. CHANGE OF ADDRESS OR TELEPHONE NUMBER

The debtor must notify the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number. See Local Bankruptcy Rule 2002-1(g)(1). for change of address procedures.

14. DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION

The ultimate goal of most Chapter 11 cases is the implementation of a plan of reorganization that has been confirmed by the Court. The Oregon Bankruptcy Court utilizes a voluntary fast track Chapter 11 process in an effort to streamline uncomplicated Chapter 11 cases and make their administration faster and less expensive. See Local Bankruptcy Rule 3016-1. The process involves a stipulated deadline for the submission of a disclosure statement and plan of reorganization, use of forms for the disclosure statement and plan, and combination of the final disclosure statement hearing with the plan confirmation hearing after conditional approval of the disclosure statement. The United States Trustee can provide additional information about the fast track procedures.

Small business debtors may use optional Official Forms for the disclosure statement and plan. See Fed. R. Bankr. P. 9009 and Fed. R. Bankr. P. 3016(d). Small business debtors may use Official Form B25A for the plan and Official Form B25B for the disclosure statement. Small business debtors may also request that the court dispense with the requirement of a separate disclosure statement or conditionally approve a disclosure statement if certain requirements are satisfied. See Fed. R. Bankr. P. 3016(b) and Fed. R. Bankr. P. 3017.1(a).

Enclosed are two documents regarding information that should be included in Chapter 11 disclosure statements and plans of reorganization. The first document, prepared by the bankruptcy judges for the District of Oregon, Portland Division, describes common omissions in Chapter 11 disclosure statements and plans of reorganization. The second document, prepared by the United States Trustee, discusses information that the United States Trustee believes should appear in disclosure statements.

ROBERT D. MILLER JR.
Acting United States Trustee

PAMELA J. GRIFFITH
Assistant United States Trustee

Attachments: District of Oregon Authorized Depositories
United States Trustee Monthly Financial Reports
Common Omissions in Chapter 11 Disclosure Statements and Plans of Reorganization
United States Trustee's guidelines on disclosure statements