

UNITED STATES TRUSTEE

DISTRICT OF OREGON

EUGENE DIVISION



CHAPTER 11 GUIDELINES

Visit our website at <http://www.justice.gov/ust/r18/eugene/chapter11.htm>

United States Trustee
Wayne L. Morse Courthouse
405 East 8th Avenue, Suite 1100
Eugene, OR 97401-2706

541-465-6330 (phone)
541-465-6335 (fax)

TO: CHAPTER 11 DEBTORS, ATTORNEYS, AND TRUSTEES

The U.S. Trustee Program is a component of the U.S. Department of Justice responsible for overseeing the administration of bankruptcy cases. The U.S. Trustee for the District of Oregon has developed these Chapter 11 Guidelines to assist debtors in meeting their obligations while in Chapter 11.

The debtor and debtor's counsel will receive two sets of U.S. Trustee forms with these Guidelines. The first set is referred to as the **Initial Reporting Requirements** and the second as the **Monthly Financial Report** forms. The Guidelines explain the purpose and use of these forms.

The Guidelines make reference to the Local Rules of Bankruptcy Procedure (Local Rules) for the District of Oregon. A copy of the Local Rules may be downloaded from the U.S. Bankruptcy Court's website at www.orb.uscourts.gov.

The U.S. Trustee reserves the right to revise, modify, or amend these guidelines and requirements from time to time and, as is appropriate, in an individual case.

REQUIREMENT TO SERVE DOCUMENTS ON U.S. TRUSTEE

The Federal Rules of Bankruptcy Procedures (FRBP) and the Local Rules require a debtor to timely serve the U.S. Trustee with copies of documents filed in the case. Documents served on the Eugene Division of the U.S. Trustee should be mailed to:

**United States Trustee
Wayne L. Morse Courthouse
405 East 8th Avenue, Suite 1100
Eugene, OR 97401-2706**

If service is allowed electronically, documents should be sent to the following e-mail address:

USTPRegion18.EG.ECF@usdoj.gov (ECF mailbox for the U.S. Trustee in Eugene)

EMPLOYMENT & COMPENSATION OF PROFESSIONALS

The employment and compensation of any professional must be approved by the court. Fed. R. Bankr. Pro., Rules (FRBP) 2014(a), 9034(d), and 9034(e) require the debtor to timely serve the U.S. Trustee with all applications for employment or compensation of professionals. Local Bankruptcy Rules (LR) 2014-1 and 2016-1 also govern the employment and compensation of professionals.

COURT APPROVAL AND/OR NOTICE REQUIRED FOR CERTAIN TRANSACTIONS

The U.S. Trustee's staff do not provide legal advice. The debtor should consult with counsel when a question arises about whether court approval and/or a notice is required for a specific transaction. The following transactions generally require Court approval:

- Using cash collateral (funds encumbered by a security interest)
- Making a payment on a pre-petition unsecured debt
- Hiring a professional, such as an attorney, accountant, realtor, appraiser, auctioneer, business consultant, engineer, or other professional
- Making a payment to a professional, such as an attorney, accountant, realtor, appraiser, auctioneer, business consultant, engineer, or other 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

**THE DEBTOR IS A
FIDUCIARY**

Chapter 11 provides an opportunity for a debtor to reorganize debts while continuing to operate. The debtor, often with the participation of creditors, develops a plan of reorganization for payment of all or a portion of debts. The "debtor in possession" may continue to operate pending approval of a plan of reorganization, unless the court authorizes the appointment of a Chapter 11 trustee. A debtor in possession has a fiduciary duty to creditors, much the same as a Chapter 11 trustee.

**BOOKS AND
RECORDS**

The debtor's accounting records must establish a clear cut-off between financial transactions that occur before the Chapter 11 filing, and those that occur after the filing. LR 2015-2(a). The debtor's balance sheet and income statement should 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.

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 U.S.C. § 341(a). See LR 2002-1(a)(3). Additional requirements regarding noticing are specified in LR, Rules 2002-1 and 2002-2.

**INITIAL
REPORTING
REQUIREMENTS**

The debtor's **Initial Reporting Requirements** are due immediately after a the debtor filed a Chapter 11 case, but not later than the date of the Initial Debtor Interview (discussed below). The **Initial Reporting Requirements** are intended to provide the U.S. Trustee with information about the debtor's affairs and to ensure the debtor meets certain obligations of a Chapter 11 debtor, as set forth below.

Banking Requirements

Unless the court orders otherwise, 11 U.S.C. § 345(b) requires a Chapter 11 debtor to protect bankruptcy estate funds by depositing them in a financial institution that will collateralize or bond the debtor's funds in favor of the United States to the extent that the funds are not otherwise insured, guaranteed, or backed by the United States. The **Initial Reporting Requirements** includes a list of authorized depositories/banks that have entered into an agreement with the U.S. Trustee with respect to this requirement. A debtor should deposit bankruptcy estate funds with a depository on this list. The debtor must contact the U.S. Trustee immediately if the debtor intends to use an account at an institution not on the list of authorized depositories. The debtor also must notify the U.S. Trustee within 5 business days of any change of bank accounts, and must provide proof of compliance with § 345(b) for each new account.

The debtor, upon filing bankruptcy, must immediately close all existing bank accounts and open a minimum of three new accounts: 1) General; 2) Payroll; and 3) Tax accounts. LR 2015-2(b). New signature cards or account agreements, and checks, must state that the owner is a "debtor-in-possession." See LR 2015-2(b). All receipts must be deposited in the "debtor-in-possession" accounts, and all disbursements must be by checks or debit card withdrawals drawn on such accounts. Depositories are to be instructed that the debtor's bank statements must report account activity on a full calendar month basis.

**INITIAL
REPORTING
REQUIREMENTS
(continued)**

Proof of Insurance

The debtor is required to maintain adequate insurance to protect estate assets. Such insurance should include, as appropriate, all or a combination of fire and extended liability insurance, general liability insurance, worker's compensation and unemployment insurance, employee health insurance, malpractice insurance, product liability insurance, liquor or dramshop insurance, contractor or employee fidelity bonds, and 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.

Within 10 days after filing the petition, the debtor shall provide the U.S. Trustee with adequate proof of insurance as specified in the instructions on *Summary of Insurance* on Page 2 of the ***Initial Reporting Requirements***. 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 U.S. Trustee on the cancellation notice for each insurance policy. Upon expiration or other termination of any coverage, the debtor shall immediately provide the U.S. Trustee with proof of replacement coverage.

**INITIAL DEBTOR
INTERVIEW**

Within 15 days of filing a Chapter 11 case, the U.S. Trustee will schedule an initial debtor interview (IDI) with the debtor and the debtor's counsel. A person knowledgeable about the debtor's accounting operations should attend the IDI on behalf of the debtor. During the IDI, the U.S. Trustee's representative will ask questions about the debtor's accounting records, bank accounts, insurance, 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 to the U.S. Trustee.

It is important that business owners and managers are aware of the importance of implementing proper internal controls to protect estate assets from loss. Experience has demonstrated that business accounting practices and procedures often are inadequate to deter and/or detect employee thefts or errors. This may be especially true during the difficult periods just before and after a bankruptcy filing.

The U.S. Trustee Program does not evaluate the debtor's internal controls in detail. However, internal controls may be discussed at the IDI and a supplement to these guidelines may be provided to the debtor in an attempt to educate the debtor about the need to adequately safeguard estate assets and to permit the debtor to evaluate the debtor's internal controls. This is done to encourage business owners and managers to consider whether events surrounding the bankruptcy have left the business vulnerable to a potential loss of assets. An owner or manager can reduce the potential of such a loss by separating employee duties and implementing other basic internal controls.

MEETING OF CREDITORS

The debtor or debtor's representative will be examined under oath by the U.S. 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 the case is filed if the meeting is held at a location not regularly staffed by the U.S. Trustee. Attendance by the debtor is mandatory, and both spouses must appear if the case is a joint filing. 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, one of the general partners must appear.

If the debtor is an individual, the debtor must provide proof of identification and social security number at the meeting of creditors. 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. FRBP 4002(b).

MONTHLY FINANCIAL REPORTS

The debtor is required to file a detailed financial report for each full calendar month. See 11 U.S.C. § 1106(a)(1), FRBP 2015, and LR 2015-1(b)(1). A partial month's report may be filed if the first or last month of the bankruptcy is not a full calendar month.

The monthly reports are based on a calendar month basis and are due by the 21st day of the succeeding month. LR 2015-1(b)(1). 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. Small business debtors should refer to FRBP 2015(a)(6) to determine when the first monthly financial report is due.

Monthly financial reports are prepared using the forms designated by the United States Trustee, LR 2015-1(b)(1), or, for small business debtors, on the required Official Form (see paragraph below).

For questions regarding monthly reports, call the U.S. Trustee's office and ask for the Bankruptcy Analyst.

The U.S. Trustee has five versions of the **Monthly Financial Report** forms: The UST-10 (Corporate and Partnership); UST-20 (Non-Operating Corporation or Partnership); UST-30 (Individual Engaged in Business); UST-50 (Individuals not Engaged in Business); and Official Form B25C. Copies of the forms can be found on the [Chapter 11](#) page of the U.S. Trustee Eugene Division website. A copy of the form that the U.S. Trustee believes is appropriate for this case is attached.

Please note that the debtor is to attach copies of bank statements to the copy of the report served on the U.S. Trustee and the committee. **The debtor should not attach bank statements to the original report that is filed with the Court.** When appropriate, the debtor may supplement the U.S. Trustee's forms with its own accounting schedules or lists to provide the detailed information required.

TAXES

The debtor must timely file all tax returns and reports for post-petition obligations and pay any liability in full. Such taxes include, but are not limited to, federal and state payroll withholding taxes; FICA taxes; federal and state unemployment 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 debtor's payroll. The debtor should timely file reports for, but not pay (unless authorized by court order), all pre-petition taxes.

SMALL BUSINESS DEBTORS

The term "small business debtor" is defined in 11 U.S.C. § 101(51D). Among other things, small business debtors have additional initial filing requirements and other duties as specified in 11 U.S.C. § 1116. As discussed above, they use different monthly financial report forms.

**INDIVIDUAL
CHAPTER 11
DEBTORS**

For individual Chapter 11 debtors, earnings for services performed after the commencement of the Chapter 11 case are property of the bankruptcy estate. 11 U.S.C. § 1115. Individual Chapter 11 debtors should review IRS Publication 908, Bankruptcy Tax Guide, for further details. This publication can be viewed and downloaded from the IRS website www.irs.gov using the Forms and Publications search function.

**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. FRBP 2015.3. The first report must be filed no later than seven 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.

The periodic reports required by FRBP 2015.3 must be prepared on Official Form B26. Copies of the report must be served on the U.S. Trustee, the committee of unsecured creditors, and any parties in interest that have filed a request to receive copies of the report.

**CHANGE OF
ADDRESS**

The debtor must provide written notification to the court and the U.S. Trustee of any change of address. See LR 2002-1(g)(1) for change of address procedures.

**U.S. DEPT. OF
JUSTICE
WEBSITES**

United States Trustee, Eugene Division
District of Oregon
www.justice.gov/ust/r18/eugene/index.htm

Executive Office for United States Trustees
www.justice.gov/ust

United States Department of Justice
www.justice.gov

**STATUTORY
QUARTERLY
FEES**

Chapter 11 debtors must pay quarterly fees to the U.S. Trustee until the case is closed, converted to another chapter, or dismissed. 28 U.S.C. § 1930(a)(6). The Code further provides that for a plan to be confirmed, all quarterly fees must be paid timely or the plan must provide for payment of all fees on the effective date of the plan. 11 U.S.C. § 1129(a)(12). Failure to pay quarterly fees is cause for conversion or dismissal of a Chapter 11 case. 11 U.S.C. § 1112(b)(4)(K).

The fee for each calendar quarter is based on total disbursements made by the debtor's estate during the quarter, including disbursements made by another party for the debtor. The fee is calculated as follows:

STATUTORY FEE SCHEDULE		
If disbursements for the calendar quarter are within these amounts. . .		Then the quarterly fee due is. . .
From	To	
\$ -0-	\$14,999.99	\$325
\$15,000	\$74,999.99	\$650
\$75,000	\$149,999.99	\$975
\$150,000	\$224,999.99	\$1,625
\$225,000	\$299,999.99	\$1,950
\$300,000	\$999,999.99	\$4,875
\$1,000,000	\$1,999,999.99	\$6,500
\$2,000,000	\$2,999,999.99	\$9,750
\$3,000,000	\$4,999,999.99	\$10,400
\$5,000,000	\$14,999,999.99	\$13,000
\$15,000,000	\$29,999,999.99	\$20,000
\$30,000,000	and above	\$30,000

**For calendar
quarter ending...**

**A fee payment
is due on...**

March 31. April 30
June 30. July 31
September 30. October 31
December 31. January 31

Send your payment and
quarterly fee payment stub
ONLY

* * * * *

Mail quarterly fee payments, with the proper
transmittal form, to:

**US Trustee Payment Center
Post Office Box 530202
Atlanta, GA 30353-0202**

Any disbursement stubs, monthly
operating
reports, correspondence, court notices,
etc., sent
to the lockbox **will be destroyed.**

**POST-
CONFIRMATION
INFORMATION
REQUIRED BY U.S.
TRUSTEE**

Each post-confirmation quarterly report filed with the U.S. Trustee shall also include the following information for purposes of calculating the statutory fees due pursuant to 28 U.S.C. § 1930(a)(6):

- 1) a disbursement total for each month of the 3-month period (the sum of payments made pursuant to the plan plus all other disbursements, whether made by the debtor or by a third party on behalf of the debtor);
- 2) a detailed list of disbursements made during each month of the 3-month period; and,
- 3) copies of the monthly bank statements.

**NOTICE OF
INTEREST
ASSESSMENT**

Pursuant to 31 U.S.C. § 3717, the United States Trustee Program began assessing interest on unpaid Chapter 11 quarterly fees charged in accordance with 28 U.S.C. § 1930(a) effective October 1, 2007. The interest rate assessed is the rate in effect as determined by the Treasury Department at the time the account becomes past due.

**COLLECTION OF
DELINQUENT
QUARTERLY FEES**

This notice is to advise debtors of the U.S. Trustee's procedures for collecting delinquent quarterly fees:

NOTICE

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, 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.
