

UNITED STATES TRUSTEE

WESTERN DISTRICT OF WASHINGTON



CHAPTER 11 GUIDELINES

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

United States Trustee
United States Courthouse
700 Stewart Street, Suite 5103
Seattle, WA 98101-1271

206-553-2000 (phone)
206-553-2566 (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. As part of his oversight responsibility, the U.S. Trustee for the Western District of Washington 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 groups of U.S. Trustee forms with these Guidelines. The first group 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 each group of forms.

The Guidelines make reference to the Local Rules of Bankruptcy Procedure for the Western District of Washington. A copy of the Local Rules may be downloaded from the U.S. Bankruptcy Court's website at: **www.wawb.uscourts.gov**. A pre-printed copy may be obtained from the U.S. Bankruptcy Court Clerk's Offices located in Seattle and Tacoma, WA.

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 all documents filed in the case.

EMPLOYMENT & COMPENSATION OF PROFESSIONALS

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

COURT APPROVAL REQUIRED FOR CERTAIN TRANSACTIONS

The U.S. Trustee's staff do not provide legal advice to a debtor. The debtor should consult with its counsel when a question arises about whether court approval 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; and,
- Entering into a contract, lease, or settlement agreement with another party.

**THE DEBTOR IS A
FIDUCIARY**

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

Duty To Keep Records and File Reports

11 U.S.C. § 1106(a)(1) of the Bankruptcy Code (Code), which incorporates § 704(8) of the Code, and FRBP 2015 require a chapter 11 debtor to maintain detailed records and to file timely financial reports. Local Rule 2015-1(a) further specifies the monthly financial information and disclosure that a debtor must provide to the court, the U.S. Trustee, and creditors.

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 on and after the date of filing. Typically, a debtor will establish a separate set of general ledger accounts to record its post-filing transactions.

**INITIAL REPORTING
REQUIREMENTS**

The debtor's ***Initial Reporting Requirements*** are due immediately after a chapter 11 case has been filed 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 and to ensure the debtor meets these chapter 11 requirements:

Banking Requirements

§ 345(b) of the Code requires a chapter 11 debtor to protect its creditors' interests by depositing bankruptcy funds in a financial institution that will collateralize or bond the debtor's funds in favor of the United States. The financial institution must be approved by the U.S. Trustee in the district where the bankruptcy case is filed.

The ***Initial Reporting Requirements*** include a list of banks approved by the U.S. Trustee for cases filed in this district. In addition, specific instructions for complying with § 345(b) may be found on *UST-2, Collateralization Certificate*, also included in the ***Initial Reporting Requirements***.

The debtor's bank statements must report account activity on a full calendar month basis. The debtor is required to 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.

Federal Income Tax Return

Local Rule 2015-1(b) requires the debtor or chapter 11 trustee to file, and serve on the U.S. Trustee, a copy of the debtor's most recent federal income tax return within 14 days after entry of the order for relief. Under the Rule, the debtor must also file and serve its returns for each subsequent year whenever such return are submitted to the Internal Revenue Service.

**INITIAL REPORTING
REQUIREMENTS
(cont'd.)**

Proof of Insurance

The debtor is required to maintain adequate insurance to preserve the interests of its creditors by protecting estate assets. Such insurance may include a combination of commercial, extended, liquor, automobile, or product liability; property insurance; worker's compensation; malpractice insurance; contractor or employee fidelity bonds; or other coverage customary in the debtor's business.

The debtor shall provide the U.S. Trustee with adequate proof of insurance as specified in the instructions on *UST-3, Summary of Insurance* in the ***Initial Reporting Requirements***. Further, upon expiration or termination of any insurance coverage, the debtor shall immediately provide the U.S. Trustee with proof of renewal or replacement of the insurance.

**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. 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.

The IDI will include a brief discussion of 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. A common type of loss involves employee theft, which can occur when an employee has too much control over cash and accounting functions. 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

Section 341(a) of the Code requires the U.S. Trustee to convene and preside over a meeting of creditors within 40 days after the filing of a chapter 11 case.

The meeting provides an opportunity for creditors and the U.S. Trustee to examine the debtor under oath, with the debtor's counsel present. Attendance by the debtor is mandatory, and if the case is a joint filing both spouses must 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, one of the general partners must appear.

**MONTHLY FINANCIAL
REPORTS**

The debtor is required to file a detailed financial report for each full calendar month. A partial month's report may be filed if the first or last month of the bankruptcy is not a full calendar month.

The debtor's financial reports shall be prepared on the U.S. Trustee's ***Monthly Financial Report*** forms. 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.

**LOCAL RULE 2015-1(a)
PRE-CONFIRMATION
REPORTS**

Confirmation is the court's approval of a plan of reorganization. Under the Local Rules, the debtor has different financial reporting obligations before and after the date of confirmation.

Local Rule 2015-1(a) applies to the debtor's pre-confirmation reports. It requires a chapter 11 debtor or trustee to file with the court and serve on the U.S. Trustee and **each member** of any committees elected or appointed pursuant to the Bankruptcy Code and to their authorized agents, a monthly financial report. Each report is due by the 14th day of the subsequent month and, except as otherwise ordered by the court, must include the following:

- 1) balance sheet;
- 2) income statement;
- 3) statement of cash receipts and disbursements;
- 4) statement of accrued receivables. The statement shall disclose amounts considered to be uncollectible;
- 5) statement of post-petition accrued payables, including professional fees. The statement shall list the name of each creditor and the amounts owing and remaining unpaid for over thirty days;
- 6) tax disclosure statement. The statement shall list post-petition taxes due or tax deposits required, the name of the taxing agency, the amount due, the date due, and an explanation for any failure to make such payments or deposits;
- 7) compensation statement. The statement shall disclose the amount of compensation paid to all insiders, as defined in 11 U.S.C. §§ 101(31).

Instructions for where to file monthly financial reports may be found on the last page of the **Monthly Financial Report** forms.

**LOCAL RULE 2015-1(c)
POST-CONFIRMATION
REPORTS**

Local Rule 2015-1(c) applies to the debtor's post-confirmation reports, and provides that, if an application for a final decree has not been filed within 3 months after confirmation of a chapter 11 plan, then a chapter 11 plan proponent shall file and mail to the U.S. Trustee a post-confirmation report within 3 months after entry of the order confirming the plan of reorganization, and every 3 months thereafter until a final decree has been entered. The post-confirmation report shall disclose progress of the plan toward consummation and shall include the following:

- 1) a summary, by class, of amounts distributed or property transferred to each recipient under the plan, and an explanation of the failure to make any distributions or transfers of property under the plan;
- 2) debtor's projections as to its continuing ability to comply with the terms of the plan;
- 3) a report of any pending or anticipated litigation, including the nature of each matter, the parties involved, and an estimated date when the matter will be resolved;
- 4) a description of any other factors that may materially affect the debtor's ability to consummate the plan;
- 5) an estimated date when an application for final decree will be filed with the court.

**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.

**STATUTORY QUARTERLY
FEES**

28 U.S.C. § 1930(a)(6) requires a chapter 11 debtor to pay quarterly fees to the U.S. Trustee until a final decree is entered administratively closing the case, or until the case is converted to another chapter or dismissed. 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. Failure to pay quarterly fees is cause for conversion or dismissal of a chapter 11 case.

The fee for each calendar quarter is based on total payments made by the debtor's estate during the quarter, including payments 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 or more		\$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**

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

Mail quarterly fee payments to:

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

**NOTICE OF INTEREST
ASSESSMENT**

Pursuant to 31 U.S.C. §3717, the United States Trustee Program will begin 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 your account becomes past due.

**COLLECTION OF
DELINQUENT QUARTERLY
FEES**

This notice is to advise the debtor 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.

CHANGE OF ADDRESS

The debtor must provide written notification to the court and the U.S. Trustee of any change of address within 10 business days of the change.

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

United States Trustee,
Western District of Washington
<http://www.justice.gov/ust/r18/index.htm>

Executive Office for United States Trustees
<http://www.justice.gov/ust>

United States Department of Justice
<http://www.justice.gov>