

UNITED STATES TRUSTEE

DISTRICT OF OREGON

PORTLAND DIVISION



CHAPTER 11 GUIDELINES

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

United States Trustee
620 SW Main St., Suite 213
Portland, OR 97205

503-326-4000 (phone)
503-326-7658 (fax)

TO: CHAPTER 11 DEBTORS, ATTORNEYS, AND TRUSTEES

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

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.

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 and, as is appropriate, in an individual case.

REQUIREMENT TO SERVE DOCUMENTS ON UNITED STATES TRUSTEE

The Federal Rules of Bankruptcy Procedures (Fed. R. Bankr. P.) and the Local Rules require a debtor to timely serve the United States Trustee with copies of documents filed in the case. Documents served on the Portland Division of the United States Trustee should be mailed to:

**United States Trustee
620 SW Main St., Suite 213
Portland, OR 97205**

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

USTPRegion18.PL.ECF@usdoj.gov (ECF mailbox for the United States Trustee in Portland)

COURT APPROVAL AND/OR NOTICE REQUIRED FOR CERTAIN TRANSACTIONS

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)
- Making a payment on a pre-petition unsecured debt
- Hiring a professional, such as an attorney, accountant, realtor, appraiser, auctioneer, business consultant, 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 under which to repay 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 trustee under Chapter 11. 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. Local Rule 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 Local Rule 2002-1(a)(3). Additional requirements regarding noticing are specified in Local Rules 2002-1 and 2002-2.

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 accompanying list reflects authorized depositories/banks that have entered into an agreement with the United States Trustee with respect to this requirement. Debtors should deposit bankruptcy estate funds with a depository on this list. The debtor must contact the United States Trustee immediately if the debtor is using an account at an institution not on the list of authorized depositories. The debtor also must notify the United States Trustee within 5 business days of any change of bank accounts, and must provide proof of compliance with § 345(b) for each new account.

Upon filing, the debtor must promptly withdraw all monies from all pre-petition deposit accounts and open new deposit accounts, including general, payroll, and tax accounts, if appropriate. Local Rule 2015-2(b). New signature cards or account agreements, and checks, must state that the owner is a "debtor-in-possession." See Local Rule 2015-2(b). All receipts must be deposited in the "debtor-in-possession" accounts, and all disbursements must be drawn on such accounts by check, debit card, or other form of withdrawal approved by the United States Trustee. Depositories are to be instructed that the debtor's bank statements must report account activity on a full calendar month basis.

INSURANCE REQUIREMENTS

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.

The debtor must provide the United States Trustee with adequate proof of insurance. 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.

INITIAL DEBTOR INTERVIEW

Generally, within 15 days of filing a Chapter 11 case, the United States Trustee will conduct an initial debtor interview (IDI) with the debtor and the debtor's counsel. The debtor should complete and return the United States Trustee's Initial Reporting Requirements form by the time of the IDI. 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, 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 United States Trustee.

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.

The United States Trustee Program believes it is important that business owners and managers be aware of the need to ensure that proper internal controls are in place 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 United States 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 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 the case is filed if the meeting is held at a location not regularly staffed by the United States 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. Fed. R. Bankr. P. 4002(b).

**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 and are due by the 21st day of the succeeding month, Local Bankruptcy Rule 2015-1(b)(1). 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. 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.

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 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. Fed. R. Bankr. P. 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 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.

**CHANGE OF
ADDRESS**

The debtor must provide written notification to the court and the United States Trustee of any change of address. See Local Rule 2002-1(g)(1) for change of address procedures.

**STATUTORY
QUARTERLY
FEES**

Chapter 11 debtors must pay quarterly fees to the United States 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).

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). 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.

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

**COLLECTION OF
DELINQUENT
QUARTERLY FEES**

The following notice is to advise debtors of the United States 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.

**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).

Attached 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.

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