

UNITED STATES TRUSTEE

DISTRICT OF MONTANA

CHAPTER 11 GUIDELINES AND REPORTING REQUIREMENTS FOR CHAPTER 11 DEBTORS

**Office of the United States Trustee
Liberty Center, Suite 204
301 Central Avenue
Great Falls, MT 59401**

**406-761-8777 (phone)
406-761-8895 (fax)**

TO: CHAPTER 11 DEBTORS, ATTORNEYS, AND TRUSTEES

The United States 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 United States Trustee ("UST") for the District of Montana 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 UST forms with these Guidelines. The first group is referred to as the **Initial Reporting Requirements** and the second as the **Monthly Operating 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 District of Montana. A copy of the Local Rules may be downloaded from the U.S. Bankruptcy Court's website at: www.mtb.uscourts.gov.

REQUIREMENT TO PROVIDE COPIES OF DOCUMENTS TO U.S. TRUSTEE

The Federal Rules of Bankruptcy Procedures (FRBP) and the Local Rules require a debtor to timely provide the UST with copies of all documents filed in the case. Documents served on the UST should be directed to:

**Office of the United States Trustee
Liberty Center, Suite 204
301 Central Avenue
Great Falls, MT 59401**

EMPLOYMENT & COMPENSATION OF PROFESSIONALS

The employment and compensation of any professionals (including, but not limited to attorneys, accountants, appraisers, realtors, consultants and auctioneers) must be approved by the Court. FRBP 2014(a) and 9034(d) and (e) require the debtor to timely serve the UST with all applications for employment or compensation of professionals. Generally, professionals will not be compensated for services rendered prior to court approval. It should be noted that a corporate or partnership debtor must be represented by an attorney; such debtor may not represent itself without counsel.

COURT APPROVAL REQUIRED FOR CERTAIN TRANSACTIONS

The UST'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 securing a loan);
- Making a payment on a prepetition debt;
- Hiring a professional, such as an attorney, accountant, realtor, appraiser, auctioneer, business consultant, or engineer;
- Making a payment to a professional, such as an attorney, accountant, realtor, appraiser, auctioneer, business consultant, or engineer;
- 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, to not take actions that impair the rights or financial position of its creditors.

**DUTY TO KEEP RECORDS
AND FILE REPORTS**

11 U.S.C. § 1106(a)(1), which incorporates 11 U.S.C. § 704(8) of the Code, and FRBP 2015 require a chapter 11 debtor to maintain detailed records and to file timely financial reports.

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.

BANK ACCOUNTS

Upon the filing of the petition, a debtor must close existing bank accounts and establish bank accounts that identify them as a debtor-in-possession for the making of operating disbursements. Generally, this will require the opening of one or more new bank accounts. All accounts must be fully FDIC or FSLIC insured in a depository which agrees to pledge collateral for any funds on deposit in excess of FDIC or FSLIC coverage. The checks for each account must bear the name of the debtor, the designation "Debtor in Possession", the bankruptcy case number, the type of account, and must be prenumbered. The debtor must also ensure that the depository changes the account title to reflect the debtor's name along with the phrase "Debtor in Possession" and that the depository is aware of the collateralization requirement. Depositories are to be instructed that bank account statements are to run for the period beginning on the first day and ending on the last day of each calendar month.

**INITIAL REPORTING
REQUIREMENTS**

Initial Reports

11 U.S.C. § 1116 (1) (A) and § 308 (b) require a "small business" chapter 11 debtor to attach to its petition the following:

- 1) its most recent balance sheet;
- 2) its most recent income statement;
- 3) its most recent cash flow statement; and
- 4) its most recent federal income tax return.

Reporting requirements to be provided by all chapter 11 debtors to the UST not later than the date of the Initial Debtor Interview (see below) are:

- 1) bank statements for the two months prior to the date of the filing;
- 2) year-end financial statements for the last two years, including annual balance sheets, income statements, and cash flow statements; and
- 3) a six month cash projection and budget in the form provided by UST-4;
- 4) proof of establishment of a debtor in possession bank account.

The ***Initial Reporting Requirements*** Form UST-1 contains a complete list of the initial reporting requirements, together with certain of the forms, as discussed below.

Banking Requirements

11 U.S.C. 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 UST in the district where the bankruptcy case is filed.

The **Initial Reporting Requirements** Form UST-1 includes a list of banks approved by the UST for cases filed in this district. In addition, specific instructions for complying with § 345(b) may be found on *UST-2, the Collateralization Certificate*, which is also included in the **Initial Reporting Requirements** group of materials.

The debtor's bank statements must report account activity on a full calendar month basis. The debtor is required to notify the UST within 5 business days of any change of bank accounts, and must provide proof of compliance with § 345(b) for each new account.

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 UST with adequate proof of insurance as specified in the instructions on *UST-3, Summary of Insurance* in the **Initial Reporting Requirements** group of materials. Such proof of insurance shall consist of certificates of insurance or binders 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 United States Trustee as an addressee for all notices for each insurance policy. Further, upon expiration or termination of any insurance coverage, the debtor shall immediately provide the UST with proof of renewal or replacement of the insurance.

INITIAL DEBTOR INTERVIEW

Within 15 days of filing a chapter 11 case, the UST will schedule an initial debtor interview (IDI) with the debtor and the debtor's counsel. A member of senior management of the debtor is required to attend the IDI.

The IDI will include a discussion of the debtor's business history and current financial and operating status, together with a discussion of the financial statements and projections provided as part of the Initial Reporting Requirements. Such discussion will include debtor's assessment of the cause of the present difficulties and debtor's initial thoughts on how these will be remedied.

During the IDI, the UST's representative will also 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.

MEETING OF CREDITORS

11 U.S.C. § 341(a) requires the UST to convene and preside over a meeting of creditors within 40 days after the filing of a chapter 11 case. A member of senior management of the debtor is required to attend the meeting of creditors.

The meeting provides an opportunity for creditors and the UST 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. It should be noted that a corporate or partnership debtor must be represented by an attorney.

MONTHLY OPERATING REPORTS REQUIRED BY UST

The debtor is required to file a detailed operating 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 UST's **Monthly Operating Report** forms. When appropriate, the debtor may supplement the UST's forms with its own accounting schedules or lists to provide the detailed information required, if approved by the UST.

Chapter 11 debtors are required to file a Monthly Operating Report with the court electronically and serve the same on the UST and **each member** of any committees elected or appointed pursuant to the Bankruptcy Code and to their authorized agents. Each report is due by the 14th day of the month following the month reported upon and, except for "small business" chapter 11 debtors ("small business" debtors have their own reporting forms), must include the following:

- 1) comparative balance sheet;
- 2) comparative income statement;
- 3) statement of cash receipts and disbursements;
- 4) statement of aged receivables (the statement shall also disclose amounts considered to be uncollectible);
- 5) statement of postpetition aged payables, including professional fees (the statement shall list the name of each creditor and the amounts owing);
- 6) statement of operations, taxes, insurance and personnel.

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

Monthly Operating Reports are signed under penalty of perjury by the debtor individually or, in the case of a corporation, by a corporate officer or, in the case of a partnership, by a general partner. Debtor's counsel may not sign a Monthly Operating Report for the debtor.

POST-CONFIRMATION REPORTS

Confirmation is the court's approval of a plan of reorganization.

Debtor's reporting obligation following the date of confirmation is abbreviated to provision of a monthly statement of cash receipts and disbursements (item 3 under "Monthly Operating Reports Required by UST" above).

STATUTORY QUARTERLY FEES

28 U.S.C. § 1930(a)(6) requires a chapter 11 debtor to pay quarterly fees to the UST until a final decree is entered administratively closing the case, or until the case is converted to another chapter or dismissed. The Bankruptcy Code further provides that in order 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 timely pay quarterly fees is cause for conversion or dismissal of a chapter 11 case.** Additionally, pursuant to 31 U.S.C. § 3717, fees paid after the due date are subject to an interest charge at the rate in effect as determined by the Treasury Department at the time the account becomes past-due. If payment of the full principal amount past due is received within thirty (30) days of the date of the notice of initial interest assessment, the interest assessed will be waived.

The fee for each calendar quarter is based on total disbursements made from the debtor's estate during the quarter, including payments made by another party for the debtor. Debtors will receive billing for quarterly fees approximately the middle of the month following the end of the calendar quarter. 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

Mail quarterly fee payments to:

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

**COLLECTION OF
DELINQUENT QUARTERLY
FEES**

This notice is to advise the debtor of the UST'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.

**TAXES AND OTHER
POSTPETITION DEBTS**

All tax returns and reports for all postpetition tax obligations shall be timely filed and accompanied by payment in full of any liability. Such taxes include, but are not limited to, federal and state income taxes, payroll withholding taxes, FICA taxes, federal and state unemployment insurance, real property taxes, personal property taxes and sales and use taxes. The debtor shall timely file returns for, but not pay, all pre-petition taxes.

The debtor must pay in full when due all obligations arising out of its postpetition operations.

CHANGE OF ADDRESS

The debtor must provide written notification to the Court and the UST of any change of address within 10 business days of the change.

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

United States Trustee,
District of Montana
<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>