

# UNITED STATES TRUSTEE

## REGION 18 DISTRICT OF OREGON



## CHAPTER 11 GUIDELINES

For additional information visit our website at: <http://www.justice.gov/ust-regions-r18>

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**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 the Region 18 United States Trustee's oversight responsibility, these Chapter 11 Guidelines to assist debtors in meeting their obligations while in Chapter 11.

The United States Trustee will provide the debtor and debtor's counsel with two sets of forms with these Guidelines: the **Initial Reporting Requirements**; and the **Monthly Financial Report** forms. These Guidelines explain the purpose and use of each set of forms. **The Initial Reporting Requirements are attached.**

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 a case or to request other relief.

**THE DEBTOR IN  
POSSESSION IS A  
FIDUCIARY**

Chapter 11 provides an opportunity for a debtor to reorganize its debts while continuing to operate. With the filing of a voluntary Chapter 11 petition, a debtor becomes a new entity called a debtor in possession. The debtor in possession, often with the participation of creditors, develops a plan of reorganization of its business and financial affairs and for payment of its debts. The debtor in possession may continue to operate pending approval of its plan of reorganization, unless the court orders 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 preserve and maintain the bankruptcy estate and to operate its business efficiently to maximize ultimate payments on pre-petition debts while keeping post-petition debts current.

**COURT APPROVAL  
REQUIRED FOR CERTAIN  
TRANSACTIONS**

The United States Trustee's staff shall 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 action. The following matters 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 settlement agreement with another party.

**EMPLOYMENT &  
COMPENSATION OF  
PROFESSIONALS**

The employment and compensation of any professional must be approved by the court. 11 U.S.C. § 327; Fed. R. Bankr. P. 2014(a).

**INITIAL REPORTING  
REQUIREMENTS**

The debtor must submit the **Initial Reporting Requirements** to the United States Trustee the earlier of the Initial Debtor Interview or **14 days** after the debtor files for Chapter 11 relief. The debtor's Initial Reporting Requirements are not filed with the court. They are intended to provide the United States Trustee with information about the debtor and to ensure the debtor meets its bankruptcy requirements.

**INSURANCE**

The debtor is required to maintain adequate insurance to preserve the interests of its creditors by protecting estate assets. The insurance must include coverage customary in debtor's business and may include a combination of commercial, liquor, automobile, or product liability; property insurance; worker's compensation; malpractice insurance; or contractor or employee fidelity bonds. The debtor's failure to maintain appropriate insurance is cause for dismissal of the case or conversion to Chapter 7. 11 U.S.C. §1112(b)(4)(C).

The debtor must provide the United States Trustee with adequate proof of insurance. The debtor is responsible for including the address of the United States Trustee on the cancellation notice for each insurance policy. Further, before any insurance coverage expires or terminates, the debtor shall provide the United States Trustee with proof of renewal or replacement insurance.

## **BANK ACCOUNTS**

Section 345(b) of the Bankruptcy 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 United States Trustee in the district where the bankruptcy case is filed. The **Initial Reporting Requirements** include a list of banks approved by the United States Trustee for cases filed in this district. Each *Chapter 11 debtor in possession bank account should be opened at one of the institutions on this list.*

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

## **DUTY TO KEEP RECORDS AND FILE 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.

The debtor is required to file a detailed financial report with the court and serve copies on the United States Trustee for each calendar month (or portion of a month) after the petition is filed. The debtor's financial reports shall be prepared on the United States Trustee's **Monthly Financial Report** forms and are due by the 21<sup>st</sup> day of the succeeding month (LBR 2015-1(b)(1)). Failure to timely file required reports is cause for dismissal of the case or conversion to Chapter 7. 11 U.S.C. § 1112(b)(4)(F).

## **TAXES**

The debtor in possession must remain current on all post-petition federal, state and local taxes and file all tax returns on a timely basis. The debtor's failure to timely pay post-petition taxes or to file post-petition tax returns is cause for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(I).

For individual Chapter 11 debtors, after filing bankruptcy earnings for services are property of the bankruptcy estate. 11 U.S.C. § 1115. An individual Chapter 11 debtor 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](http://www.irs.gov)) using the Forms and Publications search function.

## **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.

The small business debtor must use Official Form B 425C 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.

**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 debtor's 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, 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(a) must be prepared on Official Form B 426.

**INITIAL DEBTOR  
INTERVIEW**

Generally within seven to ten 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 IDI will be conducted as soon as practicable after the petition is filed and before the meeting of creditors. Depending on the debtor's location and the nature of its business, the IDI will occur at the debtor's place of business, the office of the United States Trustee or debtor's counsel, or by telephone. 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.

The United States Trustee's bankruptcy analyst will explain the monthly financial reporting requirements and debtor's other obligations, and discuss scheduling matters. The debtor's failure to attend meetings reasonably requested by the United States Trustee is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(H).

**MEETING OF CREDITORS**

The United States Trustee will convene and preside over a meeting of creditors in accordance with the timeline set forth in Fed. R. Bankr. P. 2003(a).

The debtor or debtor's representative will be examined under oath by the United States Trustee and creditors, with the debtor's counsel present. 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 or limited liability company, one of the general partners or managing members must appear and the debtor's attorney must appear.

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

The debtor's failure to attend the meeting of creditors without good cause shown is cause for conversion or dismissal of the case. 11 U.S.C. §1112(b)(4)(G).

**POST-CONFIRMATION REPORTS**

Confirmation is the court’s approval of a plan of reorganization. The Bankruptcy Code and Rules require the debtor to file a Post-Confirmation Quarterly Report for every post-confirmation calendar quarter, including the quarter in which the plan was confirmed and the quarter in which the debtor files its application for final decree. 11 U.S.C. § 1106(a)(7) and Fed. R. Bankr. P. 2015(a)(5). More frequent reporting may be requested on a case-by-case basis.

**REPORTS IN CASES CONVERTED TO CHAPTER 7**

The debtor must file a schedule of unpaid debts incurred after commencement of the Chapter 11 case, within 14 days after entry of an order converting the case to Chapter 7; and a final report and account, within 30 days after entry of the order converting the case. Fed. R. Bankr. P. 1019(5)

**STATUTORY QUARTERLY FEES**

A Chapter 11 debtor must pay quarterly fees to the United States Trustee until the case is dismissed, converted, or closed by final decree. 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). The debtor’s failure to timely 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 payments or disbursements made by the debtor’s estate during the quarter, including payments made by another party for the debtor. The fee is calculated as follows:

**NEW STATUTORY FEE SCHEDULE  
Effective January 1, 2018**

If disbursements for the calendar quarter are within these amounts. . .		Then the quarterly fee due is. . .
From	To	
-0-	\$14,999.99	<b>\$325</b>
\$15,000	\$74,999.99	<b>\$650</b>
\$75,000	\$149,999.99	<b>\$975</b>
\$150,000	\$224,999.99	<b>\$1,625</b>
\$225,000	\$299,999.99	<b>\$1,950</b>
\$300,000	\$999,999.99	<b>\$4,875</b>
\$1,000,000	<b>or more</b>	<b>1% of quarterly disbursements or \$250,000 whichever is less.</b>

<b>For calendar quarter ending . . .</b>	<b>A fee payment is due on . . .</b>	Send your payment and quarterly fee payment stub <b>ONLY</b>
March 31 . . . . .	April 30	* * * * *
June 30 . . . . .	July 31	Any disbursement stubs, monthly operating reports, correspondence, court notices, etc., sent to the lockbox <b><u>will be destroyed.</u></b>
September 30 . . . . .	October 31	
December 31 . . . . .	January 31	

Mail quarterly fee payments to:

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

**NOTICE OF INTEREST  
ASSESSMENT**

**The United States Trustee Program assesses interest on unpaid Chapter 11 quarterly fees charged in accordance with 28 U.S.C. §1930(a)(6). 31 U.S.C. § 3717. 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 United States Trustee's procedures for collecting delinquent quarterly fees:

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**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.

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