

UNITED STATES TRUSTEE

REGION 18
DISTRICT OF MONTANA



CHAPTER 11 GUIDELINES

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

Office of the United States Trustee
Central Plaza, 720 Park Boulevard, Suite 220, Boise, Idaho 83712
208-334-1300 (phone)
208-334-9756 (fax)

**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.

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 14th day of the succeeding month. See Local Bankruptcy Rule 2015-2. 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) 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. Subsequent reports are due by the 14th day of the succeeding month. See Local Bankruptcy Rule 2015-2.

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 B426.

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 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). *Please note that Local Bankruptcy Rule 3022-1 requires monthly reports.*

**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). Debtors must also file amended schedules and statements of income and expenses within 14 days following conversion, as required by Local Bankruptcy Rule 1019-1.

**STATUTORY QUARTERLY
FEES**

Under 28 U.S.C. § 1930(a)(6), a quarterly fee shall be paid to the United States Trustee in each case under Chapter 11 (except small business cases filed under Subchapter V of Chapter 11) for each calendar quarter, or portion thereof, between the date a bankruptcy petition is filed and the date the courts enters a final decree closing the case, dismisses the case, or converts the case to another chapter in bankruptcy. 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 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 in the debtor's case during the quarter, including payments made by another party for the debtor. Additional information concerning the fees may be found at:

<https://www.justice.gov/ust/chapter-11-quarterly-fees>

Effective January 1, 2018, 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	or more	1% of quarterly disbursements or \$250,000, whichever is less

For calendar quarter ending. . .	A fee payment is due on. . .	Send your payment and quarterly fee payment stub ONLY
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March 31April 30
June 30 July 31
September 30 October 31
December 31 January 31

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

Mail quarterly fee payments to:

**United States Trustee Payment Center
Post Office Box 6200-19
Portland OR 97228-6200**

Address for overnight delivery:

**U.S. Bank
Attn: Government Lockbox
U.S. Trustee Payment Center 6200-19
17650 N.E. Sandy Blvd
Portland, OR 97230-5000**

Website address for online payment:

<https://www.pay.gov/public/form/start/672415208>

**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:

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.

ATTACHMENTS

- 1) List of authorized depositories, District of Montana
- 2) Initial Reporting Requirements (Forms UST-1, 1-A and 1-B)
- 3) Monthly Operating Report, Non-Small Business Cases (Forms UST-2, 2-A through 2-D)
- 4) Small Business Monthly Operating Report, Official Form B 425C
- 5) Post-Confirmation Report (Form UST-3)