

Operating Guidelines And Reporting Requirements For Chapter 11 Cases

I. Introduction

Section 586(a)(3) of Title 28 of the United States Code provides that the United States Trustee shall supervise the administration of chapter 11 cases within the region for which such United States Trustee is appointed. Pursuant to that section, Phoebe D. Morse, the United States Trustee for Region I, which is comprised of the judicial districts of the states of Massachusetts, New Hampshire, Rhode Island, and Maine, has promulgated the following requirements for debtors-in-possession and appointed trustees in chapter 11 cases.

Rule 9034 of the Federal Rules of Bankruptcy Procedures ("FRBP") requires that the United States Trustee be kept apprised of all matters pertaining to the case at all times. This includes ensuring that the United States Trustee is served with copies of all papers filed in the case.

Unless specifically directed otherwise, communications to or documents to be served upon the United States Trustee should be directed to the attention of the Assistant United States Trustee for the debtor's district, whose name and address are as follows:

John P. Fitzgerald, Esq.
Acting Assistant United States Trustee
Office of the United States Trustee
537 Congress Street, Suite 303
Portland, ME 04101
Tel: (207) 780-3564
Fax: (207) 780-3568

All certifications, reports, documents, and any other papers required by the Office of the United States Trustee ("OUST") which are to be signed by the debtor must be signed by the debtor or an authorized individual of the debtor. Failure of the debtor or authorized individual to sign, or signing by any other party, including debtor's counsel, will render the document incomplete. Joint debtors may file one set of operating reports each month, but both debtors must sign every report.

Timely compliance with each of the following requirements is mandatory. Failure to comply with any requirement may result in the United States Trustee or other parties moving to dismiss or to convert a case, for the appointment of a trustee or examiner, or the imposition of other sanctions.

Any requests for modification of any of these requirements must be made in writing and approved in writing by the Office of the United States Trustee.

II. Guidelines and Requirements

A. General Requirements

1. The debtor is required to comply in all respects with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of the Bankruptcy Court.
2. Notices and copies of pleadings must be sent to the United States Trustee as required by FRBP 9034. As stated on page 1, these notices and copies of pleadings should be sent to the attention of the Assistant United States Trustee for the debtor's district.
3. The debtor must pay all obligations arising after the filing of the petition ("post-petition") in full when due. Post-petition obligations include but are not limited to:
 - a. General business expenses
 - b. Wages
 - c. FICA taxes (employees' and employer's share)
 - d. Federal, state, and local withholding taxes
 - e. All other taxes
4. The debtor may not, however, pay any professionals, such as attorneys, accountants, or appraisers, without the approval of the United States Bankruptcy Court ("Court"), even though these may constitute general expenses which arise post-petition. Judicial approval of employment of such professionals must be obtained prior to the rendering of any services by such persons to the debtor. Copies of all applications for employment or compensation of professionals must be served upon the United States Trustee.

5. The debtor may not pay pre-petition obligations except as allowed by the Bankruptcy Code or order of the Court. Additionally, no assets may be sold or disposed of, other than in the ordinary course of business, except as allowed by and upon compliance with §363 of the Bankruptcy Code and the Bankruptcy Rules governing sales.
6. The debtor shall file all federal, state, and local tax returns when due, or shall obtain an extension of time from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or by order of the Court.

B. Bank Account Requirements

1. All pre-petition bank accounts over which the debtor has possession, custody, control, ownership, or access must be closed immediately upon the filing of the chapter 11 petition. All funds must be deposited into debtor-in-possession bank accounts. The debtor must maintain debtor-in-possession bank accounts at a depository listed on Attachment 1. The debtor shall open a minimum of three new accounts.
 - a. **Operating Account** - All funds received by the chapter 11 debtor shall be deposited into this account. Under no circumstances may a debtor engage in cash or any other transactions that do not pass through this account.
 - b. **Payroll Account** - At the time payroll is due to be paid, an amount equal to net payroll should be transferred from the Operating Account to this account, from which payroll is to be made. Payroll accounts are only required if the debtor has 10 employees or more, or if the United States Trustee specifically requires such an account in a chapter 11 case having less than 10 employees.
 - c. **Tax Account** - As tax liabilities accrue sufficient funds to cover these liabilities must be transferred from the Operating Account to the Tax Account. Tax liabilities must be timely paid in the manner specified by the appropriate taxing authorities.

In addition, if the debtor uses cash collateral, separate cash collateral accounts must be established and maintained pursuant to 11 U.S.C. §363(c)(4).

2. The debtor must ensure that the depository imprints the name of the debtor, the designation "Debtor-in-Possession", and the case number on all checks. The signature cards for the new bank accounts shall clearly indicate that the debtor is a "Chapter 11 Debtor-in-Possession." Immediately upon receipt, the debtor shall provide to the Office of the United States Trustee copies of the final statements for closed accounts and a voided copy of the first check from each debtor-in-possession account.
3. The debtor shall deposit all receipts and make all disbursements through these accounts. After the opening of the initial debtor-in-possession accounts, no additional debtor-in-possession bank accounts or any other bank accounts shall be opened by or on behalf of the debtor during the pendency of the chapter 11 proceedings without the prior authorization of the United States Trustee and/or the Court. Any funds in excess of those required for current operations should be maintained in either an interest-bearing account; or other investments as permitted by 11 U.S.C. §345(a).
4. If an authorized depository refuses to comply with the United States Trustee Program guidelines, the United States Trustee shall notify the debtor. Upon notice, the debtor must move the accounts to another authorized depository within a reasonable time; such reasonable time shall not exceed 30 days.
5. If a trustee is appointed to succeed a debtor-in-possession, the trustee may continue previously opened debtor-in-possession accounts, but must ensure that the accounts and checks reflect the trustee's name and title along with the name of the debtor and the case number.

C. Insurance Requirements

1. All debtors must maintain insurance and make all insurance premium payments when due. Further, the United States Trustee must receive independent verification from the debtor's insurance carrier that the United States Trustee will be notified of any change, cancellation, or non-renewal of each policy. The loss/payee beneficiary must be changed to add the debtor's name followed by the designation, "Debtor-in-Possession." Affirmations that insurance coverage remain current must be submitted with every monthly operating report.
2. Unless the United States Trustee directs otherwise, the debtor shall maintain at least the following insurance coverages:
 - a. If the debtor has tangible assets susceptible to casualty loss (fire, weather, theft, vandalism, etc.), casualty insurance must be maintained at an amount at least equal to the replacement value of the property;
 - b. If the debtor has employees, workers' compensation insurance and unemployment insurance must be maintained;
 - c. If the debtor conducts business operations, general liability and, if appropriate, product liability insurance must be maintained;
 - d. Any other insurance customary in the debtor's business
3. Upon expiration, termination, or renewal of any coverage, the debtor shall immediately provide the United States Trustee with adequate proof of renewal or replacement coverage.

D. Taxes

1. Pre-petition

- a. Any pre-petition tax return due, but not filed, as of the date of the petition for which there is any tax due, must be filed with the appropriate taxing authority. It is the responsibility of the debtor to ascertain whether there are such unfiled returns and, as appropriate, to amend schedules to reflect all pre-petition tax liabilities.

2. Post-petition

- a. All post-petition taxes required to be paid and all post-petition tax returns required to be filed by the laws of the United States or any other state or political subdivision thereof, must be paid and filed by the debtor in a timely manner as required by the respective taxing authorities.
- b. The debtor is required to attach copies of receipted IRS Form 6123, or similar deposit receipt from any other taxing authority. The debtor is also required to attach copies of all tax returns filed during the reporting period.

E. Initial Debtor Conference

1. The debtor and counsel for the debtor (or substitute counsel with knowledge of the proceeding) must attend an initial debtor conference as soon as practicable after the filing of the petition or the appointment of the trustee. The designated principal(s) most familiar with the debtor's financial affairs must attend the initial meeting. The Office of the United States Trustee schedules these meetings approximately ten working days after the filing of the petition.

The purpose of the initial debtor conference is to afford the United States Trustee an early opportunity to ascertain the nature and status of the proceeding, to establish the financial reporting requirements appropriate for the case, and to answer questions pertaining to these requirements.

3. At the time of the initial debtor conference the debtor should provide the completed Information For Initial Debtor Conference (Attachment 2).
4. The United States Trustee may request copies of federal income tax returns (including all schedules and attachments), personal property tax returns (including all schedules and attachments), and financial statements.

F. Books and Records

1. The books and records of the debtor must be closed as of the petition filing date. The debtor must open a new set of books and records, and must provide separate accounting with respect to pre-petition and post-petition accounts and transactions.

G. List of Creditors, Schedules, and Statement of Financial Affairs

1. The debtor must comply with 11 U.S.C. §521(1) and FRBP 1007. These rules require the debtor to file schedules and a statement of financial affairs with the Clerk of the United States Bankruptcy Court. A copy of the schedules and statements must be sent to the United States Trustee. A complete list of all creditors and their addresses should be set forth in Schedules D, E, and F.
2. The debtor is required to file a separate list with the petition containing the names, addresses, and amounts of claims of the 20 largest unsecured creditors (FRBP 1007(d)). This list should not contain the names of creditors who are "insiders", as that term is defined in Section 101(31) of the Bankruptcy Code.

In addition, the debtor must file a list of all equity security holders of the debtor including the name, address, number, and kind of interest held by each holder.

3. Failure to file all required schedules and statement of financial affairs within 15 days of the petition filing date or failure to obtain an extension of time from the United States Bankruptcy Court may result in the filing of a motion to dismiss or to convert the case, or, in the alternative, the appointment of a trustee or examiner.

H. 11 U.S.C. §341 Meetings of Creditors and Equity Security Holders

1. Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. The United States Trustee schedules this meeting and the Clerk of the Court notifies all creditors of the meeting date and time. In scheduling the meeting the United States Trustee shall comply with the time periods set forth in FRBP 2003(a). The debtor or authorized individual of the debtor (i.e. an officer, director, or shareholder if the debtor is a corporation; a partner if the debtor is a partnership; a manager or member if the debtor is a limited liability company) and the debtor's attorney are required to attend. The United States Trustee may also request, through debtor's counsel, that additional representatives of the debtor attend the §341 meeting and be available for examination.
2. To reschedule a meeting the debtor's counsel must contact United States Trustee. If the United States Trustee approves the request the debtor's counsel must certify that notice of the rescheduled meeting has been sent to all parties in interest. Except in extraordinary situations, the United States Trustee will not reschedule a meeting after the Clerk of the Court has mailed out a notice of the meeting.
3. If the debtor's first monthly operating report is due prior to the §341 meeting, the debtor must timely submit the operating report to the Office of the United States Trustee.

4. The United States Trustee or a member of his staff will preside at the §341 meeting, administer the oaths/affirmations, and examine the debtor and other appropriate person(s). The meeting will be taped. All tapes will be stored by the Office of the United States Trustee for a period of two years after the date first set for the meeting. Requests for copies of §341 meeting tapes must be made in writing to:

Office of the United States Trustee
537 Congress Street, Suite 303
Portland, ME 04101

The request must include the case name and number, the date of the meeting, and a blank standard size cassette for copying.

5. If deemed appropriate, the §341 meeting may be continued to a later date. Creditors and other parties in interest who attended the initial §341 meeting will receive notice of the continued §341 meeting.

I. Quarterly Fees

1. All chapter 11 cases are subject to a United States Trustee Program quarterly fee.
2. The fee must be paid to the United States Trustee every quarter (including any fraction thereof) from the petition filing date to the date of the entry of an order dismissing or converting the case or approving an application for entry of a final decree. Cases pending for even one day during a quarter will be required to pay the fee applicable to that entire quarter.
3. The fee is based on the amount of total disbursements that the debtor makes during a calendar quarter. A minimum fee of \$250 is due for each quarter or fraction of a quarter that the case is pending, even if no disbursements are made during that quarter. The fee schedule is as follows:

Quarterly Fee Schedule

<u>Total Quarterly Disbursements</u>	<u>Quarterly Fee</u>
\$ 0 - \$14,999.99	\$250
\$15,000 - \$74,999.99	\$500
\$75,000 - \$149,999.99	\$750
\$150,000 - \$224,999.99	\$1,250
\$225,000 - \$299,999.99	\$1,500
\$300,000 - \$999,999.99	\$3,750
\$1,000,000 - \$1,999,999.99	\$5,000
\$2,000,000 - \$2,999,999.99	\$7,500
\$3,000,000 - \$4,999,999.99	\$8,000
\$5,000,000 and above	\$10,000

Quarterly Fee Due Dates

<u>Quarter</u>	<u>Ending</u>	<u>Payment Due Date</u>
1 st Quarter Jan-Feb-Mar	March 31	April 30
2 nd Quarter Apr-May-Jun	June 30	July 31
3 rd Quarter Jul-Aug-Sept	September 30	October 31
4 th Quarter Oct-Nov-Dec	December 31	January 31

4. Pursuant to §1129(a)(12) of the Bankruptcy Code, in order to be confirmed, a plan of reorganization must provide for payment of all unpaid quarterly fees as of its effective date and continuing through the date that the Court approves the application for final decree. The United States Trustee may also object to dismissal of any case in which outstanding fees are owed.

5.

Prior to each due date the debtor will receive an invoice. The invoice includes a payment stub which must be returned along with the debtor's check, made payable to "United States Trustee" to the following address:

United States Trustee
P.O. Box 70937
Charlotte, NC 28272-0937

The debtor's account number, which is listed on the payment stub, should be written on the face of the check. The address given is a lockbox at a bank. It may not be used for service of process, correspondence, or for any other purpose other than for the payment of quarterly fees. Direct all correspondence and questions regarding your account to the Office of the United States Trustee.

Checks will be converted into an electronic funds transfer (EFT). This means the check will be copied and the account information used to electronically debit the debtor's account for the amount of the check. The debit from the debtor's account will usually occur within 24 hours and will be shown on the debtor's regular account statement. The debtor will not receive a copy of the check. The original check will be destroyed, but a copy of the check will be maintained. If the EFT cannot be processed for technical reasons, the debtor authorizes the copy of the original check to be processed. If the EFT cannot be completed because of insufficient funds, the United States Trustee Program may try to transfer up to 2 times.

6. The debtor is responsible for prompt and full payment of this fee. Since the last monthly operating report in a calendar quarter is not due until the 15th day of the month following the reported month and since the Office of the United States Trustee does not transmit data to the billing facility on a daily basis, the quarterly fee calculated on the invoice may be an estimate. Using the calendar quarter's disbursements, the debtor should independently calculate his/her quarterly fee and pay the actual fee that is owed even if the fee differs from that listed on the invoice. Once the United States Trustee receives the applicable monthly operating report(s) and transmits the disbursement data to the billing facility, the system will update the data and calculate the quarterly fee based on the actual disbursements.
7. A **Disbursements History** stub and envelope are included with the debtor's invoice. The debtor should review the stub and make appropriate corrections. The debtor should also sign the stub and return it to the Office of the United States Trustee for the his/her district.
8. If a check is returned marked "Insufficient Funds", all future quarterly fee payments must be made by cashier's check, certified funds, or postal money order.
9. Pursuant to §1112(b)(10) of the Bankruptcy Code failure to pay the quarterly fee is cause for conversion or dismissal of a chapter 11 case. Submitting false information may subject the debtor to civil liability under 31 U.S.C. §3729(a)(7) and to criminal penalties under 18 U.S.C. §1001 and 18 U.S.C. §1621.

J. Monthly Operating Reports (FORM MOR's)

1. Pursuant to FRBP 2015 and 9034 operating reports should be submitted to the Office of the United States Trustee. In addition, copies of such reports should be provided to the chairpersons of any creditors' committees.
2. All operating reports must be filed by the 15th day of the month following the end of the month covered by the report. Unless another form is approved by the United States Trustee, debtors are required to use the report forms provided by the Office of the United States Trustee.

K. Communications With Represented Parties (McDade Amendment)

1. Recent regulations promulgated by the Attorney General may be interpreted to restrict direct communication between lawyers and those acting on behalf of lawyers of the Office of the United States Trustee and the debtor, unless permission is obtained from the debtor's counsel. While this issue has not yet been resolved, in the interests of clarity and caution, the United States Trustee would like to ensure that such direct contacts to represented parties are authorized by counsel.
2. Most communication occurring between United States Trustee Program employees and debtors is administrative in nature relating to the United States Trustee's statutory duty to supervise the administration of bankruptcy cases. The United States Trustee requests that the debtor's counsel sign an authorization which will allow United States Trustee Program employees to communicate directly with the debtor regarding administrative matters such as insurance coverage, bank account information, monthly operating reports, quarterly fees, and post-confirmation reports.
3. If the debtor's counsel agrees to the provisions stated above, he or she should sign the attached Authorization for Direct Contact (Attachment 4) and return the original of this document to Office of the United States Trustee no later than the date of the initial debtor conference.

4. If debtor's counsel does not agree to the provisions stated above, all communication with the debtor will be directed to the debtor's counsel. If the debtor initiates any contact with a United States Trustee Program employee, the employee will advise him or her that United States Trustee Program employees may communicate only with the debtor's counsel.
5. If the United States Trustee files or has a contested motion or an adversary proceeding against the debtor, all contact regarding that matter will be with the debtor's counsel.

L. Effect of Noncompliance

1. If the debtor does not follow the operating guidelines, or if the debtor does not timely submit operating reports, the United States Trustee may file an appropriate motion which could result in the conversion or dismissal of the case.

The United States Trustee reserves the right to revise, modify, or amend these guidelines and requirements from time to time, and, as appropriate, in an individual case. Comments and suggestions regarding these guidelines or other policies and procedures of the Office of the United States Trustee are sought and appreciated, and should be directed to the Office of the United States Trustee for the debtor's district.

Phoebe D. Morse, Esq.
United States Trustee, Region 1
Maine, Massachusetts, New Hampshire, Rhode Island

Attachments:

- Attachment 1 - Region 1's Authorized Depository Listing
- Attachment 2 - Information For Initial Debtor Conference
- Attachment 3 - Monthly Operating Report
- Attachment 4 - Authorization For Direct Contact

