

What Is the U.S. Trustee Program and What Role Does It Play in a Chapter 11 Case?

Creditor's Rights Toolkit

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This article discusses the key functions of the Office of the U.S. Trustee in a Chapter 11 Case.

The U.S. Trustee Program (UST) is a division of the U.S. Department of Justice that serves as a “watchdog” over the federal bankruptcy process for the benefit of all stakeholders.

KEY ISSUES

INCENTIVES

Unlike other major players in a Chapter 11 case, the UST does not have a financial incentive. Instead, the UST focuses on the integrity of the bankruptcy process, often acting to enforce compliance with Bankruptcy Code requirements or mandates of the Federal Rules of Bankruptcy Procedure or a jurisdiction’s local rules. One particularly important issue for the UST in Chapter 11 cases is professional fees for those professionals paid from the bankruptcy estate — because those professionals (such as debtor’s counsel) are compensated using funds that might otherwise be distributed to creditors, the UST works to ensure that fees billed to the estate are necessary and reasonable. Likewise, disclosures and transparency in the bankruptcy process is a key issue for the UST — whether this means adequacy of a disclosure statement (meant to inform creditors on the specifics of a bankruptcy plan, so they can cast an informed vote) or visibility into the terms of a bankruptcy sale, the UST is tasked with making sure there is proper public access to key information in a Chapter 11 case. Finally, because of the UST’s unique function, courts often give deference to, and wish to hear from, the UST on important issues.

APPOINTMENT OF A CREDITOR’S COMMITTEE

The UST is responsible for determining whether to appoint an official committee of unsecured creditors — a group that acts on behalf of and for the benefit of all unsecured creditors in a Chapter 11 case. Further, the UST decides which creditors, after an application process, will sit on the committee. These are key decisions that can alter the course of a Chapter 11 case.

SECTION 341 MEETINGS

The UST is responsible for administering a meeting of creditors (called a “341 meeting” because the meeting is mandated by Section 341 of the Bankruptcy Code). At this meeting, the UST will take sworn testimony from a representative of the debtor, often focusing on financial information required to be filed by a debtor in a Chapter 11

case, as well as working to understand the debtor's anticipated outcome of a Chapter 11 case. All creditors are meant to receive notice of this meeting, and any creditor is welcome to attend and ask questions of the debtor or simply observe.

TAKEAWAY

The UST is a unique party in a Chapter 11 case, not motivated by financing incentives, but meant to ensure a fair and transparent bankruptcy process. The UST also has key roles in administering the case, including the appointment of a creditor's committee and running the 341 meeting.

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