



**U.S. Department of Justice
Office of the United States Trustee**

*United States Trustee for Region 17
Northern and Eastern
Districts of California and Nevada*

*Regional Office
450 Golden Gate Ave., Suite 05-0153
San Francisco, CA 94102
Telephone: (415) 705-3300
Fax: (415) 705-3379
Website address: www.usdoj.gov/ust/r17*

**United States Trustee Chapter 11
Operating and Reporting Guidelines for Debtors in Possession
(Revised September 2022)**

Title 28, section 586(a)(3) of the United States Code directs the United States Trustee to supervise the administration of all chapter 11 cases. Consistent with these responsibilities, the United States Trustee for Region 17 established the following Chapter 11 Operating and Reporting Guidelines for debtors.

1. Employment of the Debtor's Professionals

Title 11 U.S.C., section 327 and Fed. R. Bankr. P. 2014 provide that the debtor-in-possession (“debtor”) must apply and obtain court approval to employ professionals. A copy of an application to employ a professional (including, but not limited to, an attorney, financial consultant, investment banker, accountant, realtor, appraiser, auctioneer, business consultant, or engineer) must be served on the United States Trustee. Generally, the debtor must file every application to employ a professional, and obtain a court order approving the employment before a professional renders services to the debtor.

Each application seeking to employ a professional must be accompanied by the professional’s verified statement disclosing any connections with the debtor, creditors, or any other parties in interest, their respective attorneys and accountants, and employees of the United States Trustee Program. Fed. R. Bankr. P. 2014. A general statement that the applicant is disinterested and does not represent an interest adverse to the estate is generally not sufficient.

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not approve an employment application within 21 days after the debtor files the bankruptcy petition. Fed. R. Bankr. P. 6003. In furtherance of the duties prescribed by 28 U.S.C. section 586(a)(3)(I), the Office of the United States Trustee will review employment applications.

2. **Books and Records**

The debtor's books and records must be closed as of the date the debtor filed its bankruptcy petition. The debtor must establish new books and records to reflect the debtor's post-petition business activities.¹

3. **Bank Accounts**

After filing the bankruptcy petition, the debtor must immediately close all existing bank accounts and open new bank accounts that are designated as a debtor in possession account ("DIP Account") and maintained subject to the following conditions:

- a. The debtor must deposit all bankruptcy estate funds in a DIP Account provided that the debtor must open and maintain (i) one DIP Account solely for monies required for timely paying taxes, including, but not limited to, federal, state, local, and payroll taxes, and (ii) a separate DIP Account for cash collateral in accordance with Bankruptcy Code section 363(c)(4).
- b. The debtor must open and maintain a separate general DIP Account for paying bills incurred during the administration of the case. The debtor may also be required to open and maintain a separate DIP Account for such items as payroll and payments to secured creditors.
- c. The debtor must maintain each DIP Account with a financial institution that has entered into an authorized depository agreement with the United States Trustee. Further, the debtor must advise the bank that it is opening the account for a debtor in a bankruptcy proceeding so the bank properly designates the account as one that must be properly maintained. A list of banks in the Region and each district that have entered into authorized depository agreements with the United States Trustee and are approved to hold chapter 11 estate bank deposits is available on the Region 17 website at: <https://www.justice.gov/ust-regions-r17/region-17-general-information>.
- d. Checks for each DIP Account must bear the name of the debtor, the designation "debtor in possession," the bankruptcy case number, and the type of account, and must be pre-numbered by the bank. The debtor must send the United States Trustee a copy of the signature card or account application that contains the name of the account for each DIP Account. Alternatively, the debtor may provide a copy of a voided original check for each DIP Account.

¹ See also Local Bankruptcy Rules for the Northern District of California, B.L.R. 2015-3; and the Local Bankruptcy Rules for the Eastern District of California, LBR 2015-1(b) (requirements regarding books and records and/or bank accounts).

4. Initial Debtor Interview or “IDI”

The United States Trustee requires each chapter 11 debtor and its counsel to meet with a staff member at an initial debtor interview (“IDI”) before the section 341 meeting of creditors. For a debtor who has elected to be treated as a small business under Chapter 11, Subchapter V of the Bankruptcy Code (“Subchapter V case”), the United States Trustee will also request that the appointed trustee attend the IDI. The purpose of the meeting is to discuss the debtor’s particular financial situation, its operating framework under chapter 11, and the United States Trustee’s operating and reporting requirements and document requests.

The United States Trustee will notify debtor’s counsel, and, if applicable the trustee, of the date and time of the IDI with a scheduling email. No less than seven days before the meeting, the debtor must complete and provide the United States Trustee with the United States Trustee’s Chapter 11 Initial Reporting Requirements and Document Requests (“Initial Reporting Requirements”). The Initial Reporting Requirements form is available on the Region 17 website at: <https://www.justice.gov/ust-regions-r17/region-17-general-information>.

5. Communication with Represented Parties (Authorization)

A portion of the communication between United States Trustee Program employees and the debtor or the debtor’s representatives is administrative in nature relating to the United States Trustee’s statutory duty to supervise the administration of bankruptcy cases and includes such topics as monthly operating reports, proof of insurance, and payment of quarterly fees. To authorize a represented party to have direct contact with an employee of the United States Trustee Program concerning administrative matters, the debtor’s attorney must complete and sign the Direction of Debtor Authorizing Client to Have Contact with United States Trustee (the Authorization form) available on the Region 17 website at: <https://www.justice.gov/ust-regions-r17/region-17-general-information>.

6. Maintenance and Proof of Insurance

The debtor is required to maintain the following insurance coverage, as appropriate: general comprehensive liability; property loss from fire, theft, water, or other extended coverage; workers’ compensation; vehicle; products liability; fidelity bonds for employees; and such other coverage as is customary in the debtor's business.

The debtor must provide the United States Trustee with proof of appropriate insurance coverage. The proof of coverage must consist of certificates of insurance or other documents showing that each policy of insurance required for the estate is in full force and effect, and the documents must disclose the type and extent of coverage, effective dates, name of insurance carrier, and the name, address, and telephone number of the agent. The debtor is responsible for including the United States Trustee’s address on the cancellation notice for each insurance policy. Upon the expiration or other termination of any coverage, the debtor must immediately provide the United States Trustee with proof of replacement coverage. Failure to maintain insurance that poses a risk of loss to the estate or the public is cause for conversion or dismissal of the case. 11 U.S.C. § 1112(b)(4)(C).

7. **Periodic Financial Reporting**

The debtor must account for the receipt, administration, and disposition of all property, and file periodic reports and summaries of a debtor's business including a statement of receipts and disbursements. 11 U.S.C. §§ 1106(a)(1), 1107(a); Fed. R. Bankr. P. 2015(a)(2), (a)(3). The debtor must file an original monthly operating report with the Clerk of the Bankruptcy Court and serve a copy on the United States Trustee and any official creditors committees appointed in the case. The United States Trustee will accept service of the MOR via the notice provided through ECF and no further service is necessary.²

A. Regular Chapter 11 Cases (Non-Small Business and Non-Subchapter V Cases)

On June 21, 2021, the United States Trustee Program's rule entitled *Uniform Periodic Reports in Cases Filed Under Chapter 11 of Title 11*, published at 28 C.F.R. § 58.8 (the "Final Rule") became effective. The Final Rule, mandated by 28 U.S.C. § 589b, requires that chapter 11 debtors and trustees, other than in small business and subchapter V cases, file monthly operating reports and post-confirmation reports using streamlined, data-embedded, uniform forms in every judicial district where the United States Trustee Program operates.

UST Form 11-MOR, Monthly Operating Report ("MOR"), is the periodic financial report that must be filed on a calendar monthly basis from the petition date to the earlier of the effective date of a confirmed plan, the conversion date of the case to another chapter, or the dismissal of the case.

UST Form 11-PCR, Post-confirmation Report ("PCR"), is the periodic financial report that must be filed on a calendar quarterly basis after the effective date of a confirmed plan. Any post-confirmation entities, which includes the reorganized debtor and any other "authorized parties" charged with administering the confirmed plan, must file the PCR until the earlier of the date the case is closed, dismissed, or converted to another chapter.

Report filers must refer to the Final Rule and instructions for the MOR and PCR forms for important information, including who must file each report, when the reports must be filed, who the reports must be served upon and what documentation must be filed along with each report. All supporting documentation must be attached to each MOR. *See* MOR Form 11 Instructions at pp. 11-13; Link provided below.

To access the latest version of the MOR and PCR forms, instructions for their use and filing, and other important information related to periodic reporting under the Final Rule, please navigate to <https://www.justice.gov/ust/chapter-11-operating-reports>. While at that webpage, please subscribe to the "Chapter 11 Operating Reports E-mail Updates" feature to automatically

² *See also* applicable local rules addressing monthly reports such as E.D. of California LBR 2015-1, N.D. of California B.L.R. 2015-2, and D. Nev. LR 2015.4.

receive email updates about periodic reporting under the Final Rule.

B. Small Business and Subchapter V Cases

Regular small business debtors and Subchapter V debtors must file periodic financial reports before a plan is confirmed. These debtors use Form 425C (Small Business Monthly Operating Report) for the periodic financial report. The form must be filed on a calendar monthly basis from the petition date to the earlier of the effective date of a confirmed plan, the conversion date of the case to another chapter, or the dismissal of the case. The report may be found on the U.S. Court's website and the United States Trustee's website at:

<https://www.justice.gov/ust/chapter-11-operating-reports>.

In addition, regular small business debtors and Subchapter V debtors who are ordered by the court to do so, must file post-confirmation reports. In Region 17 small business debtors use UST Form 11-PCR, Post-confirmation Report for any required post-confirmation periodic financial reporting. The form must be filed on a calendar quarterly basis after the confirmed plan's effective date by any post-confirmation entities, which would include the reorganized debtor and any other "authorized parties" charged with administering the confirmed plan, until the earlier of the date the case is closed, dismissed, or converted to another chapter. The report may be found on the United States Trustee Program's website at:

<https://www.justice.gov/ust/chapter-11-operating-reports>.

8. United States Trustee Quarterly Fees

Under 28 U.S.C. § 1930(a)(6), a quarterly fee shall be paid to the United States Trustee System Fund at Treasury in each case under chapter 11 (except small business cases 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 court enters a final decree closing the case, dismisses the case, or converts the case to another chapter in bankruptcy. The quarterly fee is calculated by totaling the reported disbursements for the three-month calendar quarter, or portion thereof, according to the statutory fee schedule. A minimum fee is due even if the debtor has no disbursements during a calendar quarter and the fee is not prorated. The debtor is required to pay any accrued interest in connection with delinquent quarterly fees. *See* 31 U.S.C. § 3717. The quarterly fee schedule is published on the United States Trustee Program's website available at: <https://www.justice.gov/ust/chapter-11-quarterly-fees>.

A billing statement from the United States Trustee Program is mailed to the debtor for each calendar quarter before the payment due date. Because all disbursement information may not have been available when the statement was generated, the fees billed *may be estimated*.

Quarterly fees may be paid as follows:

- Online via pay.gov at the following website:
<https://www.pay.gov/public/form/start/672415208>.
- Via the mail by completing the tear-off portion of the billing statement or

payment stub, including the 10-digit account number, and sending it with a check for the quarterly fee, made payable to “United States Trustee,” to the following address:

**United States Trustee Payment Center
P.O. Box 6200-19
Portland, OR 97228-6200**

The address shown above is a lockbox at a bank. It may NOT be used for service of process, correspondence, or any purpose other than payment of quarterly fees. Any other correspondence or documents sent to the lockbox other than the payment form will be destroyed.

The debtor must immediately notify the United States Trustee and the Bankruptcy Court in writing of any change of address or telephone number. Quarterly fee billing statements will be mailed to the address provided by the debtor.

For more information about quarterly fees, or for up-to-date information about fees, visit the United States Trustee Program’s website at: <https://www.justice.gov/ust>.

9. **Taxes**

All tax returns and reports for post-petition obligations must be timely filed and accompanied by payment in full of any liability. Taxes include, but are not limited to, federal and state payroll withholding taxes, FICA taxes, federal and state unemployment insurance, real property taxes, and sales and use taxes. The debtor must timely deposit sufficient funds in the DIP tax account to pay any payroll tax liability. The debtor must timely file all pre-petition tax returns but must not pay the tax due without proper authorization.

10. **United States Trustee Program Website**

Debtors are encouraged to refer to resources available on the United States Trustee websites for updated information about chapter 11 requirements and for information about the mailing address and contact information for each Region 17 office.

- The United States Trustee Program’s website is available at: <https://www.justice.gov/ust>.
- The United States Trustee Program’s Region 17 website is available at: <https://www.justice.gov/ust-regions-r17/region-17-general-information>.