



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

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Northern and Eastern
Districts of California and Nevada*

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United States Trustee Chapter 11 Operating and Reporting Guidelines for Debtors in Possession (Revised March 31, 2023)

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

1. Employment of the Debtor's Professionals

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.¹ Each 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 files each application seeking authority to employ a professional and obtains a court order approving the employment before a professional renders services.

Each employment application is accompanied by the professional's verified statement disclosing any connections with the debtor, creditors, or other parties in interest, their respective attorneys and accountants, and United States Trustee Program employees. Fed. R. Bankr. P. 2014. A general statement that the applicant is disinterested and does not represent an interest adverse to the estate is 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. Consistent with the duties described in 28

¹ All statutory references are to the Bankruptcy Code found in Title 11, United States Code, unless otherwise specified.

U.S.C. section 586(a)(3)(I), the United States Trustee reviews employment application.

2. Books and Records

The debtor must close all its books and records on the bankruptcy petition filing date. The debtor must establish new books and records to reflect the post-petition business activities.²

3. Bank Accounts

After filing the bankruptcy petition, the debtor must immediately close all existing bank accounts and open new accounts. Each account must be designated as a debtor in possession account (“DIP Account”). The debtor must also close any other financial accounts such as mobile or online payment processing platforms (*e.g.*, Stripe, Venmo, PayPal, etc.) that can hold customer deposits or payments and any cryptocurrency wallets. Further, the debtor must comply with section 345 concerning all bank accounts. The failure to comply with section 345 may result in the United States Trustee taking appropriate action. Further, the United States Trustee may object to requests to waive compliance with section 345. The debtor must maintain bank accounts subject to the following conditions:

- a. The debtor must deposit all bankruptcy estate funds in a designated DIP Account. The debtor also must open and maintain separate DIP accounts as follows: (i) one solely for monies required for timely paying taxes, including, but not limited to, federal, state, local, and payroll taxes, (ii) one for cash collateral in accordance with section 363(c)(4), and (iii) one for paying bills incurred during case administration. The debtor may also be required to open and maintain a separate DIP Account for items such as payroll and secured creditors payments.
- b. The debtor must maintain each DIP Account with a financial institution that has entered into an authorized depository agreement (“ADA”) with the United States Trustee and is designated an “Authorized Depository.” The debtor also must advise the bank that it is opening the account for a debtor in a bankruptcy proceeding so the bank properly designates each DIP account as one that is subject to the terms and conditions of the ADA. A list of each Authorized Depository for the judicial districts within Region 17 is available on the Region 17 website at: <https://www.justice.gov/ust-regions-r17/region-17-general-information>.
- c. Checks for each DIP Account 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.

² Also refer to 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 ask the appointed trustee to attend the IDI. At the meeting the United States Trustee’s staff will discuss the debtor’s financial situation, its operating framework under chapter 11, and these Operating and Reporting requirements and the United States Trustee’s Chapter 11 Initial Reporting Requirements and Document Requests (“Initial Reporting Requirements”).

The United States Trustee notifies 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 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)

Some communication between the United States Trustee’s employees and the debtor or the debtor’s representatives is administrative relating to the statutory duty to supervise the administration of bankruptcy cases and includes such topics as monthly operating reports, proof of insurance, and paying quarterly fees. To authorize a represented party to have direct contact with the United States Trustee Program employees 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 must 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. Proof of insurance must consist of certificates of insurance or other documents showing each required insurance policy is effective. The documents also must disclose the type and extent of coverage, the effective dates, the name of the insurance carrier, and the agent’s name, address, and telephone number. The debtor is responsible for including the United States Trustee’s address on the cancellation notice for each insurance policy. When insurance coverage expires or terminates, 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. Section 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. Sections 1106(a)(1), 1107(a); Fed. R. Bankr. P. 2015(a)(2) and (3). The debtor must file an original monthly operating report with the Clerk of the Bankruptcy Court and serve the United States Trustee and any appointed official creditors committees. Service on the United States Trustee of the MOR is via the notice provided through ECF and no further service is necessary.³

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 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. A separate MOR for both the first month and the month when a plan is confirmed must be filed, even if for partial months of only one day.

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. A separate PCR for the first quarter in which the plan was confirmed and the last quarter must be filed, even if for partial quarters (such as only a few days).

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. Among other supporting documentation, debtors should provide blockchain ledgers for all open cryptocurrency wallets.

³ See Fed. R. Bankr. P. 5005(b)(1). 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.

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, navigate to <https://www.justice.gov/ust/chapter-11-operating-reports>. While at that webpage, subscribe to the “Chapter 11 Operating Reports E-mail Updates” feature to automatically receive email updates about periodic reporting under the Final Rule.

The requirement to file MORs ends on the confirmed plan’s effective date. After the effective date, PCRs are required until the case is closed, dismissed, or converted. The United States Trustee requires the debtor’s attorney to note the plan’s effective date on the Court’s docket via an ECF entry, so all parties know what reporting is required.⁴

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 prepared based on a calendar month 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. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Fed. R. Bankr. P. 2015(a)(6). 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 prepared and filed based on a calendar quarter starting after the confirmed plan’s effective date by any post-confirmation entities, which 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

⁴ When a case confirms on any date other than the last day of the month, a MOR must be filed for the partial month before the effective date and a PCR is required for the remainder of the month and calendar quarter after the effective date.

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 bank lockbox. It may NOT be used for service of process, correspondence, or any purpose other than paying quarterly fees. Any 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>.