

**REGION 21**  
**OPERATING GUIDELINES & REPORTING REQUIREMENTS**  
**FOR CHAPTER 11 DEBTORS IN POSSESSION**  
**AND CHAPTER 11 TRUSTEES**  
**(October 2022)**

**UNITED STATES TRUSTEE’S ROLE IN CHAPTER 11 BANKRUPTCY CASES**

The United States Trustee Program is a component of the United States Department of Justice that seeks to promote the efficiency and protect the integrity of the Federal bankruptcy system. To further the just, speedy, and economical resolution of bankruptcy cases, the Program monitors the conduct of parties and private estate trustees, oversees administrative functions, and acts to ensure compliance with applicable laws and procedures. It also identifies and helps investigate bankruptcy fraud and abuse in coordination with United States Attorneys, the Federal Bureau of Investigation, and other law enforcement agencies.

The United States Trustee is charged with responsibility for supervising the administration of chapter 11 cases. The United States Trustee’s duties include:

- reviewing the debtor's requests for emergency orders early in a bankruptcy case and ensuring the requested relief is tailored to the circumstances;
- determining what official committees should be established to serve in the case, appointing committee members, and engaging in oversight of committee actions;
- reviewing reorganization plans and disclosure statements filed by parties in the case to make sure they provide adequate and accurate information;
- ensuring that all required reports and schedules are timely filed, and that the debtor manages money and assets consistent with the Bankruptcy Code and with its fiduciary duty to creditors;

- taking action to prevent undue delay by, for example, moving to dismiss the case, convert the case to chapter 7, or to appoint a chapter 11 trustee;
- reviewing and, if appropriate, objecting to applications filed by professionals seeking employment in the case, payment of compensation, and reimbursement of expenses; and
- investigating criminal, fraudulent, or abusive conduct for possible civil or criminal prosecution - the U.S. Trustee pursues civil (non-criminal) penalties and refers cases of apparent criminal fraud to the U.S. Attorney for investigation and criminal prosecution.

### **DEBTOR'S FIDUCIARY OBLIGATIONS**

The chapter 11 debtor-in-possession is authorized to continue to operate its business unless the court orders otherwise. With limited exceptions, the debtor has all of the duties and responsibilities of a trustee. The debtor is obligated to comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, local rules, and any court order.

The debtor or its attorney must immediately notify the United States Trustee about any change in the debtor's business operations and any significant matter that may affect the administration of the case or the debtor's prospects for reorganizing. Significant events include, but are not limited to, cessation of business operations, casualty or theft losses, changes in insurance coverage, and allegations of violations of laws, ordinances, or regulations, including but not limited to, the failure to pay taxes.

The debtor or its attorney must notify the United States Trustee and the clerk of the bankruptcy court in writing of any change of address or telephone number within 14 days of the change. The debtor may not receive notice of actions taken in the case if the debtor fails to provide proper notice of address changes.

The debtor's timely compliance with the United States Trustee's Operating Guidelines and Reporting Requirements is essential. Failure to comply may result in a motion to dismiss or convert the case to a chapter 7 liquidation proceeding, a motion for the appointment of a chapter 11 trustee or examiner, or a motion for imposition of sanctions. A request that these requirements be varied or waived must be in writing directed to the appropriate United States Trustee field office.

### **Bank Accounts**

Debtors must comply with all requirements of 11 U.S.C. § 345 to safeguard estate funds from loss. The debtor must close its prepetition bank accounts and open new debtor-in-possession accounts and provide documentation of these actions to the United States Trustee. Absent court authorization, the accounts may be maintained only in depositories that agree to post a bond or pledge securities for all deposits not insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States, or backed by the full faith and credit of the United States. The debtor should establish a separate general account for the purpose of paying bills incurred during the administration of the case. The debtor should, where appropriate, also establish a separate tax trust account so that it may escrow the necessary funds for the payment of post-petition taxes including, for example, payroll and sales or excise taxes, when such liabilities are incurred. The debtor may also be required to establish separate accounts for such items as payroll and payments to secured creditors. Savings accounts and certificates of deposit may be maintained as well, pursuant to the statutory obligation to obtain a safe, yet reasonable, return on estate funds for the benefit of creditors.

All business revenues must be deposited into the operating account, with amounts needed to fund the other accounts being transferred to those accounts as necessary. Requests to use, create, or maintain petty cash accounts must be submitted to the United States Trustee in writing. Individual debtors engaged in business as sole proprietors should open a separate debtor-in-possession account for payment of personal living expenses.

### **Insurance**

The debtor must maintain appropriate insurance coverage and provide documentation of insurance coverage to the United States Trustee as early in the case as possible. The debtor must provide separate notice to the United States Trustee regarding any change in insurance coverage. The debtor should instruct its insurance companies and agents to include the Office of the United States Trustee as a notice party on any insurance policies so that the United States Trustee receives prior notification regarding any change, cancellation, or expiration of the debtor's insurance policy.

The extent of coverage must be adequate, given the circumstances of the case. Depending on the case, the debtor may be required to maintain all or a

combination of property and automobile insurance, general liability insurance, extended liability insurance, worker's compensation and unemployment insurance, employee health insurance (especially if pursuant to a collective bargaining agreement or retirement plan), malpractice insurance, product liability insurance, and liquor or dramshop insurance. The dollar amount of the property insurance coverage must be sufficient to cover the fair market value of the estate's property.

A debtor's failure to maintain proper insurance is a breach of its fiduciary obligations. For example, if the debtor's business is open to the public and the debtor does not have liability insurance, the business should be closed until such time as insurance is obtained and written verification submitted to the United States Trustee. If the debtor is unable to purchase insurance, then a motion to convert or dismiss may be appropriate.

### **Payment of Administrative Taxes**

A debtor is presumed to be aware of the withholding requirements of federal and state law. Unpaid post-petition taxes are administrative claims, and failure to pay taxes as they come due prejudices the estate and creditors. Failure to remit taxes is a breach of the debtor's statutory obligations and fiduciary duties and constitutes grounds for conversion or dismissal of the case or for the appointment of a chapter 11 trustee.

### **Use of Property**

Federal Rules of Bankruptcy Procedure 2002 and 4001 require specific notice of certain actions by the debtor. The technical requirements of these rules may be violated, intentionally or not, in three common situations: use, sale, or lease of property other than in the ordinary course of business; settlement of a controversy; or settlement of a cash collateral or adequate protection dispute. The debtor may not, without court authority, use, sell, or lease property of the estate outside the ordinary course of business; incur secured debt; or use cash collateral without consent from the creditor with an interest in the cash collateral.

### **Payment of Debts**

Post-petition debts must remain current and pre-petition unsecured debts may not be paid, unless otherwise ordered by the court.

## **Books & Records**

The debtor should close its books and records as of the date of filing and open new post-petition books and records. The old books and records must be retained and be available for review by the United States Trustee.

## **INITIAL DEBTOR INTERVIEW**

Immediately following the entry of an order for relief, the United States Trustee will schedule an initial debtor interview (“IDI”) with the principals of the debtor and debtor’s counsel. The IDI provides the United States Trustee with vital information so that an early assessment can be made of the accuracy of the debtor’s schedules and statements and of the debtor’s financial ability to confirm a plan. The IDI also provides an opportunity to discuss the debtor’s fiduciary obligations and the United States Trustee’s role in the administration of the case. Prior to conclusion of the IDI, the United States Trustee will set a deadline for the debtor to address any outstanding deficiencies or issues. Failure to provide requested materials or attend the IDI may result in a motion to dismiss or convert the case to chapter 7 or for appointment of a trustee.

## **FINANCIAL AND BUSINESS RECORDS**

Prior to the IDI, the debtor must produce the following materials (if applicable) to the United States Trustee.

1. certificates of insurance for all insurable assets, with the Office of the United States Trustee identified as a notified party
2. certificates of other insurance coverage, including general liability insurance, extended liability insurance, worker’s compensation and unemployment insurance, employee health insurance (especially if pursuant to a collective bargaining agreement or retirement plan), malpractice insurance, product liability insurance, and liquor or dramshop insurance
3. the two most recently filed state and federal income tax returns, with all schedules and attachments
4. each periodic statement for the twelve-month period preceding the filing of the petition for every financial account held by or for the benefit of the debtor and a copy of each cancelled check or a check register

5. proof that all pre-petition bank accounts have been closed, including copies of the final periodic statement and cancelled checks for each account
6. proof of establishment of debtor-in-possession bank account(s)
7. list of all disbursements and transfers of property made during the 90 days prior to the petition date, including the date, amount, payee or transferee, and purpose or consideration for the payment or transfer
8. projected cash budget for the first six months of post-petition operations
9. most recent financial statements, including balance sheet and profit and loss statement
10. accounts receivable aging report
11. all required licenses and permits
12. rent roll and third-party management agreement
13. report of physical inventory
14. written policies given to customers regarding the sale of personal identification information
15. information regarding employment and compensation of each of the debtor's principals, including the individual's name; position; description of duties and responsibilities; necessity for continued employment; current salary; current bonuses, retention pay, and incentive pay; current benefits including, but not limited to, use of vehicles, housing, expense reimbursement, insurance, and pension or profit sharing; any other current compensation; and information about all compensation and benefits received or accrued during the preceding twelve-month period
16. information about employee pension plans and health plans
17. if the debtor is an individual, photo identification and proof of social security number

#### **CERTIFICATION OF RECEIPT AND UNDERSTANDING OF NOTICES**

**Within 14 days of filing the petition,** the debtor must sign and submit the attached forms certifying receipt and understanding of certain notices.

1. Certification of Receipt and Understanding - United States Trustee's Operating Guidelines and Reporting Requirements

2. Certification of Receipt and Understanding – Debt Collection Improvements Act
3. Certification of Receipt and Understanding – USTP Lockbox
4. Certification of Receipt and Understanding – Prompt Determination
5. Certification of Receipt and Understanding – 11 U.S.C. § 1115

### **LIMITED WAIVER**

Because of restrictions on communications between attorneys and represented clients, the United States Trustee will inquire from debtor's counsel whether United States Trustee staff may communicate directly with the debtor or its employees regarding administrative matters such as insurance coverage, bank account information, monthly operating reports, quarterly fees, and post-confirmation reporting. Approval for direct communication should be in writing. The debtor's attorney may sign and submit the Limited Waiver form for this purpose.

### **MEETING OF CREDITORS**

Pursuant to Bankruptcy Code section 341, the United States Trustee will convene and preside at a meeting of creditors within a reasonable time after the petition date. The meeting of creditors is the statutory forum where the debtor or a designated representative of a partnership or corporation must appear and answer questions under oath about the debtor's business and financial affairs and the bankruptcy case. The person appearing on behalf of the debtor should be prepared to verify the accuracy of the schedules and statements and to respond effectively to the examination. If the debtor is a corporation, the representative may include any or all of its officers, members of its board of directors or trustees, or similar controlling body, a controlling stockholder or member, or any other person in control. If the debtor is a partnership, the representative may include any or all of its general partners or, if designated by the court, any other person in control.

The scope of examination of the debtor at the meeting of creditors may relate to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. The examination may also relate to the operation of any business and the desirability of its continuance, the source of

any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

An individual debtor must present to the United States Trustee: (1) an original government-issued photo identification or any other identifying information that establishes the debtor's identity and (2) confirmation of the full Social Security number listed on the section 341 meeting notice issued by the clerk of court and provided to the debtor and creditors in the case. Acceptable forms of picture identification (ID) include: driver's license, U.S. government ID, state ID, passport (and current U.S. visa, if not a U.S. citizen), military ID, resident alien card, and identity card issued by a national government authority (if authorized by the United States Trustee). Acceptable forms of proof of the Social Security number include Social Security card, medical insurance card, pay stub, W-2 Form, IRS Form 1099, and Social Security Administration (SSA) Statement.

The meeting will be recorded electronically by the United States Trustee. The record of the meeting will be preserved by the United States Trustee and will be available for public access until two years after the conclusion of the meeting. At an entity's request, the United States Trustee will provide a copy of the recording at the entity's expense.

## **CHAPTER 11 REPORTING REQUIREMENTS**

Debtors-in-possession and chapter 11 trustees must account for the receipt, administration, and disposition of all property; provide information concerning the estate and the estate's administration as parties in interest request; and file periodic reports and summaries of a debtor's business, including a statement of receipts and disbursements, and such other information as the United States Trustee or the bankruptcy court requires.

Pursuant to 28 U.S.C. § 589b, the Department of Justice is authorized to issue rules requiring uniform periodic reports filed by debtors-in-possession or trustees in cases under chapter 11. 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 requires that chapter 11 debtors-in-possession 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 U.S. Trustee Program operates. The monthly periodic report filed during the case before the confirmation of a plan of reorganization is generally known as the monthly operating report (“MOR”). The quarterly periodic report filed after the confirmation of a plan of reorganization and before the case is closed is generally known as the post-confirmation report (“PCR”).

### **Monthly Operating Reports**

A chapter 11 debtor who does not qualify as a “small business debtor” under 11 U.S.C. § 101(51D) or a subchapter V debtor, as defined in 11 U.S.C. § 1182, or trustee, if appointed in the case, must complete a report of the debtor’s financial condition and status of operations for each calendar month using UST Form 11-MOR, together with any required supporting documentation. The MOR must be filed with the court no later than the 21st day of the month immediately following the reporting period covered by the MOR. The MOR, together with any required supporting documentation filed as separate attachments, must be filed each calendar month until one of the following occurs: (1) the effective date of a confirmed plan of reorganization; (2) the conversion of the case to a case under another chapter; or (3) the dismissal of the case. In a case that does not have an effective plan, if an order has been entered on the docket that vacates the confirmation, dismissal, or conversion order or reopens the case for a reason other than an administrative purpose, the debtor or trustee, if appointed in the case, must resume the filing of MORs.

The timely filing of MORs is crucial to the efficient administration of chapter 11 cases. The reports are designed to provide the United States Trustee, the court, creditors, and other parties in interest with reliable information regarding the current status of the case. Failure to timely file complete MORs may constitute cause for dismissal or conversion of the case or for the appointment of a trustee or an examiner.

### **Monthly Operating Reports - Supporting Documentation**

Non-individual debtors must file, as separate attachments to the MOR: (1) a Statement of Cash Receipts and Disbursements; (2) a Balance Sheet containing the summary and detail of the assets, liabilities, and equity (net worth) or deficit; (3) a Statement of Operations (Profit or Loss Statement); and (4) account or bank statements prepared by each financial institution or investment account detailing activity in the reporting period.

Individual debtors must attach account or bank statements prepared by each financial institution or investment account detailing activity in the reporting period.

### **Post-Confirmation Reports**

Following the effective date of a confirmed chapter 11 plan in a case that did not qualify as a “small business debtor” under 11 U.S.C. § 101(51D) or a subchapter V debtor, as defined in 11 U.S.C. § 1182, the reorganized debtor and any other authorized parties who have been charged with administering the confirmed plan must each complete a report of the financial condition and status of operations for each calendar quarter using UST Form 11-PCR. The PCR must be filed with the court no later than the 21st day of the month immediately following the calendar quarter covered by the PCR. The PCR must be filed every calendar quarter until one of the following occurs: (1) the date of the final decree; (2) the conversion of the case to a case under another chapter; or (3) the dismissal of the case. If an order has been entered on the docket that vacates the confirmation, dismissal, or conversion order or reopens the case for a reason other than an administrative purpose, the filing of PCRs must be resumed.

### **Forms & Instructions for MORs and PCRs**

To obtain the required MOR and PCR forms, instructions for completing and filing MOR and PCR forms, and other important information, please visit the United States Trustee Program’s Chapter 11 Operating Reports resource page at [www.justice.gov/ust/chapter-11-operating-reports](http://www.justice.gov/ust/chapter-11-operating-reports).

### **Reports for Small Business Debtors**

Chapter 11 debtors designated as small businesses must file a monthly operating report using Official Form 425C (Monthly Operating Report for Small Business Under Chapter 11). The form is available on the bankruptcy court’s website.

On or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. §1930(a)(6), the debtor must file and transmit to the United States Trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. §1930(a)(6) for that quarter.

## **Other Reports**

If applicable, the debtor must file and serve a Report of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest for any entity in which the debtor controls or owns at least a 20 percent interest. The report must be submitted on Official Form 426, available on the Court's website, and must be filed seven days prior to the first date set for the section 341 meeting of creditors. Subsequent reports must be filed every six months. See FRBP 2015.3 for details.

## **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. A reorganization plan cannot be confirmed unless provision is made for the payment of all outstanding quarterly fees no later than the effective date of the plan.

### **Quarterly Fee Calculation**

The quarterly fee is calculated by totaling disbursements for the three-month calendar quarter, or portion thereof, according to published fee schedules.<sup>1</sup> The quarterly fee amount will be estimated if disbursements for all of the months of a calendar quarter that the case is open have not been reported to the United States Trustee. The estimated fee is based on (a) the reported disbursement history, (b) the debtor's initial financial data submitted when the case was filed, or (c) the United States Trustee's estimate. The applicable minimum fee is due even if there were no disbursements during a calendar quarter. The fee is not prorated.

### **Fee Due Date**

Quarterly fees are due no later than one month following the end of each calendar quarter. Payment of the current quarterly fees and any past due fees and interest must be made before the effective date of a confirmed plan. Quarterly fees will continue to accrue until entry of the final decree or until the

---

<sup>1</sup> Information about quarterly fees may be obtained at <https://www.justice.gov/ust/chapter-11-quarterly-fees>.

case is converted or dismissed. Failure to pay these fees may result in a motion by the United States Trustee to dismiss or convert the case to chapter 7.

### **Payment Options**

A billing statement from the United States Trustee Program is mailed to the debtor or other designated party for each calendar quarter before the payment due date. Chapter 11 quarterly fees may be paid online or by mailing the tear off portion of the statement and a check, made payable to “United States Trustee.”

To pay online, visit <https://www.pay.gov/public/form/start/672415208>.

The address to use to mail quarterly fee payments is:

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

The address to use for overnight delivery of quarterly fee payments is:

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

These addresses are a lockbox at a bank. Do not use these addresses for service of process, correspondence, or any purpose other than paying quarterly fees. Correspondence or documents sent to the lockbox other than the payment form will be destroyed.

Each quarterly fee must be timely paid. Failure to receive a bill from the Executive Office for United States Trustees does not excuse timely payment. Failure to timely pay the quarterly fee is cause for conversion or dismissal of the chapter 11 case pursuant to 11 U.S.C. § 1112(b)(4)(K) (for cases filed on or after October 17, 2005) or 11 U.S.C. § 1112(b)(10) (for cases filed before October 17, 2005).

## **RETENTION & COMPENSATION OF PROFESSIONALS**

Among the U.S. Trustee Program's top priorities and statutory responsibilities in chapter 11 cases is reviewing requests to retain and pay professionals from the bankruptcy estate, including attorneys, accountants, financial advisors, turnaround specialists, auctioneers, realtors, and other professionals.

### **Retention**

Sections 327, 1103, and 1114 of the Bankruptcy Code authorize the employment of professionals in a chapter 11 case, and Bankruptcy Rule 2014 requires that a professional seeking employment under those sections file a verified statement of all connections with parties in interest. The retention and disclosure process is designed to ensure public confidence in the integrity and efficiency of the bankruptcy system by determining whether professionals can render undivided loyalty and untainted advice and by limiting the retention of professionals to those instances where the services are necessary. Absent complete, clear, and public disclosure of all connections, a court cannot determine whether a professional satisfies the rigorous statutory standard for employment. The United States Trustee's role as the "watch dog" of the bankruptcy system is to faithfully read and apply the Code and Rules and to raise issues so that the court may make the ultimate decision on a professional firm's employment.

### **Compensation**

United States Trustees have an express statutory responsibility to review applications for professional compensation. In the Bankruptcy Reform Act of 1994, Congress directed the U.S. Trustee Program to establish uniform guidelines for reviewing fee applications to provide consistency in the fee application preparation and review process.

In early 1996, the U.S. Trustee Program published fee guidelines to assist the court, the U.S. Trustees, and interested parties in evaluating the reasonableness of fee requests. The 1996 guidelines include disclosure requirements, task-based billing requirements, and standards for reimbursement for certain expenses. In 2013, the Program promulgated fee guidelines governing the review of applications for compensation filed by attorneys in larger chapter 11 cases.<sup>2</sup>

---

<sup>2</sup> Information on the fee guidelines is available on the Program's website at <https://www.justice.gov/ust/fee-guidelines>.

The failure to obtain court authorization before making payments to estate professionals constitutes a breach of a debtor-in-possession's fiduciary duties and serves as a basis for dismissal or conversion pursuant to 11 U.S.C. § 1112(b).

### **NOTICE TO SUBCHAPTER V DEBTORS**

Subchapter V debtors are required to comply with deadlines not imposed in other chapter 11 cases.

- The Bankruptcy Court will hold a status conference not later than 60 days after the case is filed “to further the expeditious and economical resolution” of the subchapter V case. 11 U.S.C. § 1188(a).
- Not later than 14 days before the status conference, “the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.” 11 U.S.C. § 1188(c).
- The subchapter V debtor shall file a plan not later than 90 days after the petition date, except that the court may extend the period “if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.” 11 U.S.C. § 1189(b).
- Pursuant to 11 U.S.C. § 521(a)(3), the subchapter V debtor has a duty to cooperate with the subchapter V trustee in the trustee’s performance of the trustee’s statutory duties.

Portions of the Operating Guidelines and Reporting Requirements for Debtors in Possession and Chapter 11 Trustees do not apply to chapter 11 debtors who are proceeding under subchapter V.

- Subchapter V debtors are not required to pay quarterly fees under 28 U.S.C. § 1930(a)(6)(A).
- Because subchapter V debtors are not required to pay quarterly fees, subchapter V debtors do not need to file post-confirmation disbursement reports
- Subchapter V debtors do not need to complete the Certification of Receipt and Understanding of Notice – Disclosure under Debt Collection Improvement Act of 1996.
  - Subchapter V debtors do not need to complete the Certification of Receipt and Understanding of Notice – United States Trustee Payment Center Lockbox Destruction Policy and Banking System.