

DEPARTMENT OF JUSTICE

28 CFR Part 58, Appendix B

Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses

Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

AGENCY: Executive Office for United States Trustees, Justice.

ACTION: Notice of internal procedural guidelines.

SUMMARY: In 1996, in accordance with Congress's mandate in 28 U.S.C. § 586(a)(3)(A), the United States Trustee Program ("USTP") established Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330. See 28 C.F.R. Part 58, Appendix A ("Appendix A guidelines"). The USTP has drafted additional guidelines for reviewing applications for compensation and reimbursement of expenses filed by attorneys in larger chapter 11 cases with \$50 million or more in assets and \$50 million or more in liabilities, aggregated for jointly administered cases. Single asset real estate cases, as defined in 11 U.S.C. § 101(51B), filed under chapter 11 are excluded from these guidelines.

To keep all published rules, regulations, and guidelines pertaining to the review of applications for compensation and reimbursement of expenses filed under 11 U.S.C. § 330 in one section of the Code of Federal Regulations, the superseding guidelines that apply to the USTP's review of applications for compensation filed by attorneys in larger chapter 11 cases will be included as Appendix B to 28 C.F.R. Part 58 ("Appendix B guidelines"). Until the USTP adopts other superseding guidelines, the Appendix A guidelines will continue in effect for the USTP's review of applications filed under section 330 in: (1) larger chapter 11 cases by those professionals seeking compensation who are not attorneys; (2) all chapter 11 cases with less than \$50 million in assets and \$50 million in liabilities, aggregated for jointly administered cases; (3) all chapter 11 single asset real estate cases; and (4) all cases under other chapters of the Bankruptcy Code.

The USTP will continue to review and update these guidelines, as appropriate.

EFFECTIVE DATE: July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Nan Roberts Eitel, Associate General Counsel for Chapter 11 Practice, Executive Office for United States Trustees, 20 Massachusetts Ave., 8th Floor, Washington, D.C. 20530.

SUPPLEMENTARY INFORMATION: The authority for these guidelines is 28 U.S.C. § 586(a)(3)(A), which provides that United States Trustees may review "in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States Trustee except when circumstances warrant different

treatment) applications filed for compensation and reimbursement under section 330 of title 11” *Id.* The guidelines are to be applied by the USTP; however, they are not exclusive and do not limit the United States Trustee’s discretion to object or comment to a particular application.

Because the Appendix B guidelines, like the Appendix A guidelines, constitute procedural guidelines that apply to the USTP’s review of fee applications, they are not subject to the Administrative Procedure Act’s formal notice and comment provisions. Nonetheless, to engage the bankruptcy community, the USTP followed an extensive notice and comment-like process by reaching out to various bankruptcy judges and the National Bankruptcy Conference before drafting the Appendix B guidelines, posting a draft of the Appendix B guidelines to its public website for public comment, holding a public meeting, and posting a revised draft of the Appendix B guidelines responding to the comments to its public website for further public comment.

1. Appendix B is added to Part 58 to read:

Appendix B to Part 58 -- Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases

A. GENERAL INFORMATION

1. United States Trustees may review “in accordance with procedural guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States Trustee except when circumstances warrant different treatment) applications for compensation and reimbursement filed under section 330 of title 11” 28 U.S.C. § 586(a)(3)(A). United States Trustees may also file “with the court comments with respect to such application and, if the United States Trustee considers it to be appropriate, objections to such application.” *Id.* The Executive Office for United States Trustees (“Executive Office”) adopted procedural guidelines, which apply to all cases filed after October 21, 1994. *See* 28 C.F.R. Part 58, Appendix A.
2. Because the circumstances in larger chapter 11 cases warrant different treatment, the Executive Office adopted these Appendix B guidelines (“Guidelines”) to apply only when United States Trustees review applications for compensation filed by attorneys employed under sections 327 or 1103 of the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* (“Code”), in chapter 11 cases where the debtor’s petition lists \$50 million or more in assets **and** \$50 million or more in liabilities, aggregated for jointly administered cases and excluding single asset real estate cases as defined in 11 U.S.C. § 101(51B) (“threshold”).
3. The United States Trustees will use these Guidelines to review applications for compensation filed by attorneys employed under sections 327 or 1103 of the Code in all chapter 11 cases that meet the threshold and that are commenced on or after July 1, 2013.

4. The Guidelines express the USTP's policy positions, and the USTP will use these Guidelines in the absence of controlling law or rules in the jurisdiction. Thus, the Guidelines do not supersede local rules, court orders, or other controlling authority. However, these Guidelines do not limit the USTP's ability to seek changes in controlling laws or rules through litigation, appeals, and other actions.
5. Only the court has authority to award compensation and reimbursement under section 330 of the Code. The Guidelines focus on the disclosure of information relevant to the court's award of compensation and reimbursement of expenses under section 330 of the Code. The Guidelines reflect standards and procedures in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure. Applications containing the information requested in these Guidelines will assist review by the court, the parties, and the United States Trustee.
6. Because the review of fee applications under section 330 of the Code is inextricably intertwined with the terms and conditions of employment approved by the court when the applicant is retained, these Guidelines also address disclosure of certain information in applications for retention filed under sections 327 and 1103 of the Code.
7. Nothing in the Guidelines should be construed:
 - a. To limit the United States Trustee's discretion to request additional information necessary for the review of a particular fee application or to refer any information provided to the United States Trustee to any law enforcement authority of the United States or a state.
 - b. To limit the United States Trustee's discretion to determine whether to file comments or objections to fee applications.
 - c. To create any private right of action on the part of any person enforceable against the United States Trustee or the United States.

B. UNITED STATES TRUSTEE'S GOALS AND CONSIDERATIONS IN REVIEWING AND COMMENTING ON FEE APPLICATIONS

1. **Goals:** In determining whether to object to or comment on fee applications, the United States Trustee will be guided by the following goals. These goals, however, are not exclusive and in no way limit the discretion of the United States Trustee to object or comment. In applying the Guidelines, the United States Trustee seeks:
 - a. To ensure that bankruptcy professionals are subject to the same client-driven market forces, scrutiny, and accountability as professionals in non-bankruptcy engagements.
 - b. To ensure adherence to the requirements of section 330 of the Code so that all professional compensation is reasonable and necessary, particularly as compared to the market measured both by the applicant's own billing practices for bankruptcy and non-bankruptcy engagements and by those of its peers.

- c. To increase disclosure and transparency in the billing practices of professionals seeking compensation from the estate.
 - d. To increase client and constituent accountability for overseeing the fees and billing practices of their own professionals who are being paid by the estate.
 - e. To encourage the adoption of budgets and staffing plans developed between the client and the applicant to bring discipline, predictability, and client involvement and accountability to the compensation process.
 - f. To decrease the administrative burden and increase the efficiency of review of fee applications.
 - g. To assure that, even in the absence of an objection, the burden of proof to establish that fees and expenses are reasonable and necessary remains on the applicant seeking compensation and reimbursement.
 - h. To increase public confidence in the integrity and soundness of the bankruptcy compensation process.
2. **Considerations on fees:** The Guidelines are intended to elicit information that will aid the United States Trustee, the parties, and the court in determining whether the fees and expenses sought in a fee application are reasonable and necessary as required by section 330 of the Code. In applying section 330 to the review of fee applications, the United States Trustee will consider the following:
- a. **Section 330 factors:** The factors expressly set forth in section 330 of the Code, including:
 - i. The time spent.
 - ii. The rates charged.
 - iii. Whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered.
 - iv. Whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.
 - v. The demonstrated skill and experience in bankruptcy of the applicant's professionals.
 - vi. Whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

The United States Trustee may object to the extent that the applicant fails to provide sufficient information to satisfy its burden under section 330.

- b. **Comparable services standard:** Whether the applicant provided sufficient information in the application to establish that the compensation sought is reasonable as compared to the market measured by the billing practices of the applicant and its peers for bankruptcy and non-bankruptcy engagements. The United States Trustee will ordinarily object to fees that are above the market rate for comparable services. **Exhibit A** is a model form that may be useful in providing this information.¹
- c. **Staffing inefficiencies:** Whether there was duplication of effort or services, or whether the seniority or skill level of the applicant's professional was commensurate with the complexity, importance, and nature of the issue or task. The United States Trustee may object if any duplication is unjustified or unjustifiable, including if multiple professionals unnecessarily attend hearings or meetings. The United States Trustee may also object if the skill level of the professional rendering a particular service is not commensurate with the task. The United States Trustee encourages applicants to consider how to assign and staff more routine and "commoditized" work, such as avoidance actions and claims objections, and to consider whether lower cost co-counsel should be retained for discrete types of work, while being careful to avoid duplication, overlap, and inefficiencies. See **Exhibit B** for factors the USTP will consider in determining whether to object to the retention or compensation of co-counsel.
- d. **Rate increases:** Whether the application contains rates higher than those disclosed and approved on the application for retention or any supplemental application for retention or agreed to with the client. **Exhibit C** is a model form that may be useful in providing this information. The United States Trustee may object if the applicant fails to justify any rate increases as reasonable. Boilerplate language in the retention application filed under section 327 of the Code is insufficient.
- e. **Transitory professionals:** Whether any of the applicant's professionals billed only a few hours to the matter with insufficient evidence of benefit to the estate. The United States Trustee may object if the applicant fails to justify the necessity or benefit of these professionals' services.
- f. **Routine billing activities:** Whether an applicant billed for routine billing activities that typically are not compensable outside of bankruptcy. Most are not compensable because professionals do not charge a client for preparing invoices, even if detailed. *Reasonable* charges for preparing interim and final fee applications, however, are compensable, because the preparation of a fee application is not required for lawyers practicing in areas other than bankruptcy as a condition to getting paid. Activities

¹ The model forms included as exhibits to the Guidelines are templates offered as guidance to facilitate preparation and review of requested information.

that the United States Trustee may object to as non-compensable include but are not limited to:

- i. Excessive redaction of bills or invoices for privileged or confidential information. Professionals and paraprofessionals whose compensation will be paid by the bankruptcy estate know at the inception that their billing records must be publicly filed and should draft time entries and prepare invoices to both minimize redactions and avoid vague descriptions. The time spent for redactions should be reasonably proportional to the overall fees sought.
 - ii. Reviewing or revising time records.
 - iii. Preparing, reviewing, or revising invoices.
 - iv. Preparing, reviewing, or revising monthly fee statements, notices or other informal interim compensation requests to the extent duplicative of the preparation of the related interim or final fee application filed with the court under section 330 of the Code.
 - v. Preparing the final fee application to the extent duplicative of the preparation of interim fee applications.
- g. **Contesting or litigating fee objections:** Whether the fee application seeks compensation for time spent explaining or defending monthly invoices or fee applications that would normally not be compensable outside of bankruptcy. Most are not compensable because professionals typically do not charge clients for time spent explaining or defending a bill. The USTP's position is that awarding compensation for matters related to a fee application after its initial preparation is generally inappropriate, unless those activities fall within an applicable, judicially recognized and binding exception (such as litigating an objection to the application where the applicant substantially prevails). Thus, the United States Trustee may object to time spent explaining the fees, negotiating objections, and litigating contested fee matters that are properly characterized as work that is for the benefit of the professional and not the estate.
- h. **Block billing or lumping:** Whether the entries in the application are recorded in increments of .1 of an hour and whether discrete tasks are recorded separately. The United States Trustee will object to block billing or lumping. Each timekeeper, however, may record one daily entry that combines tasks for a particular project that total a de minimis amount of time if those tasks do not exceed .5 hours on that day.
- i. **Vague or repetitive entries:** Whether the application contains insufficient information to identify the purpose of the work or the benefit to the estate. The United States Trustee may object to vague or repetitive entries that are otherwise unjustified. Phrases like "attention to" or "review file," without more, are generally insufficient.

- i. **Overhead:** Whether the application includes activities that should be considered part of the applicant's overhead and not billed to the estate. Tasks that the United States Trustee may object to as overhead include clerical tasks and word processing. The United States Trustee may also object to fees for summer clerks or summer associates, which are more properly the firm's overhead for recruiting and training.
 - j. **Non-working travel:** Whether the application includes time billed for non-working travel at the full rate. The United States Trustee may object if the applicant seeks compensation at a professional's full rate for time spent traveling without actively working on the bankruptcy case or while working on other unrelated matters.
 - k. **Geographic variations in rates:** Whether the applicant increased the hourly rates of its professionals and paraprofessionals based solely on the geographic location of the bankruptcy case. The United States Trustee will not object to "non-forum" rates of professionals when the "non-forum" rates are based on the reasonable rates where they maintain their primary office, even if the locally prevailing rates where the case is pending are lower (*i.e.*, a professional may bill the same reasonable rate in any forum). Conversely, the United States Trustee will object if professionals increase their rates based on the forum where the case is pending when they bill lower rates where they maintain their primary offices.
 - l. **Budgets and staffing plans:** Whether the fee application sufficiently explains: (i) any substantial increase (e.g., 10% or more) in the amount requested in the fee application as compared to any client-approved budget; and (ii) any increase in the number of professionals and paraprofessionals billing to the matter during the application period as compared to any client-approved staffing plan. The United States Trustee ordinarily will seek the use of fee and expense budgets and staffing plans, either with the consent of the parties or by court order as soon as feasible after the commencement of the case, as described more specifically in E. In reviewing the fee application, the United States Trustee will consider any budget and staffing plan filed retrospectively with the application. **Exhibit D** is a model budget and staffing plan, and **Exhibit E** is a model form that may be useful in reporting fees sought in comparison to client-approved budgets.
 - m. **Verified and other statements:** Whether the client has provided a verified statement with the applicant's retention application regarding its budgeting, review, and approval process for fees and expenses, and whether the applicant has made similar representations and disclosures in the retention application and fee application.
3. **Considerations on expenses:** In applying section 330 to the review of applications for reimbursement of reasonable, actual, and necessary expenses, the United States Trustee will consider the following:
- a. **Proration:** Whether the applicant has prorated shared expenses where appropriate between the estate and other cases and has adequately explained the basis for any

such proration. For example, applicants should prorate travel expenses that are applicable to more than one case.

- b. **Reasonable:** Whether the expense is reasonable and necessary. For example, travel should be in coach class, and first class and other above standard travel or accommodations will normally be objectionable.
- c. **Customary:** Whether the requested expenses are customarily charged to the applicant's non-bankruptcy clients and by the applicant's peers in the market. The United States Trustee will ordinarily object to expenses that are not customary, absent a specific and adequate justification.
- d. **Actual:** Whether the expenses incurred or paid by the applicant reflect the actual cost of such expenses to the applicant and whether any mark-up is justified. Mark-ups will ordinarily be objectionable.
- e. **Overhead:** Whether the expenses are or should be non-reimbursable overhead costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Without limitation, the United States Trustee will ordinarily consider the following expenses to be overhead: word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, telephone charges, and library and publication charges.
- f. **Local rule or order:** Whether the applicant has adhered to allowable rates or charges for expenses as may be fixed by any local rule or order of the court. Expenses that are not allowable will normally be objectionable.
- g. **Unusual:** Whether unusual expenses are supported by detailed explanations and allocated, where practicable, to specific projects. The United States Trustee may object if unusual expenses are unsupported or unjustified.
- h. **Receipts:** Whether receipts for larger or unusual expenses are available for review upon request.

C. CONTENTS AND FORMAT OF APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES

1. **General:** All applications should include sufficient detail to demonstrate compliance with the standards of 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the court, the parties, and the United States Trustee can review it without searching for relevant information in other documents. The information sought below will facilitate review of the application and should be provided in every fee application.
2. **Information to be provided about the applicant and the scope of the application:**

- a. Name of applicant.
- b. Name of client.
- c. Petition date.
- d. Retention date.
- e. Date of order approving employment.
- f. Time period covered by application.
- g. Terms and conditions of employment and compensation, including source of compensation, existence and terms controlling any retainer, and any budgetary or other limitations on fees.
- h. Whether the application is interim under section 331 or final.
- i. The date and terms of any order allowing filing of interim applications more frequently than every 120 days, if applicable.
- j. Whether the applicant seeks compensation under a provision of the Code other than section 330.
- k. For each professional and paraprofessional who billed on the matter during the application period:
 - i. Name.
 - ii. Title.
 - iii. Primary department, group, or section.
 - iv. Date of first admission to the bar, if applicable.
 - v. Total fees billed included in application.
 - vi. Total hours billed included in application.
 - vii. Current hourly rate contained in this application.
 - viii. Hourly rate contained in the first interim application.
 - ix. The number of rate increases since the inception of the case.
 - x. If the applicant has increased rates during the case, the application should disclose the effect of the rate increases. For comparison purposes, the applicant should calculate and disclose the total compensation sought in the fee application using the rates originally disclosed in the retention application.

Exhibit C is a model form that may be useful in providing the information requested in ¶ C.2.k.

3. Information to be provided about customary and comparable compensation:

- a. The blended hourly rate either billed **or** collected, excluding bankruptcy engagements, during the preceding year for the applicant's timekeepers.
 - i. The application should disclose the blended hourly rate for the aggregate of either:
 - (a) All of the applicant's domestic timekeepers; or
 - (b) All timekeepers in each of the applicant's domestic offices in which timekeepers collectively billed at least 10% of the hours to the bankruptcy case during the application period.
 - ii. The application should also segregate the timekeepers in ¶ C.3.a.i by the various categories of professionals and paraprofessionals maintained by the applicant (e.g., partner, counsel, sr. counsel, associate, etc.), and disclose the blended hourly rate for each category of timekeeper.
 - iii. To calculate the blended hourly rate **billed**, divide the dollar value of hours billed by the number of hours billed (regardless of when the work was performed) for the relevant timekeepers during the applicable time period. To calculate the blended hourly rate **collected**, divide the revenue collected by the number of hours billed for the relevant timekeepers during the applicable time period.
 - iv. In calculating the blended hourly rate:
 - (a) Full service law firms should generally exclude all bankruptcy engagements or all data from timekeepers practicing primarily in a bankruptcy group or section.
 - (b) Law firms that practice exclusively or primarily in bankruptcy should exclude all estate-billed bankruptcy engagements.
 - (c) The applicant may exclude:
 - a. Pro bono engagements.
 - b. Other engagements for clients who are employees or charitable organizations that are billed at materially discounted rates.
 - (d) The applicant should include discounted or alternative engagements, other than those engagements in ¶ C.3.a.iv.(c). For

any alternative fee arrangements not billed by the hour to the client but for which the applicant tracks hours and revenue by hours worked, the applicant should include this information in the calculation and explain as necessary.

- v. The “preceding year” can be either the applicant’s prior completed fiscal year or a rolling 12 month year.
- b. The blended hourly rate billed to the bankruptcy case during the application period for all of the applicant’s timekeepers.
- i. The application should disclose the blended hourly rate billed in the aggregate for all timekeepers who billed to the matter.
 - ii. The application should also segregate the timekeepers by the various categories of professionals and paraprofessionals maintained by the applicant (e.g., partner, counsel, sr. counsel, associate, etc.), and disclose the blended hourly rate billed for each category of timekeeper.
 - iii. To calculate the blended hourly rate billed, divide the dollar value of hours billed by the number of hours billed (regardless of when the work was performed) for the relevant timekeepers during the application period.

Exhibit A is a model form that may be useful in providing this information.

- c. Applicants can propose detailed and specific disclosures, other than those requested at ¶ C.3. a.-b., that are tailored to the applicant’s circumstances and ability to gather and organize internal information, but the United States Trustee may object to the adequacy of the disclosure if it is insufficient to enable the United States Trustee to evaluate whether the requested compensation is comparable and customary.
4. **“Safe harbor”:** An applicant’s disclosure of blended hourly rates in accordance with ¶ C.3 will provide a limited “safe harbor” from additional requests from the United States Trustee for information about customary and comparable compensation under section 330(a)(3)(F) of the Code. This “safe harbor” is without prejudice to the United States Trustee’s ability to seek additional information based upon the particular facts and circumstances of the case, to file an objection, or to offer evidence on comparable compensation from other sources.
5. **Statement from the applicant:** The applicant should answer the questions below in the fee application. Many questions require only a yes or no answer. The applicant, however, is free to provide additional information if it chooses to explain or clarify its answers.
- a. Did you agree to any variations from, or alternatives to, your standard or customary billing rates, fees or terms for services pertaining to this engagement that were provided during the application period? If so, please explain.

- b. If the fees sought in this fee application as compared to the fees budgeted for the time period covered by this fee application are higher by 10% or more, did you discuss the reasons for the variation with the client?
 - c. Have any of the professionals included in this fee application varied their hourly rate based on the geographic location of the bankruptcy case?
 - d. Does the fee application include time or fees related to reviewing or revising time records or preparing, reviewing, or revising invoices? (This is limited to work involved in preparing and editing billing records that would not be compensable outside of bankruptcy and does not include reasonable fees for preparing a fee application). If so, please quantify by hours and fees.
 - e. Does this fee application include time or fees for reviewing time records to redact any privileged or other confidential information? If so, please quantify by hours and fees.
 - f. If the fee application includes any rate increases since retention:
 - i. Did your client review and approve those rate increases in advance?
 - ii. Did your client agree when retaining the law firm to accept all future rate increases? If not, did you inform your client that they need not agree to modified rates or terms in order to have you continue the representation, consistent with ABA Formal Ethics Opinion 11-458?
6. **Information about budget and staffing plans:** If the applicant consents to, or the court directs, the use of budgets and staffing plans, as described more generally in ¶ E, the applicant should attach the client-approved budget and client-approved staffing plan to the fee application for the time period covered by the fee application. Both original and any amended budgets and staffing plans should be included.
- a. The budget and staffing plan for the fee application period should be filed when the fee application is filed, not when the client and the applicant agree on the budget and staffing plan. For example, the budget disclosed with each interim fee application should relate to work already performed and reflected in that application. Thus, if the client approved four, 30-day budgets that collectively covered a 120-day interim application period, then these four budgets should be attached.
 - b. Budgets may be redacted as necessary to protect privileged and confidential information, and such redactions may be compensable if the disclosure of the privileged or confidential information cannot otherwise be avoided through careful drafting. But the time spent for redactions should be reasonably proportional to the overall fees sought. Redactions may be unnecessary if the applicant uses the model budget in **Exhibit D**, which budgets total hours and fees by project category without descriptive entries.

- c. The fee application should also include a summary of fees and hours budgeted compared to fees and hours billed for each project category. **Exhibit E** is a model form that may be useful in reporting fees sought in comparison to the budget.
- d. The applicant should provide an explanation if the fees sought in the fee application exceed the budget during the application period by 10% or more.
- e. The applicants should provide an explanation if fees are sought in the fee application for a greater number of professionals than identified in the staffing plan.

7. Information about prior interim applications:

- a. With respect to each prior interim application, counsel should provide the following information:
 - i. Date(s) filed and period covered.
 - ii. Fees and expenses requested.
 - iii. Fees and expenses approved.
 - iv. Approved fees and expenses paid.
 - v. Approved fees and expenses remaining unpaid.
 - vi. Date(s) of previous order(s) on interim compensation or reimbursement of expenses.
- b. Counsel should provide the following information on a cumulative basis since case inception:
 - i. Fees and expenses requested.
 - ii. Fees and expenses approved.
 - iii. Approved fees and expenses paid.
 - iv. Approved fees and expenses remaining unpaid.
 - v. Fees and expenses disallowed or withdrawn.

8. Billing procedures and format:

- a. Time and service entries should be reported in chronological order.
- b. Each time or service entry should include:
 - i. The timekeeper's name.
 - ii. Time spent on task.

- iii. Hourly rate.
 - iv. Fees sought for each entry.
 - v. Description of task or service.
 - vi. Project category as set forth in **Exhibit F**.
- c. Time should be recorded contemporaneously in increments of no more than one tenth of an hour. A disproportionate number of entries billed in half-or whole-hour increments may indicate that actions are being lumped or not accurately billed.
- d. Services should be described in detail and not combined or "lumped" together, with each service showing a separate time entry. Each timekeeper, however, may record one daily entry that combines tasks for a particular project that total a de minimis amount of time if those tasks do not exceed .5 hours on that day.
- e. Entries should give sufficient detail about the work, identifying the subject matter of the communication, hearing, or task and any recipients or participants.
- f. If more than one professional attends a hearing or conference, the applicant should explain the need for multiple attendees.
- g. The project categories set forth in **Exhibit F** should be used to the extent applicable. Applicants are encouraged to consult with the United States Trustee regarding the need to formulate case-specific project billing with respect to a particular case.
- h. The applicant should provide a brief narrative summary of the following information for each project category:
- i. A description of the project, its necessity and benefit to the estate, and its status, including all pending litigation for which compensation and reimbursement are requested.
 - ii. The identity of each person providing services on the project.
 - iii. A statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.
9. **Electronic records:** The billing records (detailed time entries) substantiating the application should generally be provided to the United States Trustee (and, if requested, to the court or any other party) in an open and searchable electronic data format.² The applicant may provide the electronic data in the manner in which it maintains it. An applicant that does not maintain billing data electronically is encouraged to consult with the United States Trustee

² See www.LEDES.org for information regarding open electronic data formats commonly used in legal e-billing.

about providing paper copies of such information. The applicant's submission of electronic data does not relieve the applicant of its obligations under the Code, local rules, and any applicable compensation or case management orders, including providing paper copies if required.

10. **Case status:** The following information should be provided to the extent possible:

- a. A brief summary of the case, discussing key steps completed and key steps remaining until the case can be closed.
- b. The amount of cash on hand or on deposit, the amount and nature of accrued unpaid administrative expenses, and the amount of unencumbered funds in the estate.
- c. Any material changes in the status of the case that occur after the filing of the fee application should be raised at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

11. **Contents of application for reimbursement of reasonable, actual, and necessary expenses:** Any expense for which reimbursement is sought must be reasonable, actual, and necessary and must be of the kind customarily billed to non-bankruptcy clients. Expense applications should include the following information:

- a. Amount.
- b. Description and pertinent detail (*e.g.*, copy costs, messengers, computer research, type of travel, type of fare, rate, destination, *etc.*).
- c. Date incurred.
- d. Who incurred the expense, if relevant.
- e. Reason for expense.
- f. Categorization of expenses according to the project categories as set forth on **Exhibit F**.

12. **Summaries:**

- a. All applications should contain a summary cover sheet that provides the information below. **Exhibit G** is a model form that may be useful in transmitting this information.
 - i. Name of applicant.
 - ii. Name of client.
 - iii. Time period covered by application.
 - iv. Total compensation sought this period.
 - v. Total expenses sought this period.

- vi. Petition date.
 - vii. Retention date.
 - viii. Date of order approving employment.
 - ix. Total compensation approved by interim order to date.
 - x. Total expenses approved by interim order to date.
 - xi. Total allowed compensation paid to date.
 - xii. Total allowed expenses paid to date.
 - xiii. Blended rates in this application for all attorneys and other timekeepers as shown on Exhibit A.
 - xiv. Compensation sought in this application already paid pursuant to a monthly compensation order but not yet allowed.
 - xv. Expenses sought in this application already paid pursuant to a monthly compensation order but not yet allowed.
 - xvi. Number of professionals included in this application.
 - xvii. If applicable, the number of professionals included in this application in excess of the total number of professionals included in any client-approved staffing plan for the application period.
 - xviii. Difference between fees budgeted and compensation sought for this application period.
 - xix. Number of professionals billing fewer than 15 hours of work during this period.
 - xx. If the applicant has increased rates during the case, the application should disclose the effect of the rate increases. For comparison purposes, the applicant should calculate and disclose the total compensation sought in the application using the rates originally disclosed in the retention application.
- b. All applications should summarize fees and hours by project category and expenses by expense category. **Exhibit E** is a model form that may be useful in providing this information.
- c. All applications should summarize professionals (preferably in alphabetical order) included in the fee application by the professional's name, title, date of first admission, rates, hours, fees, and primary practice group. **Exhibit C** is a model form that may be useful in providing this and other information.

D. APPLICATIONS FOR EMPLOYMENT

- 1. Statement from the applicant.** The applicant should answer the questions below in all applications for employment filed under sections 327 or 1103 of the Code. Most questions require only a yes or no answer. The applicant, however, is free to provide additional information if it chooses to explain or clarify its answers.
 - a. Did you agree to any variations from, or alternatives to, your standard or customary billing arrangements for this engagement?
 - b. Do any of the professionals included in this engagement vary their rate based on the geographic location of the bankruptcy case?
 - c. If you represented the client in the 12 months prepetition, are you billing the client at the same effective rates that you billed prepetition (i.e., the same discounts given prepetition)? If no, explain the difference and why the effective rates differ post-petition.

- 2. Verified statement from the client:³** The client should provide a verified statement with all applications for employment filed under sections 327 and 1103 of the Code that addresses the following:
 - a. The identity and position of the person making the verification. The person ordinarily should be the general counsel of the debtor or another officer responsible for supervising outside counsel and monitoring and controlling legal costs.
 - b. The steps taken by the client to ensure that the applicant's billing rates are at market rate, including the due diligence taken to ensure that the rates are comparable to those that would have been charged by other comparable firms.
 - c. The number of firms the client interviewed.
 - d. If the rates are not at a "market rate," the circumstances warranting the retention of that firm.
 - e. The procedures the client has established to supervise the applicant's fees and expenses and to manage costs. If the procedures for the budgeting, review and approval of fees and expenses differ from those the client regularly employs in non-bankruptcy cases to supervise outside counsel, explain how and why. In addition, describe any efforts to negotiate rates, including rates for routine matters, or in the alternative to delegate such matters to less expensive counsel.

³ A verified statement is either a declaration executed in accordance with 28 U.S.C. § 1746 or an affidavit conforming to the laws of the jurisdiction where executed.

- f. The client verification should be appropriately detailed and should not be a routine form prepared by the client's bankruptcy counsel.

E. BUDGETS AND STAFFING PLANS, IN GENERAL

1. In a larger chapter 11 case that meets the threshold, the United States Trustee ordinarily will seek the use of fee and expense budgets and staffing plans, either with the consent of the parties or by court order as soon as feasible after the commencement of the case. As set forth in ¶ B.2.l above, the United States Trustee will consider fee applications in the context of budgets and staffing plans used in the case, and the professionals are urged to consult with the United States Trustee whether they anticipate delays in formulating budgets. **Exhibit D** contains a model budget and staffing plan.
2. Budgets and staffing plans should be agreed to between attorneys and clients.
3. Budgets can and should be amended as necessary to reflect changed circumstances or unanticipated developments.
4. The appropriate budget period should be decided between attorneys and clients. For example, the budget could be provided for the next month, the next 120-day interim application period, or for any other time period as agreed.
5. The staffing plan should use the same planning period as the budget.
6. In the staffing plan, the number of professionals expected to work on the matter during the budget period may be disclosed either by category of timekeeper (*e.g.*, 25 associates) or by years of experience (*e.g.*, 15 lawyers with 8-14 years of experience).
7. Except as provided in ¶ E.8 below, any disclosure of the budget and staffing plan to the United States Trustee and other parties will be retrospective only with the fee application. See ¶ C.6, above.
8. The United States Trustee may request that counsel for the debtors-in-possession and the official committees exchange their budgets with each other once they are approved by their respective clients or whenever amended. The budgets may be provided subject to an appropriate confidentiality agreement and redacted to protect privileged or confidential information. Such redactions may be compensable if the disclosure of the privileged or confidential information cannot otherwise be avoided through careful drafting. But the time spent for redactions should be reasonably proportional to the overall fees sought. The confidential and prospective exchange of budgets between these fiduciaries concerns the administration of the case and potentially avoids duplication, consistent with the requirements of section 1103 of the Code. The United States Trustee will not otherwise seek prospective disclosure of an applicant's budget, except as set forth in this paragraph.

F. SPECIAL FEE REVIEW ENTITIES

1. **Generally:** In a larger chapter 11 case where a significant number of professionals will be retained and the normal fee application and review process would be especially burdensome, the United States Trustee ordinarily will seek the court's appointment of a special fee review entity, such as a fee review committee or an independent fee examiner. Such an entity can assist the court and parties in reviewing fee applications and can bring consistency, predictability, and transparency to the process. Although whether a fee review entity is appointed is ultimately the court's decision, the United States Trustee will follow these Guidelines in connection with fee review entities, subject to the court's directions and orders.
2. **Timing:** The United States Trustee ordinarily will seek the appointment of a fee review entity as soon as practicable after the order for relief.
3. **Purpose:** A fee review entity's primary purpose is to ensure that professional fees and expenses paid by the estate are reasonable, actual, and necessary, as required by section 330 of the Code. Thus, a fee review entity should monitor, review, and where appropriate, object to interim and final applications for fees and expenses filed by professionals who seek compensation from the estate. If a case has a monthly compensation order permitting the payment of fees and expenses before approval of interim or final applications, the fee review entity should also monitor, review, and where appropriate, object to monthly invoices submitted for payment. The fee review entity can also establish other measures to assist the court and the professionals in complying with the Code, the Federal Rules of Bankruptcy Procedure, local rules or general orders, the Guidelines, and other controlling law within the jurisdiction. In the absence of local rules or general orders and other controlling law within the jurisdiction, a fee review entity should monitor, review, and where appropriate, object to interim and final fee applications under section 330 in accordance with these Guidelines.
4. **Models:** A fee review entity can take one of several forms. The determination of the appropriate form for a particular case will be the product of consultation among the United States Trustee, the debtor, and any official committee, but it is ultimately the court's decision. There are several possible models, including a fee review committee, a fee review committee with an independent member, and an independent fee examiner.
 - a. **Fee review committee:** The court could appoint a Fee Review Committee, which should ordinarily consist of representatives of the debtor in possession, the unsecured creditors committee, any other official committee, and the United States Trustee. The representatives of the debtor in possession and the official committee(s) should not be retained professionals whose fees and expenses will be subject to review by the Fee Review Committee. One member of the Fee Review Committee should be designated as chairman, but that person's function should be administrative. The chairman should serve as a point of contact for any professionals retained by the Fee Review Committee. Each member should have a vote, and decisions should be reached by majority vote. The order appointing the Fee Review Committee or any protocol developed by the members may address other administrative issues, including the resolution of any tie vote.

- b. **Fee review committee with independent member:** The court could appoint a Fee Review Committee as described above, and add an “Independent Member” as chairman. The Independent Member should be an experienced person not otherwise involved in the case as a party in interest or as a representative of a party in interest. In addition to performing administrative functions and serving as the primary point of contact for any professionals retained by the Fee Review Committee, the Independent Member will be an active participant in the substantive discussions of the Fee Review Committee and will, in consultation with the committee, meet and otherwise communicate with professionals whose compensation is subject to Fee Review Committee review. Each member, including the Independent Member, should have a vote, and decisions should be reached by majority vote. In the event of a tie vote, the Independent Member’s vote should be determinative. The United States Trustee will, at the court’s request, solicit suggestions from parties in interest for appointment as the Independent Member and submit several names to the court for consideration.
- c. **Independent fee examiner:** The court may appoint a single person to serve as an Independent Fee Examiner for the case. The Fee Examiner should be an experienced person not otherwise involved in the case as a party in interest or a representative of a party in interest. The order appointing the Fee Examiner should fully describe the Fee Examiner’s duties and reporting obligations.
5. **Retention of professionals:** A fee review entity should be authorized, subject to court approval, to retain professionals, including but not limited to attorneys and fee auditors, to assist in discharging its duties. The United States Trustee, however, may not participate in or vote on the hiring of professionals for the fee review entity, although the United States Trustee may suggest persons who should serve as Independent Members or Independent Fee Examiners.
6. **Compensation:** The Independent Fee Examiner, the Independent Member, and the Fee Review Committee’s professionals should be compensated in accordance with the fee procedures established in the case and should file interim and final fee applications for consideration under the reasonableness standards set forth in 11 U.S.C. § 330(a). Compensation under a flat fee arrangement may be appropriate in certain cases but only if subject to reasonableness review under section 330.
7. **Rights of a party in interest:** A fee review entity should have the rights of a party in interest in connection with fee issues, and should be authorized to negotiate fee disputes with retained professionals, to object to fee applications both interim and final, to object to monthly invoices if a case is governed by a monthly compensation order, and to undertake discovery in connection with contested fee matters.
8. **Budgets:** If the court directs that budgets be adopted by retained professionals, a fee review entity should establish guidelines and requirements for the preparation and submission of fee and expense budgets by the retained professionals. A fee review entity should also

consider whether case-specific project billing codes should be developed to facilitate preparation and review of fee applications.

9. **Dispute resolution:** A fee review entity should establish procedures to resolve fee disputes with retained professionals, while retaining the right to file and prosecute objections if disputes cannot be resolved.
10. **Exculpation and indemnification:** The order appointing a fee review entity should contain appropriate provisions exculpating and indemnifying Fee Review Committee members, the Independent Member, or the Fee Examiner from any liability arising out of their service.

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EXHIBIT A

COMPARABLE AND CUSTOMARY COMPENSATION DISCLOSURES WITH FEE APPLICATIONS

	BLENDED HOURLY RATE	
CATEGORY OF TIMEKEEPER (using categories already maintained by the firm)	BILLED OR COLLECTED Firm or Offices for preceding year, excluding bankruptcy	BILLED This Fee Application
Sr./Equity Partner/Shareholder		
Jr./Non-equity/Income Partner		
Counsel		
Sr. Associate (7 or more years since first admission)		
Associate (4-6 years since first admission)		
Jr. Associate (1- 3 years since first admission)		
Staff Attorney		
Contract Attorney		
Paralegal		
Other (please define)		
All timekeepers aggregated		

See Guidelines paragraph C.3 for definitions of terms used in this Exhibit.

Case Name and Number: _____
 Applicant's Name: _____
 Date of Application: _____
 Interim or Final: _____

**GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
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EXHIBIT B

UNITED STATES TRUSTEE CONSIDERATIONS ON THE RETENTION AND COMPENSATION OF CO-COUNSEL

Scope of Retention

Where a debtor retains multiple 327(a) bankruptcy counsel, the retention applications should clearly specify which firm is acting as lead counsel and should clearly delineate the areas of the secondary counsel's responsibility. In general, it should be presumed that all bankruptcy matters in the case will be handled by the lead counsel unless the retention application specifically assigns them to the secondary counsel.

The retention application should not contain an indeterminate or open-ended description of the secondary counsel's duties. In particular, retention orders should not contain language permitting the secondary counsel to perform additional, unspecified services at the discretion of the debtor or the lead counsel. Rather, to the extent that it becomes necessary to expand the scope of the secondary counsel's duties, the debtor should file an amended retention application setting forth those revised duties.

Except to the extent that such work is directly relevant to its assigned duties, secondary counsel should not perform or be compensated for general case administration duties, such as preparing agenda letters, monitoring dockets, reviewing pleadings, or attending hearings at which it does not directly participate.

The retention application should clearly identify the reporting relationships of the proposed secondary counsel. In most cases, secondary counsel should report directly to the management of the debtor.

Necessity for Retention

Applications to retain secondary counsel should contain sufficient facts to support any contention that employment of an additional law firm will benefit the estate. Secondary counsel may be either "efficiency counsel" or "conflicts counsel." Efficiency counsel is secondary counsel employed to handle more routine and "commoditized" work, such as claims objections and avoidance actions, at lower cost to the estate than lead bankruptcy counsel. Conflicts counsel is secondary counsel employed when lead bankruptcy counsel is subject to a limited, not pervasive, conflict of interest that prevents it from performing some small part of its duties.

In the case of efficiency counsel, the retention application should include, at a minimum, a comparison of the billing rates of the secondary counsel and the lead counsel and a projection of the total cost savings to the estate that would result from employing secondary

EXHIBIT B

counsel. The retention application should also identify any other factors that would weigh for or against retaining the secondary counsel, including any significant differences in associated travel costs.

In the case of conflicts counsel, the retention application should set forth with specificity the nature of the lead counsel's conflict, including the identity of any relevant party whom the lead counsel has represented, a description of the nature of that representation, and the terms of any waivers or covenants that affect the lead counsel's ability to take action adverse to that party. The application should also set forth any procedures that the debtor proposes to adopt in response to that conflict, including any ethical walls to which the lead counsel will be subject.

Retention of Conflicts Counsel versus Disqualification of Lead Counsel

In most cases, applications for the retention of conflicts counsel are filed because the debtor is aware at the outset that its proposed lead counsel is subject to a conflict of interest that prevents it from performing some part of its duties or in response to an objection to retention filed by the UST or another party. In either case, the UST should carefully review the proposed conflicts counsel retention to assure that the lead counsel's conflicts are not so pervasive as to require disqualification rather than the appointment of secondary counsel.

As in any case, the UST should review the lead counsel's conflicts based on the particular facts and circumstances of the case, including the specific terms of the proposed conflicts counsel's retention. In particular, the following are circumstances that may indicate that conflicts counsel retention is inappropriate and should weigh in favor of a motion to disqualify the lead counsel:

- The responsibilities of conflicts counsel are not confined to discrete legal matters.
- The conflicts counsel will be used to handle matters that are inseparable from the major reorganization activities of the case (e.g., negotiation of major plan provisions).
- The conflicts counsel will act under the direct supervision of, and at the direction of, the lead counsel.
- The conflicts counsel's role will include filing or advocating pleadings that have been drafted by lead counsel.
- The conflicts counsel has been retained to litigate matters in which the lead counsel has represented the debtor in settlement negotiations.

EXHIBIT B

- The debtor will not (or cannot) create an ethical wall to screen the lead counsel from the work of the conflicts counsel.

One recent trend has been for law firms to obtain limited conflicts waivers that permit them to engage in settlement negotiations against certain entities, but which require them to assign the matter to conflicts counsel in the event that the dispute is litigated in court. Such arrangements are generally objectionable in bankruptcy cases, both because of the duplication of effort they create and because such arrangement may raise concerns about the independence and objectivity of lead counsel during the negotiation phase.

Billing and fee matters

The UST should encourage both lead and secondary counsel to submit their fees in a format that will enable the UST and other interested parties to easily identify any duplication or overlap in their work. In particular, matters for which secondary counsel is primarily responsible should be assigned a separate billing code, and fee statements should clearly reflect both the amount of time that secondary counsel has spent on matters outside its primary responsibility, as well as the amount of time that lead counsel or other professionals have spent on the matter assigned to secondary counsel.

Non-compensable services

Lastly, the UST should monitor the fees of both secondary and lead counsel for services that are unnecessary, duplicative, or that do not benefit the estate, and should advise counsel in advance that the UST will object to any such fees. Among other examples, the UST should object to fees for the following:

- Excessive time bringing secondary counsel “up to speed” on the case, including time spent reviewing background materials that are not germane to the secondary counsel’s areas of responsibility;
- “Shadowing” of the secondary counsel by lead counsel;
- Unnecessary attendance of attorneys from both lead and secondary counsel at court hearings and conferences;
- Reviewing, editing, or revising the work product of the other counsel; or
- Excessive duplication of case administration tasks, such as monitoring the docket, reviewing pleadings, or preparing hearing agenda letters.

**EXHIBIT C
SUMMARY OF PROFESSIONALS INCLUDED IN THIS FEE APPLICATION**

NAME	TITLE OR POSITION	DEPT. OR GROUP	DATE OF FIRST ADMISSION	FEEES BILLED	HOURS BILLED	NUMBER OF RATE INCREASES SINCE CASE INCEPTION	HOURLY RATE BILLED	
				IN THIS APPLICATION	IN THIS APPLICATION		IN THIS APPLICATION	IN FIRST INTERIM APPLICATION

Case Name and Number: _____
 Applicant's Name: _____
 Date of Application: _____
 Interim or Final: _____

**EXHIBIT D
BUDGET AND STAFFING PLAN**

If the parties consent or the court so directs, a budget and staffing plan approved by the client in advance should generally be attached to each interim and final fee application filed by the applicant. If the fees sought in the fee application vary by more than 10% from the budget or if fees are sought for a greater number of professionals than identified in the staffing plan, the fee application should explain the variance. See Exhibit F for category information.

BUDGET

Case Name and Number _____

Professional/Firm _____

Dates Covered _____

Date Retention Approved _____

Date Budget Approved by Client _____

PROJECT CATEGORY	ESTIMATED HOURS	ESTIMATED FEES
Asset Analysis and Recovery		
Asset Disposition Analysis		
Assumption-Rejection of Leases and Contracts		
Avoidance Actions		
Budgeting (Case)		
Business Operations		
Case Administration		
Claims Administration and Objections		
Corporate Governance/Board Matters		
Employee Benefits/Pensions		
Employment/Fee Application Preparation		
Employment/Fee Application Objections		
Financing and Cash Collateral		
Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category). Identify each separately by adv. no. and caption or title of motion or application and docket no.		
Meetings with Creditors		
Non-Working Travel		
Plan and Disclosure Statement		
Real Estate		
Relief from Stay and Adequate Protection		
Reporting		
Tax		
Valuation		
TOTAL		

**GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
FILED UNDER 11 U.S.C. § 330 BY ATTORNEYS IN LARGER CHAPTER 11 CASES**

**EXHIBIT D
BUDGET AND STAFFING PLAN**

STAFFING PLAN

Case Name and Number _____

Professional/Firm _____

Dates Covered _____

Date Retention Approved _____

Date Budget Approved by Client _____

CATEGORY OF TIMEKEEPER (as maintained by the firm) ¹	NUMBER OF TIMEKEEPERS EXPECTED TO WORK ON THE MATTER DURING THE BUDGET PERIOD	AVERAGE HOURLY RATE
Sr./Equity Partner/Shareholder		
Jr./Non-equity/Income Partner		
Counsel		
Sr. Associate (7 or more years since first admission)		
Associate (4-6 years since first admission)		
Jr. Associate (1- 3 years since first admission)		
Staff Attorney		
Contract Attorney		
Paralegal		
Other (please define)		

¹ As an alternative, firms can identify attorney timekeepers by years of experience rather than category of attorney timekeeper: 0-3, 4-7, 8-14, and 15+. Non-attorney timekeepers, such as paralegals, should still be identified by category.

EXHIBIT E

COMPENSATION REQUESTED BY PROJECT CATEGORY

(See Exhibit F for category information.)

PROJECT CATEGORY	HOURS BUDGETED (IF APPLICABLE)	FEEES BUDGETED (IF APPLICABLE)	HOURS BILLED	FEEES SOUGHT
Asset Analysis and Recovery				
Asset Disposition				
Assumption-Rejection of Leases and Contracts				
Avoidance Action Analysis				
Budgeting (Case)				
Business Operations				
Case Administration				
Claims Administration and Objections				
Corporate Governance/Board Matters				
Employee Benefits/Pensions				
Employment/Fee Application Preparation				

Case Name and Number: _____

Applicant's Name: _____

Date of Application: _____

Interim or Final: _____

GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
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EXHIBIT E

PROJECT CATEGORY	HOURS BUDGETED (IF APPLICABLE)	FEEES BUDGETED (IF APPLICABLE)	HOURS BILLED	FEEES SOUGHT
Employment/Fee Application Objections				
Financing and Cash Collateral				
Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category). Identify each separately by adv. no. and caption or title of motion or application and docket no.				
Meetings with Creditors				
Non-Working Travel				
Plan and Disclosure Statement				
Relief from Stay and Adequate Protection				
Reporting				
Tax				
Valuation				
TOTAL				

Case Name and Number: _____
 Applicant's Name: _____
 Date of Application: _____
 Interim or Final: _____

**GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
 FILED UNDER 11 U.S.C. § 330 BY ATTORNEYS IN LARGER CHAPTER 11 CASES**

EXHIBIT E

EXPENSE REIMBURSEMENT REQUESTED SUMMARY BY CATEGORY

CATEGORY	VENDOR, if any	UNIT COST, if applicable	AMOUNT
Copies			
Outside Printing			
Telephone			
Facsimile			
Online research			
Delivery Services/Couriers			
Postage			
Local travel			
Out-of-town travel: Transportation			
Hotel			
Meals			
Ground Transportation			
Meals (local)			
Court fees			
Subpoena fees			
Witness fees			
Deposition transcripts			
Trial transcripts			
Trial exhibits			
Litigation Support vendors			
Experts			
Investigators			
Arbitrators/Mediators			
Other (please specify)			

Case Name and Number: _____
 Applicant's Name: _____
 Date of Application: _____
 Interim or Final: _____

**GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
 FILED UNDER 11 U.S.C. § 330 BY ATTORNEYS IN LARGER CHAPTER 11 CASES**

EXHIBIT F
PROJECT AND EXPENSE CATEGORIES

Only one category should be used for a given activity. Professionals should make their best effort to be consistent in their use of categories, whether within a particular firm or by different firms working on the same case. It would be appropriate for all professionals to discuss the categories in advance and agree generally on how activities will be categorized. This list is not exclusive. The application may contain additional categories as the case requires.

	PROJECT CATEGORIES	DESCRIPTIONS
1.	Asset Analysis and Recovery	Identification and review of potential assets including causes of action and non-litigation recoveries.
2.	Asset Disposition	Sales, leases (§ 365 matters), abandonment and related transaction work related to asset disposition.
3.	Assumption-Rejection of Leases and Contracts	Analysis of leases and executory contracts and preparation of motions specifically to assume or reject.
4.	Avoidance Action Analysis	Review of potential avoiding actions under Sections 544-549 of the Code to determine whether adversary proceedings are warranted.
5.	Budgeting (Case)	Preparation, negotiation, and amendment to budgets for applicant
6.	Business Operations	Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.
7.	Case Administration	Coordination and compliance activities not specifically covered by another category.
8.	Claims Administration and Objections	Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.
9.	Corporate Governance/Board Matters	Preparation for and attendance at Board of Directors meetings; analysis and advice regarding corporate governance issues, including trustee, examiner, and CRO issues; review and preparation of corporate documents (<i>e.g.</i> , articles and bylaws, etc.).
10.	Employee Benefits/Pensions	Review and preparation related to employee and retiree benefit issues, including compensation, bonuses, severance, insurance benefits, and 401K, pensions, or other retirement plans.
11.	Fee and Employment Applications	Preparation of employment and fee applications for self or others; motions to establish interim procedures.
12.	Fee and Employment Objections	Review of and objections to the employment and fee applications of others.
13.	Financing and Cash Collateral	Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.
14.	Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category). Identify each separately by adv. no. and caption or title of motion or application and docket no.). For Litigation, use the UTBMS Litigation Task Code Set	

**GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
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**EXHIBIT F
PROJECT AND EXPENSE CATEGORIES**

	PROJECT CATEGORIES	DESCRIPTIONS
15.	Meetings and Communications with Creditors	Preparation for and attendance at section 341(a) meeting and any other meetings with creditors and creditors' committees.
16.	Non-Working Travel	Non-working travel where the court reimburses at less than full hourly rates.
17.	Plan and Disclosure Statement	Formulation, presentation and confirmation; compliance with the plan confirmation order, related orders and rules; disbursement and case closing activities, except those related to the allowance and objections to allowance of claims.
18.	Real Estate	Review and analysis of real estate-related matters, including purchase agreements and lease provisions (e.g., common area maintenance clauses).
19.	Relief from Stay and Adequate Protection	Matters relating to termination or continuation of automatic stay under 362 and motions for adequate protection
20.	Reporting	Statement of financial affairs, schedules, monthly operating reports, and any other accounting or reporting activities Contacts with the United States Trustee not included in other categories.
21.	Tax	Analysis of tax issues and preparation of state and federal tax returns.
22.	Valuation	Appraise or review appraisals of assets.

**EXHIBIT F
PROJECT AND EXPENSE CATEGORIES**

EXPENSE CATEGORIES				
		VENDOR, if any	UNIT COST, if applicable	AMOUNT
1.	Copies			
2.	Outside Printing			
3.	Telephone			
4.	Facsimile			
5.	Online research			
6.	Delivery Services/Couriers			
7.	Postage			
8.	Local travel			
9.	Out-of-town travel:			
	Transportation			
	Hotel			
	Meals			
	Ground Transportation			
	Other (please specify)			
10.	Meals (local)			
11.	Court fees			
12.	Subpoena fees			
13.	Witness fees			
14.	Deposition transcripts			
15.	Trial transcripts			
16.	Trial exhibits			
17.	Litigation Support vendors			
18.	Experts			
19.	Investigators			
20.	Arbitrators/Mediators			
21.	Other (please specify)			

Although certain expense categories may appear in the category list, the United States Trustee may still object to the inclusion of any expenses that should properly be deemed a professional's overhead. See Guidelines, ¶ B.2.e.

EXHIBIT G

SUMMARY OF FEE APPLICATION COVER SHEET

Name of applicant	
Name of client	
Time period covered by application	
Total compensation sought this period	
Total expenses sought this period	
Petition date	
Retention date	
Date of order approving employment	
Total compensation approved by interim order to date	
Total expenses approved by interim order to date	
Total allowed compensation paid to date	
Total allowed expenses paid to date	
Blended rate in this application for all attorneys (Exhibit A)	
Blended rate in this application for all timekeepers (Exhibit A)	
Compensation sought in this application already paid pursuant to a monthly compensation order but not yet allowed	
Expenses sought in this application already paid pursuant to a monthly compensation order but not yet allowed	
Number of professionals included in this application	
If applicable, number of professionals in this application not included in staffing plan approved by client	
If applicable, difference between fees budgeted and compensation sought for this application period	
Number of professionals billing fewer than 15 hours to the case during this period	
Are any rates higher than those approved or disclosed at retention? If yes, calculate the amount of compensation attributable to any rate increase	

Case Name and Number: _____

Applicant's Name: _____

Date of Application: _____

Interim or Final: _____

**GUIDELINES FOR REVIEWING APPLICATIONS FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES
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SUMMARY OF SIGNIFICANT CHANGES AND ANALYSIS OF PRINCIPAL COMMENTS

INTRODUCTION

On November 4, 2011, the USTP posted for public comment proposed guidelines that apply only to the USTP's review of applications for compensation filed by attorneys under section 330 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* ("Code") in the largest chapter 11 cases ("Appendix B guidelines" or "Guidelines"). The USTP intends to issue guidelines that apply to the review of applications filed by other types of professionals in larger chapter 11 cases and professionals in other cases at a later date.

The Appendix B guidelines, originally and as revised, reflect eight core principles:

- Ensuring that fee review is subject to client-driven market forces, accountability, and scrutiny.
- Ensuring adherence to the requirements of section 330 of the Code so that all professional compensation is reasonable and necessary, particularly as compared to the market measured both by the professional's own billing practices for bankruptcy and non-bankruptcy engagements and by those of its peers.
- Enhancing meaningful disclosure by professionals and transparency in billing practices.
- Increasing client and constituent accountability for overseeing the fees and billing practices of their own professionals.
- Encouraging the development of budgets and staffing plans to bring discipline, predictability, and client involvement and accountability to the compensation process.
- Decreasing the administrative burden of review.
- Maintaining the burden of proof on the fee applicant, and not the objecting party.
- Increasing public confidence in the integrity and soundness of the bankruptcy compensation process.

The USTP convened a public meeting regarding the Appendix B guidelines on June 4, 2012. Seven commenters appeared at the public meeting held on June 4, 2012, and this discussion is reflected in the transcript of the public meeting. As of October 19, 2012, the USTP had received 31 comments on the Appendix B guidelines. All comments and the transcript of the public meeting are available for review on the USTP's website, at http://www.justice.gov/ust/eo/rules_regulations/guidelines/proposed.htm#docs.

The USTP has reviewed the written and oral comments concerning the Appendix B guidelines and sets forth below its analysis of those comments and a summary of the significant revisions to the initial version of the Appendix B guidelines. The USTP posts the revised Appendix B guidelines for an additional comment period ending November 23, 2012, and will thereafter finalize the Guidelines for publication in the Federal Register.

SUMMARY OF SIGNIFICANT CHANGES SINCE POSTING FOR COMMENT NOVEMBER 4, 2011

- 1. THRESHOLD FOR APPLICATION:** The threshold for application has been revised to \$50 million or more in assets *and* \$50 million or more in liabilities, aggregated for jointly administered cases and excluding single asset real estate cases. ¶ A.2. The prior threshold was \$50 million in assets and liabilities combined.
- 2. DISCLOSURES FOR CUSTOMARY AND COMPARABLE COMPENSATION AND CLIENT VERIFICATIONS:** The disclosures that the USTP will request regarding customary and comparable compensation have been amended. ¶ C.3. Instead of disclosing high, low and average rates, the revised Guidelines provide that applicants disclose blended billing rates in the aggregate and by category of professional. ¶ C.3.a-b. Applicants have the flexibility to report their blended rate information for non-bankruptcy engagements based on either time billed or revenue collected either for the firm (domestic offices only) or offices in which timekeepers billed at least 10% of the hours to the bankruptcy case during the application period. ¶ C.3.a.i. The revised Guidelines clarify that pro bono and materially discounted charitable or firm-employee engagements may be excluded from the non-bankruptcy blended rate computation. Disclosure in accordance with ¶ C.3. will provide a limited “safe harbor” from additional requests from the United States Trustee for information about customary and comparable compensation under section 330(a)(3)(F) of the Code, without prejudice to the United States Trustee’s ability to seek additional information based upon the particular facts and circumstances of the case, to file an objection, or to offer evidence on comparable compensation from other sources. ¶ C.4.
- 3. BUDGETS AND STAFFING PLANS:** A budget and staffing plan will be used only with the consent of the professionals or if the United States Trustee obtains a court order. ¶ E.1. The United States Trustee will ask that the counsel for the debtor-in-possession and official committees exchange their budgets once client-approved, ¶ E.8., and that professionals provide budgets and staffing plans to the United States Trustee retrospectively with the fee application. ¶¶ C.6.a, E.7-8. Budgets may be redacted to protect privileged or confidential information. ¶¶ C.6.b, E.8. The revised Guidelines clarify that the attorney and the client should decide the appropriate budget period, and that budgets may be amended as necessary to reflect changed circumstances or unanticipated developments. ¶¶ E.3-4.
- 4. TASK CODES AND SUB-CATEGORY ACTIVITY CODES:** The 20 sub-category activity codes have been deleted. Instead, the USTP slightly modified the project categories in the existing Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330, 28 C.F.R. Part 58, Appendix A (“Appendix A guidelines”). Exhibit F. First, the USTP added a “Budgeting” category to reflect the intention to seek the use of budgets for the applicant in most cases that satisfy the threshold. Second, to provide better transparency and accountability, the USTP extracted and separately categorized certain tasks that are included in the broader Appendix A project categories, all but one of which is included in the long-established ABA-UTBMS bankruptcy code set. These tasks are:

Assumption-Rejection of Leases and Contracts; Avoidance Actions; Corporate Governance/Board Matters; Litigation; Non-working Travel; Real Estate; and Reporting.

5. **CO-COUNSEL RETENTIONS AND STAFFING EFFICIENCIES:** Debtors and official committees are encouraged to use co-counsel arrangements to achieve better staffing and fee efficiencies. ¶ B.2.c; Exhibit B. These arrangements include using less expensive co-counsel for certain routine, commoditized, or discrete matters to avoid duplication, overlap, and inefficiencies.
6. **DEBTORS' ESTIMATE OF FEES INCURRED IN ORDINARY COURSE AND NOT BECAUSE OF BANKRUPTCY:** This requested disclosure has been deleted.
7. **REDACTIONS:** The USTP will not object to compensation for limited redactions to protect privileged or confidential information in the budget or the fee application, the disclosure of which could not be avoided through drafting. ¶¶ B.2.f, C.6.b, E.8.
8. **CLIENT AGREEMENT TO RATE INCREASES:** The applicant's statement for the fee application adds an additional question: "Did your client agree when retaining the law firm to accept all future rate increases? If not, did you inform your client that they need not agree to modified rates or terms in order to have you continue the representation, consistent with ABA Formal Ethics Opinion 11-458?" ¶ C.5.f. The client's verification at the time of the fee application has been deleted.

DISCUSSION OF PUBLIC COMMENTS

As of October 19, 2012, the USTP had received 31 comments on the Appendix B guidelines. In addition, seven commenters appeared at the public meeting held on June 4, 2012, and this discussion is reflected in the transcript of the public meeting. Many of the comments contained several sub-comments. The USTP appreciates the comments and has considered each comment carefully. The USTP's response to the most significant comments are discussed below, starting with the "General Comments" section and continuing with comments categorized by specific subject matter.

A. GENERAL COMMENTS

1. **Comment:** Official committees, the U.S. Trustee, and the court already review fee applications. The Appendix A guidelines should not be updated because the current system works well and changes would not improve the administration of bankruptcy cases.

Response: The existing Appendix A guidelines were adopted 16 years ago, and law firm billing practices and billing technology have evolved considerably since then. Better data and better technology permit comparisons that would have been difficult, if not impossible, two

decades ago. In addition, while clients have substantially improved the way they manage and pay their counsel outside of bankruptcy, estate-paid bankruptcy engagements may not have been subject to comparable discipline. In its comment, the Managed Funds Association (“MFA”), an industry group that represents regular consumers of sophisticated legal services in both bankruptcy and non-bankruptcy engagements, asserted that “bankruptcy compensation has moved from the economy of administration standard to a premium standard by which bankruptcy professionals are effectively compensated at rates higher than those realized in comparable non-bankruptcy engagements. . . . In bankruptcy engagements, we do not perceive the same cost control-driven constraints [that we see in non-bankruptcy engagements]. . . .” MFA letter dated September 21, 2012, p. 2 (“MFA Letter”). Similarly, one academic took the view that the bankruptcy compensation process generally requires improvement, including better disclosures. See *generally*, Professor Nancy B. Rapoport, Letters dated December 14, 2011, and May 1, 2012, and Public Meeting Tr., pp. 11-36. The Appendix B guidelines seek to remain current with contemporary law firm practice and improve the fee application process for all stakeholders.

2. ***Comment:*** The Appendix B guidelines would benefit from a robust and open rule-making process. Similarly, the USTP should “convene a series of meetings with practitioners, judges, and debtors and creditors’ committees . . . to discuss the USTP’s concerns with the current fee process and hear and solicit views on the relevant issues from the participants.” 119 law firms’ letter dated January 30, 2012, p. 14 (“119 Law Firms’ Initial Letter”).

Response: The Appendix B guidelines are internal procedural guidelines that are not subject to the notice-and-comment process of the Administrative Procedures Act (“APA”). Nevertheless, recognizing the importance of the proposed guidelines to the bankruptcy system, the USTP has solicited a great deal of public comment within a framework that exceeds APA requirements.

The USTP engaged in pre-drafting outreach to various bankruptcy judges and practitioners. In November 2011, the USTP posted on its website the draft Appendix B guidelines for public comment through the end of January 2012. The USTP posted the comments on its website as they were received and re-opened the comment period at the request of various commenters. The USTP convened a public meeting on June 4, 2012, and invited the public—and all commenters—to attend and to make presentations. The USTP made available on its website a transcript of the public meeting and advised interested parties that it would revise the guidelines as necessary after consideration of the comments and post a second draft for an additional (third) comment period. The USTP also considered written submissions after the public meeting.

The USTP concludes that no changes are necessary to the process that the USTP employed to solicit public comment or to the Guidelines based on these comments.

B. COMMENTS REGARDING THE SCOPE OF THE APPENDIX B GUIDELINES

3. **Comment:** The threshold of \$50 million in combined assets and liabilities is too low. In addition, certain types of cases, such as single asset real estate cases, should be excluded from these guidelines.

Response: The USTP reviewed available data before setting the initial threshold. A combined assets and liabilities standard was adopted based on the metric used in the American Bankruptcy Institute’s chapter 11 fee study, see Stephen J. Lubben, *Corporate Reorganization and Professional Fees*, 82 AM. BANKR. L.J. 77, 105 (2008),⁴ and it is the formula used by some courts, including one in the District of Delaware, when determining whether to appoint fee examiners. See *General Order Re: Fee Examiners in Chapter 11 Cases With Combined Assets and/or Liabilities in Excess of \$100,000,000* (Bankr. D. Del. Dec. 16, 2009) (Sontchi, J.). The \$50 million threshold appeared to apply to approximately 40% of all chapter 11 cases filed in the District of Delaware and 10% of all cases filed in the Southern District of New York. Virtually every other judicial district would have had approximately one or two cases a year at this level.

Although a few commenters offered suggestions on revising the threshold, there was no clear basis for those suggestions. For example, the NBC suggested raising the threshold from \$50 million to \$100 million but did not have a particular basis for its suggestion and acknowledged that, “[t]here is no precise answer here . . .” Public Meeting Tr., p. 59.

The group of 118 law firms (previously 119) suggested a complex formula resulting in an even higher threshold. 118 law firms’ supplemental letter dated April 16, 2012, p. 2 (“118 Law Firms’ Supplemental Letter”). The suggested threshold would require all of the following:

- More than \$250 million in assets.
- More than \$50 million of unencumbered assets.
- More than \$250 million of unsecured debt.
- At least 250 unsecured creditors (excluding present and former employees).
- More than \$50 million of syndicated debt for borrowed money.

The petition does not collect asset, debt, and creditor information in the manner necessary to determine whether a particular case meets the threshold suggested by the commenters. Therefore, it is impossible to confirm without further information whether any chapter 11 cases that are currently pending in any judicial district or that have been filed since 2009, would meet that proposed threshold. Under the 118 law firms’ proposal, debtors would need to provide in their first day filings the information necessary to answer these five questions or risk uncertainty and delay.

⁴ Professor Lubben used the sum of assets and liabilities as a measure of debtor size to select large cases for his analysis.

The USTP revised the threshold after evaluating additional data in light of the comments. Guidelines ¶ A.2. First, the threshold was increased to a combination of at least \$50 million in assets **and** \$50 million in liabilities, based on the values shown on the petition. Second, the USTP agreed that single asset real estate cases should be excluded because they do not routinely entail the complexities of other large cases and revised the Guidelines to exclude them. Without controlling for single asset real estate cases, the USTP estimates that approximately one-half of the chapter 11 cases subject to the revised Guidelines would be filed outside of the District of Delaware and the Southern District of New York, in approximately two-thirds of the USTP’s judicial districts.

4. Comment: The Appendix B guidelines should apply to all estate compensated professionals.

Response: The USTP is revisiting the fee guidelines in phases. Other considerations are relevant in evaluating the fee applications of financial advisors and other professionals, as well as attorneys in chapter 11 cases below the threshold in the Appendix B guidelines. Until the USTP promulgates new guidelines, the Appendix A guidelines remain in effect for the USTP’s review of fee applications of other types of professionals in chapter 11 cases that meet the threshold, of professionals in all chapter 11 cases below the threshold, and of all professionals in cases not under chapter 11.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

C. COMPARABLE COMPENSATION DISCLOSURE COMMENTS

5. Comment: The comparable billing disclosures proposed by the USTP are overly burdensome.

Response: The necessity for comparable billing data arises from the Bankruptcy Code, which requires that courts determine “reasonable compensation” based on, among other factors, “customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.” 11 U.S.C. § 330. The USTP concurs that the disclosure of data for the necessary comparison to customary compensation outside of bankruptcy must strike the right balance between the parties’ and the court’s need for evidence and the professional’s burden of providing it.

The National Bankruptcy Conference (“NBC”) suggested modifications to the Appendix B guidelines intended to preserve the ability of reviewers to meaningfully evaluate fee applications while arguably lessening the burden on the applicants. In substance, the NBC proposed that applicants should be provided with a “menu” of three possible, alternative methods for demonstrating comparable compensation. These options are: (1) a certification that would compare the billing rates of certain of the attorneys assigned to the case with their billing rates in other engagements; (2) a certification comparing the blended rates of the firm or office as a whole to its overall billing rate in the past year; or (3) a client verification

detailing the steps it took to ensure that it was being charged reasonable market rates. NBC's supplemental letter dated February 27, 2012, pp. 3-5. The NBC further proposed that firms satisfying any of the three alternatives should receive a limited "safe harbor" from a USTP objection on whether the firm has met its burden to disclose customary and comparable compensation information. *Id.*, pp. 2-3.

The USTP agrees that many of the NBC's suggestions have merit, subject to further modification. The NBC's menu of options could too easily be circumvented by uncorroborated and boilerplate certifications and therefore would not represent a substantial improvement on current practices. In addition, the MFA suggested that the comparability disclosure should be "more plainly and overtly referenced than capturing it in a blended rate as the NBC proposed." MFA Letter, p. 4.

Based on these comments, the USTP has revised the guidelines regarding customary and comparable compensation, ¶ C.3, as follows:

- a. The USTP adopted the NBC's "blended hourly rate" disclosures, with some modifications. See Guidelines ¶ C.3.
 - Professionals should disclose blended rate information by category of timekeeper. The USTP modified the NBC's suggestion of a single, aggregate blended rate in order to ensure that staffing patterns, which may vary for different types of cases, do not mask differences in blended rates among professionals within the firm that have the same level of experience. If higher blended rates are charged by bankruptcy professionals as compared to similarly experienced professionals in other practice areas, then the applicant should explain why the bankruptcy rate is higher and how the rate satisfies the statutory standard. Disclosing the blended rate by category of professional also obviates the need for the NBC's suggested disclosure of staffing percentages for bankruptcy and other engagements, which the USTP understood would have been difficult for certain firms to calculate.
 - To provide flexibility, blended hourly rate information may be disclosed on either an as-billed or as-collected basis. Blended hourly rates should be calculated as total dollar value of hours billed (or collected) divided by the number of hours.⁵
 - To provide further flexibility, the USTP also adopted the NBC's suggestion that firms choose one of two alternative groups of timekeepers for the blended rate disclosures. Firms may calculate the blended rate based on all domestic timekeepers throughout the firm or, alternatively, on all timekeepers in only

⁵ The USTP adopted NBC's calculation of "blended hourly rate," which was the same as the USTP's original formula for "average rate billed."

those domestic offices in which professionals collectively billed at least 10% of the hours to the matter during the relevant application period.

- b. The USTP partially adopted the NBC's suggestion of a limited "safe harbor." An applicant that provides the disclosures in the Guidelines at ¶ C.3 will receive a limited "safe harbor" from additional requests from the United States Trustee for information about customary and comparable compensation under section 330(a)(3)(F) of the Code. The United States Trustee, however, is not precluded by the "safe harbor" from seeking additional information based on the particular facts and circumstances of the case, filing an objection, or offering evidence on comparable compensation from other sources.
 - c. The USTP also adopted the NBC's proposal that other meaningful and detailed evidence may satisfy the professional's disclosure obligations on comparable and customary compensation, which is consistent with the MFA's suggestion of an alternative flexible standard to avoid the guidelines' obsolescence as billing practices evolve. Disclosures other than in compliance with the Guidelines at ¶ C.3 fall outside the scope of the "safe harbor," and the United States Trustee might object to the adequacy of those disclosures.
6. **Comment:** Given the prevalence of alternative fee arrangements and other variable terms of engagements outside of bankruptcy, including volume or repeat business discounts and other individually negotiated billing arrangements, the disclosures seek incomplete or inaccurate information and will not establish comparability. Similarly, *pro bono* or other types of engagements should be excluded.

Response: Several commenters expressed the view that the requested data on hourly rates actually billed would not establish comparable data because it would not account for such things as volume discounts or other alternative fee arrangements. This conclusion ignores that applicants may choose to explain why a particular alternative fee arrangement would be an inaccurate point of comparison for bankruptcy engagements. Moreover, excluding these arrangements would circumvent comparability with the firm's bankruptcy fees as required by the Bankruptcy Code, because "[d]iscount arrangements . . . are regularly sought and given in non-bankruptcy engagements; therefore, we think that any safe harbor should measure the market by the effective discount provided in non-bankruptcy engagements." MFA Letter, p. 3.

The USTP concludes that no changes are necessary to the Guidelines based on these comments, except for one clarification: The USTP agrees that for all comparable billing rate disclosures, firms may exclude *pro bono*, charitable, or firm-employee engagements that were never contemplated to be billed at or near standard or full rates. Guidelines ¶ C.3.a.iv.(c).

7. **Comment:** The increased disclosures of actual comparable billing data will force sophisticated practitioners and firms to withdraw from a bankruptcy practice because they

would choose to leave bankruptcy practice before disclosing this data. This would result in decreased competition for estate-paid bankruptcy work.

Response: These comments suggest that estate-paid professionals may ignore the requirement in section 330 that an applicant establish that its compensation is comparable to compensation outside of bankruptcy. The USTP concludes that no changes are necessary to the Guidelines based on these comments.

- 8. Comment:** Some commenters stated that requiring disclosure of the lowest hourly rates billed seeks to re-impose the economy of administration standard rejected by Congress in the 1978 Code. In contrast, other commenters stated that requiring the disclosure of high, average, and low hourly rates might “normalize” the market at the high range and therefore drive up estate costs.

Response: These comments are irreconcilable. The USTP does not seek to re-impose the economy of administration standard rejected by the 1978 Code any more than it seeks to foster premium compensation for bankruptcy. By emphasizing actual market forces, the revised Guidelines reinforce the legislative purpose of the 1978 Code as embodied in section 330—that comparable services are the standard by which to measure bankruptcy fees. “Comparable” does not mean “economy” or “premium” as the standard against which bankruptcy fees should be measured

Nevertheless, the USTP agrees with the NBC’s suggestion that the average (or blended) hourly billed rate is the most meaningful of the originally requested disclosures. Accordingly, the USTP revised the Guidelines to delete the request for any disclosure of low and high rates billed. The USTP retains the right to seek further information based on the facts and circumstances in a particular case or if an applicant does not choose to disclose billing information in compliance with the “safe harbor” option at ¶ C.3.

- 9. Comment:** Some commenters stated that the additional disclosures of actual comparable billing data will increase the cost of preparing fee applications and, therefore, chapter 11 bankruptcy cases. Other commenters stated that it is logistically impossible for even the most sophisticated law firms to generate low, high, and average billed rates by attorney or other comparable billing data sought in the Guidelines.

Response: Sophisticated law firms maintain and study copious amounts of data and metrics for various purposes, including managing their own profitability, determining partner compensation, and meeting client expectations. As the co-chairman of the NBC stated at the public meeting, “firm billing systems are just huge databases. . . . [W]hen a firm wants to do a bill, it extracts data from the database, and when it wants to do financial reporting statistics, it extracts data from the database.” Public Meeting Tr., pp. 71-73. A law firm that maintains that it is impossible to provide this information may explain in the fee application and attest in its statement why it is unable to do so.

The evidence is overwhelming that law firms routinely obtain and review billing data in setting their rates outside of bankruptcy. For example, many firms provide internal billing

and other financial data that is made available to participating firms in a variety of surveys, including the Citi Private Bank Law Watch Annual Survey of Law Firm Financial Performance, PriceWaterhouseCoopers BRASS Survey (billing rate and associate salary survey), the Thomson Reuters Peer Monitor data, Hildebrandt International surveys, and various Altman Weil Surveys. In addition, firms (including many that commented on the Guidelines) routinely disclose aggregate billing rate information to periodicals for publication, including the National Law Journal (“NLJ”) 250 Annual Billing Rate survey, which provides low, high, and average rates by timekeeper class for a number of firms and includes far more detailed information than the information requested in the Guidelines.

Although there will be some additional work for the professionals in preparing fee applications with these disclosures, the financial data to be disclosed will come from the professionals’ accounting and finance staff. Moreover, as explained above, the USTP revised the Guidelines to no longer require disclosure of low and high rates. The USTP concludes that no further changes are necessary to the Guidelines based on these comments.

10. Comment: A firm’s actual billing data is attorney-client privileged, confidential, and proprietary. Alternatively, the USTP should seek comparable billing data from outside proprietary sources, such as CitiBank, Hildebrand, and Hoffman Alvery.

Response: The proposed disclosure of blended billing rates in the Guidelines does not require the disclosure of attorney-client privileged information. The disclosure is not a **communication** with a client and does not identify particular clients.

Moreover, the broad dissemination of a firm’s billing information to third parties, as discussed in the prior response, is inconsistent with the contentions that the information is legally privileged and that clients consistently maintain such information as proprietary. For example, the CT Tymetrix and Corporate Executive Board Real Rate Report 2012 analyzes actual invoice data provided by clients. The 2012 report reviewed \$7.6 billion in law firm billings generated from 2007 through 2011 by more than 4,000 law firms and roughly 120,000 timekeepers. Although the Real Rate Report does not disclose rates of particular firms or attorneys, it is generated from the billing data firms send to their clients.

To the extent that commenters suggest that the USTP obtain comparable billing data from outside survey sources, these are generally unavailable to the USTP (and the court as the arbiter). For example, CitiBank and PWC BRASS surveys are only available to those who participate and for a fee. In addition, comparability under section 330 requires consideration of fees charged by comparably skilled practitioners within the firm for other types of engagements as well as fees charged by other firms providing similar services. These surveys address comparability with other firms, not within the firm.

Some commenters state that their billing rates are proprietary business information and that their business will be harmed if they disclose them, presumably because disclosure would allow law firms to bid for work against each other more effectively. Other commenters appear concerned that if their rate structures are transparent to their clients, those clients may be better positioned to negotiate fees. The commenters, however, do not explain why

their pecuniary interest in preventing transparency in billing practices should outweigh the need to produce evidence that satisfies the Code's comparable services requirement.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

11. Comment: The Guidelines should only obtain comparability data from domestic practitioners because international billing practices vary widely.

Response: Exhibit A, the template for this disclosure, expressly stated that comparability data should be reported for U.S. professionals only. The Guidelines have been similarly clarified.

D. BUDGET COMMENTS

12. Comment: Budgets and staffing guidelines are unduly burdensome.

Response: The requested budgets are a summary with little detail. Presumably attorneys in complex chapter 11 cases—at least once the critical early days of a case have passed—make some effort to plan next steps, to strategize on ultimate outcome, and to assign tasks accordingly, taking into account their experience in other complex cases.

Moreover, requesting budgets and staffing plans in bankruptcy cases is consistent with practices employed by clients outside of bankruptcy to manage legal costs. The USTP budget and staffing templates are modeled after the Association of Corporate Counsel's ("ACC") Sample Case Budget Template.⁶ The ACC is a global bar association for in-house counsel with 29,000 members employed by over 10,000 organizations. The extensive resources provided by ACC to its members on legal project management, including budgeting and staffing, strongly suggest that budgeting and staffing plans are mainstream and common features of legal engagements across a wide spectrum of businesses.

The USTP slightly modified the ACC template. See Exhibit D. First, the USTP separated the budget template from the staffing template. Second, the USTP budget template uses the modified project categories in Exhibit F, as described more fully in the response to Comment 18. Third, in the revised Guidelines, the USTP further simplified the staffing plan to reduce the perceived burden. Rather than asking for identification of each professional proposed to work on the engagement, the revised USTP template requests the number of professionals by category of timekeeper (*e.g.*, 10 partners, 30 associates, *etc.*) or experience level, as well as their average hourly rates (billed or collected). Unlike the ACC template, however, the USTP revised staffing plan does not ask for this information for each project category.

13. Comment: Public disclosure of budgets with interim fee applications will reveal confidential strategy information and give adversaries advantages.

⁶ See http://www.acc.com/ValueChallenge/resources/avcresources.cfm?rs_vc=365.

Response: The USTP addressed this concern in the initial draft of the Guidelines in two ways. First, the budgets and staffing plans are to be publicly disclosed retrospectively with the fee application and for the same time period covered by the fee application. Guidelines ¶¶ C.6.a, E.7-8. Second, the budget template is a summary chart of aggregate hours and fees by project code, without the detail of the budget that the professional provided to its client prospectively at the beginning of the fee application period. Exhibit D. While the budget submitted with the fee application will retrospectively summarize the fees estimated to be required during that period, the fee application itself and invoices contain the detailed information about what was actually done during the period.

Nevertheless, to further address this concern, the USTP revised the Guidelines to provide that budgets and invoices may be redacted as necessary, and such redactions may be compensable if necessary to protect privileged or confidential information that must be disclosed. Guidelines ¶¶ C.6.b, E.8. But the time spent for redactions should be reasonably proportional to the overall fees sought. Redactions, particularly to address issues of litigation strategy, may be unnecessary if the applicant uses the model budget in Exhibit D, which budgets total hours and fees by project category without descriptive entries.

The USTP also revised the Guidelines to provide for one prospective disclosure of the budget on a confidential basis: between counsel for the debtor-in-possession and official committees once the budgets have been approved by their respective clients or whenever they are amended. Guidelines ¶ E.8. As the NBC commented, there are at least two “set[s] of professionals compensated out of the estate . . . looking out for the estate’s interests.” NBC letter dated January 30, 2012, p. 2. Official committees routinely receive confidential or other sensitive information during the case that they are precluded from sharing. In addition to providing the budgets under appropriate confidentiality agreements, the debtor and committees may redact the budgets to address privilege or confidentiality concerns. Guidelines ¶¶ C.6.b, E.8. The confidential and prospective exchange of budgets between these fiduciaries facilitates communication, avoids duplication of effort, and promotes efficiency in the administration of the bankruptcy case, consistent with the requirements of section 1103 of the Code.

14. Comment: Budgets are ineffective and provide little, if any, benefit to the estate because bankruptcy is just too unpredictable to budget.

Response: Budgets are a planning tool for disciplined and deliberative case management that business clients routinely expect of their professionals outside of bankruptcy. The pervasiveness of this practice supports the conclusion that budgets are effective to focus the scope of the engagement and the efficiency in staffing.

Moreover, the concern about the alleged unpredictability of bankruptcy engagements in particular is overstated. All budgets—whether for a bankruptcy case, a litigation matter, a chapter 13 debtor, a law firm, a business, or the government—are an informed estimate of expectations, identifying that which is predictable based on historical experience and that which is truly volatile and beyond the budgeter’s control.

Indeed, budgets for professional fees are already a regular feature of chapter 11 cases. Secured lenders typically require debtors and their counsel to prepare budgets as a condition to the estate's use of cash collateral. Similarly, parties in the case, including the debtor and official committees, often insist that examiners prepare and file budgets and work plans.

The USTP concludes that no changes are necessary to the budget and staffing guidelines based on these comments.

15. Comment: Budgets should not be mandatory.

Response: Only the courts can award compensation and determine what requirements professionals must satisfy consistent with section 330 to be paid from the estate. The Guidelines are internal procedural guidelines that the USTP will follow “in the absence of controlling law or rules in the jurisdiction” in reviewing applications for compensation and determining whether to comment or object. Guidelines ¶ A.4. In some instances, the guidelines reflect disclosures, standards, or procedures that the United States Trustee may consider presumptively reasonable or presumptively unreasonable when deciding whether to object to fee applications.

After considering these comments, the USTP revised the Guidelines to clarify that, although budgets are not mandatory, the parties may agree to the budgets or the court may require them. If the parties do not consent, the United States Trustee generally will move the court to require budgets of estate-paid attorneys in larger chapter 11 cases consistent with the guidelines.

16. Comment: Budgets should be non-binding and should be able to be amended.

Response: The USTP agrees. The revised Guidelines provide that “[b]udgets can and should be amended as necessary to reflect changed circumstances or unanticipated developments.” Guidelines ¶ E.3. Similarly, the guidelines request an explanation if the fees sought in the application exceed the budget during the application period by at least 10%, and whether the applicant has discussed the variance with the client. Guidelines ¶¶ C.2.I, C.5.b.; Exhibit E.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

17. Comment: Time spent preparing budgets and staffing plans should be compensable.

Response: The USTP agrees. For this reason, the Guidelines, both as originally proposed and as revised, include a suggested project category for “budgeting.” Exhibit F.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

E. PROJECT CODE AND CATEGORY COMMENTS

18. Comment: The project categories and sub-categories create 480 possible coding combinations, which is unworkable and unduly complicated without a corresponding benefit.

Response: The Appendix A guidelines contain suggested project codes that professionals have used for years to categorize their time in fee applications. To further assist the court and parties in reviewing fee applications, the USTP had proposed additional disclosures in the initial draft of the Appendix B guidelines in the form of sub-categories for the project codes, substantially comparable to the Uniform Task Based Management System (“UTBMS”) activity codes used with task codes in legal billing.⁷

Based on these comments to streamline project coding, the USTP revised the Appendix B guidelines to eliminate the proposed sub-categories. The Appendix B guidelines will continue to use the project categories from the Appendix A guidelines with slight modifications. First, the USTP added a “Budgeting” category to reflect the intention to seek the use of budgets for the applicant in most cases that satisfy the threshold. Second, to provide better transparency and accountability, the USTP extracted and separately categorized certain tasks that are included in the broader Appendix A project categories.⁸ See Exhibit F. All but one of these tasks (“Reporting”) is included in the long-established ABA-UTBMS bankruptcy code set.

Based on these revisions to the project categories, the USTP conformed other requested disclosures that incorporate the modified project categories, such as the budgets and the reconciliation of fee applications to budgets. See Exhibits D and E.

The USTP retains discretion not to seek coding or to seek case-specific coding if the standard template does not meet the needs of a particular case.

⁷ The UTMBMS was developed in the mid-1990s by the Association of Corporate Counsel and the American Bar Association, and is now under the jurisdiction of the non-profit LEDES Oversight Committee. Task-based billing, coded and aggregated by type of work performed, allows corporate clients to have “consistent enforcement” of their “outside counsel billing guidelines and alleviat[ed] some of the burden on bill reviewers. Time entry coding assists with reporting and facilitates comparison” See www.utbms.com.

⁸ “Reporting” was extracted from the existing “Case Administration” category. “Assumption-Rejection of Leases and Contracts” was extracted from “Asset Disposition.” “Avoidance Actions” were extracted from “Litigation.” “Corporate Governance/Board Matters,” “Real Estate” and “Non-working Travel” span across a number of the existing Appendix A project categories.

F. CO-COUNSEL COMMENTS

19. **Comment:** The USTP should encourage the use of co-counsel for more routine or “commoditized” work, such as preference actions and claims objections, to bring efficiencies to the bankruptcy estate.

Response: This suggestion was raised by several commenters, including the NBC, Professor Lubben, and Togut, Segal & Segal. It is also similar to the local counsel requirement in the District of Delaware. The USTP agrees that applicants should consider how to assign and staff more routine and “commoditized” work, and whether lower cost co-counsel should be retained for discrete types of work, provided that the use of multiple 327(a) bankruptcy counsel must not mask disqualifying conflicts and connections, and co-counsel must avoid duplication of services.

The USTP revised the Guidelines to provide that retention applications should clearly specify lead counsel and clearly delineate secondary counsel’s responsibility. See Exhibit B. In general, all bankruptcy matters should presumptively be handled by lead counsel unless the retention application specifically assigns them to the secondary counsel. The retention application should not contain indeterminate or open-ended duties for secondary counsel, and retention of secondary counsel must benefit the estate.

The USTP will carefully review the proposed co-counsel retention to ensure that the lead counsel does not have a pervasive conflict requiring disqualification that the retention of secondary counsel is designed to conceal or ignore. The USTP will also monitor the fees of both lead and secondary counsel for services that are unnecessary, duplicative, or not beneficial to the estate.

At the public meeting, one commenter suggested that the USTP should also include a proposed form of order for the retention of co-counsel. Public Meeting Tr., pp. 99-100. In developing a proposed form of order, the USTP will benefit from experience with these guidelines and declines to address a specific form of order at this time.

G. ELECTRONIC DATA COMMENTS

20. *Comment:* Submitting electronic billing records creates confidentiality concerns.

Response: Fee applications with detailed invoices are routinely filed and served on parties in a particular case through the courts' Case Management/Electronic Case Filing (CM/ECF) system. In addition, once filed this information is available to the general public through the courts' Public Access to Court Electronic Records (PACER) system. There should be no confidentiality concern in providing the same data in a format that can be queried and sorted.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

21. *Comment:* Submitting electronic data may require firms to revamp their billing software.

Response: The USTP suggested using LEDES standards because this is the universal standard adopted by law firms, clients, and e-billing vendors and because no particular software is required. See www.LEDES.org. Because it is an open standard, a firm can provide electronic data in the same format in which it maintains the data and does not need to modify its existing billing software.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

H. RETENTION APPLICATION COMMENTS

22. *Comment:* The USTP has no statutory authority to address compensation issues at the retention stage.

Response: The USTP is statutorily required to adopt uniform guidelines for the review of professional compensation applications. 28 U.S.C. § 586(a)(3)(A). The review of fee applications under section 330 of the Code is inextricably intertwined with the terms and conditions of the applicant's retention under section 327 or 1103. The NBC, among others, supports the view that a closer consideration of the terms of compensation at the outset of the case can lead to less controversy later and benefit both the professionals and the estate. See Public Meeting Tr., p. 74. The USTP's adoption of uniform guidelines governing the review of applications for retention under sections 327 and 1103 of the Code on issues that are relevant to fee applications benefits professionals, the court, and parties in interest by providing predictability in enforcement and is consistent with the USTP's statutory mandate.

The NBC proposed adding a client verification at the retention stage. The USTP agrees and has modified the Guidelines to provide that clients supply a verified statement on retention. Guidelines ¶ D.2. This is in lieu of the previously requested client verification with the fee application. The proposed verification may explain the steps the client took to ensure

compensation was comparable to the non-bankruptcy market, to control legal fees as it would outside of chapter 11, and to negotiate rates.

The USTP concludes that no other changes are necessary to the Guidelines based on these comments.

I. FEE APPLICATION COMMENTS

23. *Comment:* The USTP exceeds its statutory authority when it reviews and comments on interim fee applications filed under section 331. The USTP may only comment on final fee applications under section 330.

Response: Consistent with its statutory duties, the USTP has commented on and objected to thousands of interim fee applications, and is unaware that any party has challenged the USTP's right to appear and be heard in that litigation. In addition to 28 U.S.C. § 586(a)(3), section 307 of the Bankruptcy Code gives the United States Trustee broad authority to raise, to be heard, and to appear on any issue in any case. Moreover, deferring all objections to the final fee application would seem unfair and unduly prejudicial to the professionals, in addition to being unduly burdensome to the USTP, the court, and other parties in interest.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

24. *Comment:* The Guidelines fail to consider that for many debtors a significant portion of estate-paid work is for non-bankruptcy matters. Other practitioners stated that the Guidelines require debtors' attorneys to speculate about what legal fees the debtor would have incurred outside of bankruptcy, which will be costly and of no value.

Response: The USTP originally included a disclosure to address the complaint that the public misunderstands professional fees in bankruptcy because some of the fees that the court must approve may not result from the bankruptcy filing. Thus, the fee application may include fees for matters for which the debtor routinely engaged counsel before the bankruptcy filing. The USTP did not anticipate that providing this data would be time-consuming or arduous because applicants could provide historical data. Nevertheless, the group of 119 law firms, representing a broad segment of the bankruptcy legal community and including many of the firms that are routinely involved in the larger cases meeting the threshold, stated that this disclosure "serves no useful purpose." 119 Law Firms' Initial Letter, p. 7. Based on this comment, the USTP eliminated the disclosure.

J. COMMENTS REGARDING COMPENSATION FOR PARTICULAR MATTERS

25. **Comment:** Redaction of bills or invoices for privileged or confidential information should be compensable.

Response: The USTP has re-evaluated its position in light of these comments. It is important that clients receive informative invoices that may contain privileged or confidential information. But professionals whose compensation will be paid by the bankruptcy estate know at the inception that their billing records must be publicly filed and should draft time entries and prepare invoices both to minimize redactions and to avoid vague descriptions. Therefore, the time for redacting invoices that are submitted under a monthly compensation order or filed with the fee application should be kept to a minimum and bear some reasonable relationship to the overall fees sought. Guidelines ¶ B.2.f.

26. **Comment:** The Guidelines prohibit the use of transitory professionals and the attendance of multiple attorneys at meetings or hearings.

Response: This comment is inaccurate. In these two instances, the Guidelines instruct the United States Trustee to seek an explanation of practices that could be evidence of billing abuses. Guidelines ¶¶ B.2.c, e. An adequate explanation will avert an objection on this guideline.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

27. **Comment:** Precluding compensation for preparing monthly invoices is inappropriate.

Response: The ability to bill monthly is an accommodation to professionals to enable them to avoid the delay incumbent in the interim fee application process. The professional's decision to avail itself of this opportunity should not cost the estate additional money. The United States Trustee may object if a professional seeks compensation for the preparation of monthly invoices that is duplicative of fees that the professional later seeks for the preparation of the fee application related to those invoices. Based on these comments, the USTP has revised the Guidelines to clarify its position. Guidelines ¶ B.2.f.

28. **Comment:** Attorneys should be entitled to compensation for litigating and negotiating objections to fee applications.

Response: The Guidelines provide that “[r]easonable charges for preparing interim and final fee applications . . . are compensable,” (¶ B.2.f) (emphasis in original), because the preparation of a fee application is not required for lawyers practicing in areas other than bankruptcy as a condition to getting paid. But time spent beyond the initial preparation of the applications, including without limitation time spent explaining the fees, negotiating objections, and litigating contested fee matters, is properly characterized as work that is for the benefit of the professional, and not the estate. Such services are therefore not compensable under 11 U.S.C. § 330(a)(4)(ii) because they are neither reasonably likely to benefit the debtor's estate nor necessary to the administration of the bankruptcy case. This

result is consistent with non-bankruptcy practice because law firms typically do not charge clients for time spent explaining or defending a bill. Thus, the USTP's position is that awarding compensation for fee application matters beyond the initial preparation of the application is inappropriate, unless those activities fall within an applicable, judicially recognized, and binding exception (such as litigating an objection to the application where the applicant substantially prevails).

The USTP has clarified its position in the Guidelines based on these comments. See Guidelines ¶ B.2.f.

29. Comment: Attorneys should always be able to charge their highest rate, and are not bound by their lower "home forum" rate when the bankruptcy case is pending in a higher-priced market, for example, New York.

Response: The Guidelines provide that the USTP will not object to attorneys charging their "home forum" rate regardless of where a case is pending. Guidelines ¶ B.2.k. This recognizes that a substantial component of a professional's billing rate is overhead attributable to the professional's home office, and does not penalize professionals (or their clients in their choice of professionals) solely because of the forum in which the case is pending.

By contrast, the group of 118 law firms (formerly 119) proposed that, if a lawyer from St. Louis, for example, traveled to New York for a bankruptcy case, the St. Louis lawyer should charge New York rates. 118 Law Firms' Supplemental Letter, p. 2. But the 118 law firms would not have the New York lawyer traveling to St. Louis charge St. Louis rates. This result is illogical because it is not based on the professional's overhead (or even the forum in which the case is pending). Additionally, travel costs are typically reimbursed by the estate, and allowing professionals both to both their rates and to receive reimbursement for travel costs is unreasonable.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

30. Comment: Routine expenses, such as copies and long distance calls, should not require explanation. Similarly, referring to telephone charges as "overhead" might result in objection to long distance and conference charges currently allowed.

Response: Clients outside of bankruptcy increasingly refuse to reimburse expenses, even routine ones, that clients consider part of a firm's overhead. Thus, the guidelines provide that the United States Trustee will ordinarily object to expenses not customarily charged by the applicant to its non-bankruptcy clients and by the applicant's peers in the market as well as overhead expenses incident to the operation of the applicant's office.

31. Comment: Routine objection to summer associate time and non-working travel at full rate are not market-based.

Response: These commenters did not provide any support for the contention that sophisticated clients routinely pay for summer associate time or full rates for non-working

travel. Indeed, the USTP understands that it has long been customary for firms to write off the time of their summer associates, which is more properly attributed to recruitment and training. And clients increasingly refuse to pay for first or second year associates working on their matters.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

32. *Comment:* Fee enhancements should be based on agreements between counsel and clients, subject to court approval.

Response: A central principle of the Guidelines is that bankruptcy fees should be reasonable, fully disclosed, and consistent with market norms. For this reason, it is problematic when bankruptcy professionals seek to compel the estate, through their clients, to pay them a fee enhancement or a bonus that is not based on their contractual agreement and disclosed and approved at retention. An applicant's request for fees above the amounts it initially represented in its retention application remains subject to section 330 of the Code, including the comparability requirements of section 330(a)(3)(F), and other applicable law. Therefore, fee enhancements should be available only in extraordinary circumstances and solely to the extent that a professional outside of bankruptcy would be entitled to demand fees from the client in excess of a contractually agreed upon amount.

Upon further consideration, the USTP concludes that the issue of fee enhancements should, at this time, be addressed on a case-by-case basis and thus deleted the considerations pertaining to fee enhancements from the Guidelines.

K. FEE EXAMINER COMMENTS

33. *Comment:* Fee examiners and fee committees are appropriate only if the court believes they will be helpful. Similarly, special fee review procedures should not be included in the Guidelines.

Response: The appointment of a fee examiner or a fee committee is a decision reserved to the judgment of the bankruptcy court. To enhance the transparency and integrity of the fee review process, the Guidelines simply offer several alternative models that the USTP may suggest in a particular case. Guidelines ¶ F.

The success of the fee examiner in the General Motors case and the fee committee in the Lehman Brothers Holdings case have demonstrated that alternative fee review arrangements can have salutary effects. The fee examiner and fee committee have identified both discrete issues with the applications of certain professionals and global issues affecting compensation sought by many professionals. When possible, they have negotiated an acceptable resolution of those issues. When agreement could not be reached, they have presented the issues to the court in an organized manner that eased the burden of fee review on the court and others.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

34. Comment: The costs of fee examiners should be borne by the federal government.

Response: Presumably the commenter intended that the USTP bear these costs. The Bankruptcy Code is premised on bankruptcy estates paying the costs of administration, including professional fees. *See, e.g.*, 11 U.S.C. §§ 330, 503(b), 507(a)(2); 28 U.S.C. § 1930. Fee examiners and fee committees are typically sought in cases that are administratively solvent and very complex to ease the burden of fee review on the court and parties in interest. It is reasonable that the costs of administration of the estate include the cost of a fee examiner or a fee committee.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

L. MISCELLANEOUS COMMENTS

35. Comment: One commenter stated that firms should not have to disclose all rate increases under all circumstances. Rather, the commenter proposed that firms should only disclose annual rate increases exceeding 10% and should not have to disclose any “standard seniority step ups” regardless of amount or any annual increases of 10% or less.

Response: The cumulative cost to the estate of regular rate increases of, for instance, 10% per year over the life of a lengthy chapter 11 case is significant. This additional cost would be compounded by annual step increases as attorneys advance in seniority. At a minimum, law firms should disclose the additional cost being borne by the estate and its creditors as a result of increased rates so the parties, the court, and the United States Trustee can evaluate whether the requested compensation is reasonable, comparable, and customary.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

36. Comment: The guideline on billing a disproportionate amount of time in .5 and 1.0 hour increments is not realistic.

Response: This is not a change from the existing Appendix A guidelines. Moreover, routinely billing in those increments can be suggestive of billing abuses and failure to carefully track an attorney’s time.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

37. Comment: The Guidelines lack consequences that would give professionals incentives to comply with them.

Response: The Guidelines are internal procedural guidelines that the USTP will follow in reviewing and commenting on fee applications in the absence of controlling law or rules in a jurisdiction. The Guidelines do not supersede local rules, court orders, or other controlling authority. Only the court has the authority to award compensation and reimbursement under section 330 of the Bankruptcy Code and to provide incentives for complying with the Guidelines. Guidelines ¶¶ A.1-5.

The USTP concludes that no changes are necessary to the Guidelines based on this comment.

38. Comment: Greater transparency in fee applications would reduce concerns and address allegations that professionals are overly compensated for unnecessary work and diverting value.

Response: One of the USTP's stated goals has been to bring greater transparency to the compensation process in chapter 11 cases and to foster public confidence in the integrity of that process.

The USTP concludes that no changes are necessary to the Guidelines based on these comments.

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