

DEPARTMENT OF JUSTICE

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.

These guidelines that apply to the USTP's review of applications for compensation filed by attorneys in larger chapter 11 cases will be published in the Federal Register and entitled 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 ("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: November 1, 2013.

FOR FURTHER INFORMATION CONTACT: Nan Roberts Eitel, Associate General Counsel for Chapter 11 Practice, Executive Office for United States Trustees, 441 G St., N.W., Suite 6150, 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 to or comment on 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 before finalizing.

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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

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 filed for compensation and reimbursement under section 330 of title 11” 28 U.S.C. § 586(a)(3)(A)(i). 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 commenced on or after October 22, 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 filed on or after October 1, 2013. The Guidelines generally will not apply to counsel retained as an ordinary course professional pursuant to appropriate court order or local rule (“ordinary course professional”), unless the professional is required to file a fee application under such court order or local rule.
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 Bankruptcy Rule 2016. 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 other comparable professionals.
 - 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. Factors the USTP will consider in determining whether to object to the retention or compensation of co-counsel are described more specifically in ¶ F. Nothing in the Guidelines should be construed as precluding the retention and payment of "ordinary course professionals," subject to appropriate motions and orders in a particular case. Nothing in the guidelines should

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

be construed as precluding the retention of special counsel under section 327(e) or local counsel under section 327(a).

- d. **Rate increases:**² 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 B** 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 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.

² “Rate increases” as used in the Guidelines exclude annual “step increases” historically awarded by the firm in the ordinary course to attorneys throughout the firm due to advancing seniority and promotion. Applicants should not characterize actual rate increases that are unrelated to an attorney’s advancing seniority and promotion as “step increases” in an effort to thwart meaningful disclosure or billing discipline. If a firm does not distinguish between “step increases” and other types of rate increases, it should disclose and explain all rate increases as requested.

- 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 (or vice versa).
 - 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 a judicial exception applicable within the district (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 sufficient 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 greater specificity or more detail, are generally insufficient.
- j. **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.
- k. **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.
- l. **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 the professionals 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.

- m. **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 C** is a model budget (Exhibit C-1) and staffing plan (Exhibit C-2), and **Exhibit D-1** is a model form that may be useful in reporting fees sought in comparison to client-approved budgets.
 - n. **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. 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 other comparable professionals. 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 (other than actual charges for multi-party conference calls incurred by counsel in connection with the case), 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 of and terms controlling any retainer, and any budgetary or other limitations on fees.
- h. Whether the application is interim under section 331 or final under section 330.
- 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 or position.
 - 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.

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

- l. 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 E** is a model form that may be useful in providing the requested calculation.

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

- a. The blended hourly rate either billed or collected 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:
 - (1) Pro bono engagements.
 - (2) 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 fee arrangements, other than those engagements in ¶ C.3.a.iv.(c). For any 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. If the applicant's calculation includes any fee arrangements not billed by the hour, the applicant should concisely explain the methodology it used to calculate the blended hourly rates.
- 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.a.-b. 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 C-1**, which budgets total hours and fees by project category, see ¶ C.8., and 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 D-1** 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. Project categories for billing records: To facilitate effective review of the application, all time and service entries should be arranged by project categories.

- a. 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.
- b. The project categories set forth below should be used to the extent applicable. The following list of project categories is not exclusive, and 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.
 - i. Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.
 - ii. Asset Disposition: Sales, leases (section 365 matters), abandonment and related transaction work related to asset disposition.

- iii. Assumption and Rejection of Leases and Contracts: Analysis of leases and executory contracts and preparation of motions specifically to assume or reject.
- iv. Avoidance Action Analysis: Review of potential avoiding actions under Sections 544-549 of the Code to determine whether adversary proceedings are warranted.
- v. Budgeting (Case): Preparation, negotiation, and amendment to budgets for applicant.
- vi. Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.
- vii. Case Administration: Coordination and compliance activities not specifically covered by another category.
- viii. Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.
- ix. Corporate Governance and 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 (e.g., articles and bylaws, etc.).
- x. Employee Benefits and Pensions: Review and preparation related to employee and retiree benefit issues, including compensation, bonuses, severance, insurance benefits, and 401K, pensions, or other retirement plans.
- xi. Employment and Fee Applications: Preparation of employment and fee applications for self or others; motions to establish interim procedures.
- xii. Employment and Fee Application Objections: Review of and objections to the employment and fee applications of others.
- xiii. Financing and Cash Collateral: Matters under sections 361, 363 and 364 including cash collateral and secured claims; loan document analysis.
- xiv. Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category), each identified separately by caption and adversary number, or title of motion or application and docket

number, and using the Uniform Task Based Management System (“UTBMS”) Litigation Task Code Set.³

- xv. Meetings and Communications with Creditors: Preparation for and attendance at section 341(a) meeting and any other meetings with creditors and creditors’ committees.
 - xvi. Non-Working Travel: Non-working travel where the court reimburses at less than full hourly rates.
 - xvii. 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.
 - xviii. Real Estate: Review and analysis of real estate-related matters, including purchase agreements and lease provisions (e.g., common area maintenance clauses).
 - xix. Relief from Stay and Adequate Protection: Matters relating to termination or continuation of automatic stay under 11 U.S.C. § 362 and motions for adequate protection under 11 U.S.C. § 361.
 - xx. 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.
 - xxi. Tax: Analysis of tax issues and preparation of federal and state tax returns.
 - xxii. Valuation: Appraise or review appraisals of assets.
- c. 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.

³ See UTBMS.com for information on uniform task codes commonly used in legal billing.

9. **Time and service entries within each project category:**

- a. Time and service entries should be reported in chronological order within each project category.
- 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.
- c. Time should be recorded contemporaneously in increments of no more than one tenth (.1) 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.

10. **Electronic billing records:** The billing records (detailed time and service entries) substantiating the application should be provided in an open and searchable electronic data format: (i) with the application to the court, the debtor-in-possession (or trustee), official committees, the United States Trustee, and the fee review committee, fee examiner, and fee auditor; and (ii) upon request, to any other party in interest.⁴ 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 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.

⁴ See www.LEDES.org for information regarding open electronic data formats commonly used in legal e-billing.

11. **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.
12. **Expense Categories:** To facilitate effective review of the application, all expense entries should be arranged by expense categories.
- a. The expense categories set forth below should be used to the extent applicable:
 - i. Copies.
 - ii. Outside Printing.
 - iii. Telephone.
 - iv. Facsimile.
 - v. Online Research.
 - vi. Delivery Services/Couriers.
 - vii. Postage.
 - viii. Local Travel.
 - ix. Out-of-town Travel:
 - (a) Transportation.
 - (b) Hotel.
 - (c) Meals.
 - (d) Ground Transportation.
 - (e) Other (please specify).
 - x. Meals (local).
 - xi. Court Fees.
 - xii. Subpoena Fees.

- xiii. Witness Fees.
- xiv. Deposition Transcripts.
- xv. Trial Transcripts.
- xvi. Trial Exhibits.
- xvii. Litigation Support Vendors.
- xviii. Experts.
- xix. Investigators.
- xx. Arbitrators/Mediators.
- xxi. Other (please specify).

- b. 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 an applicant's overhead. See ¶ B.3.e.
- c. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

13. 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.

- a. Expenses should be reported in chronological order within each expense category.
- b. Each expense should include the following information:
 - i. Amount.
 - ii. Description and pertinent detail (e.g., copy costs, messengers, computer research, type of travel, type of fare, rate, destination, etc.).
 - iii. Date incurred.
 - iv. Who incurred the expense, if relevant.
 - v. Reason for expense.

14. Summaries:

- a. All applications should contain a summary cover sheet that provides the information below. **Exhibit E** 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 this 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 rate in this application for all attorneys.
- xiv. Blended rate in this application for all timekeepers. *See Exhibit A.*
- xv. Compensation sought in this application already paid pursuant to a monthly compensation order but not yet allowed.
- xvi. Expenses sought in this application already paid pursuant to a monthly compensation order but not yet allowed.
- xvii. Number of professionals included in this application.
- xviii. If applicable, the number of professionals included in this application not included in a staffing plan approved by the client.
- xix. If applicable, difference between fees budgeted and compensation sought for this period.
- xx. Number of professionals billing fewer than 15 hours to the case during this period.
- xxi. 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 D-1** (fees) and **Exhibit D-2** (expenses) are model forms 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, primary practice group, date of first admission, fees, hours, rates, and number of rate increases. **Exhibit B** 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, disclose your billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If your billing rates and material financial terms have changed postpetition, explain the difference and the reasons for the difference.
 - d. Has your client approved your prospective budget and staffing plan, and, if so, for what budget period?
2. **Verified statement from the client:**⁵ 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.

⁵ 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.

- b. The steps taken by the client to ensure that the applicant's billing rates and material terms for the engagement are comparable to the applicant's billing rates and terms for other non-bankruptcy engagements and to the billing rates and terms of other comparably skilled professionals.
- c. The number of firms the client interviewed.
- d. If the billing rates are not comparable to the applicant's billing rates for other non-bankruptcy engagements and to the billing rates of other comparably skilled professionals, 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.
- 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.m 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. The United States Trustee will also consider whether the client has approved the applicant's budget and staffing plan when reviewing applications for employment. See ¶ D.1.d. **Exhibit C** contains a model budget (Exhibit C-1) and staffing plan (Exhibit C-2).
2. Budgets and staffing plans should be agreed to between the professional and its client.
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 the professional and its client. 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 in conjunction with the fee application. *See* ¶ C.6. above.
8. Absent the parties' consent, the United States Trustee may seek a court order expressly authorizing the exchange of budgets by counsel for the debtor-in-possession and the official committees once they are approved by their respective clients or whenever amended. These 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.

F. RETENTION AND COMPENSATION OF CO-COUNSEL

1. Scope of retention:

- a. Where a debtor retains multiple section 327(a) bankruptcy counsel, the retention applications should clearly specify which firm is acting as lead counsel and should clearly delineate the areas of 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 secondary counsel.
- b. The retention application should not contain an indeterminate or open-ended description of secondary counsel's duties. In particular, retention orders should not contain language permitting secondary counsel to perform additional, unspecified services at the discretion of the debtor or the lead counsel.
- c. When a new matter within the authorized scope of secondary counsel's engagement is assigned by the lead counsel to secondary counsel, secondary counsel need not file a supplemental retention application and obtain an amended order. Rather, secondary counsel should file a supplemental declaration in accordance with Bankruptcy Rule 2014, and provide notice of the filing sufficient to afford parties in interest an opportunity to object. Nevertheless, if the matter does not fall within the authorized scope of the engagement, secondary counsel should file a supplemental retention application and obtain an amended order to expand the scope of the engagement to include that matter.

- d. 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.
- e. The retention application should clearly identify to whom the proposed secondary counsel will report. In most cases, secondary counsel should report directly to the management of the debtor.

2. Necessity for retention:

- a. 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.
- b. In the case of efficiency counsel, the retention application should include, at a minimum, a comparison of the billing rates of the lead counsel and secondary counsel and a projection of the total cost savings to the estate that would result from employing secondary counsel. The retention application should also identify any other factors that would weigh for or against retaining secondary counsel, including any significant differences in associated travel costs.
- c. 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.

3. Lead counsel’s conflicts:

- a. In most cases, applications for the retention of conflicts counsel are filed because either 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 United States Trustee or other party. The United States Trustee should carefully review the proposed conflicts counsel’s retention to assure that the lead counsel’s conflicts are not so pervasive as to give rise to an objection to the lead counsel’s retention rather than the appointment of secondary counsel.

- b. As in any case, the United States Trustee 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. The following are circumstances that may indicate that the retention of conflicts counsel is inappropriate and should weigh in favor of an objection to the retention application of the lead counsel:
 - i. The responsibilities of conflicts counsel are not confined to discrete legal matters.
 - ii. 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).
 - iii. The conflicts counsel will act under the direct supervision of, and at the direction of, the lead counsel.
 - iv. The conflicts counsel's role will include filing or advocating pleadings that have been drafted by lead counsel.
 - v. The conflicts counsel has been retained to litigate matters in which the lead counsel has represented the debtor in settlement negotiations.
 - vi. The debtor will not (or cannot) create an ethical wall to screen the lead counsel from the work of the conflicts counsel.
 - c. 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, and the United States Trustee retains discretion whether to object in a particular situation. Negotiation without the ability to litigate against a party usually will render a lawyer disqualified from the matter, and such disqualification cannot be cured by retention of conflicts counsel to handle the litigation.
4. **Billing and fee matters:** The United States Trustee should encourage both lead and secondary counsel to submit their billing records in a format that will enable the United States Trustee and other interested parties to easily identify any duplication or overlap in their work. 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 lead counsel or other professionals have spent on the matter assigned to secondary counsel, as well as the amount of time that secondary counsel has spent on matters outside its primary responsibility.
5. **Non-compensable services:** The United States Trustee should monitor the fees of both lead counsel and secondary counsel for services that are unnecessary, duplicative, or that do not benefit the estate, and should advise counsel in advance that the United States Trustee will

object to any such fees. Among other examples, the United States Trustee should object to fees for the following:

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

G. 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 one 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. The Independent Member will perform administrative functions and serve as the primary contact for any professionals retained by the Fee Review Committee. In addition, 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 the committee's 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 Fee Review Committee's professionals, the Independent Member, and the Independent Fee Examiner 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.

Dated: 6.11.13



Clifford J. White III
Director
Executive Office for United States Trustees