



Chapter 11 Update: *New Bankruptcy Billing Guidelines Go Into Effect* **NOVEMBER 1**

Andrea L. Weed
October 2013

New federal guidelines governing the review of bankruptcy attorneys' fees and expenses go into effect on November 1, 2013. These guidelines, which were approved by the Department of Justice's United States Trustee Program ("USTP") after a lengthy public review and comment period, apply to Chapter 11 bankruptcy cases filed on or after November 1 by debtors with at least \$50 million in assets and at least \$50 million in liabilities.¹

The USTP, which is the arm of the DOJ assigned to oversee bankruptcy cases,² first issued guidelines governing the review of attorney fee applications in 1996.³ While these guidelines do not carry binding authority (as the final authority to award compensation and reimbursement under the Bankruptcy Code is vested in the court), they do provide a framework that allows interested parties to evaluate whether fees sought by debtor's counsel and other professionals are appropriate.⁴ The new guidelines for large chapter 11 cases are focused not simply on increasing the amount of information disclosed in connection this evaluation process, but ensuring that the information disclosed can be more readily interpreted and analyzed.⁵

Among other things, the new guidelines provide for: (i) revised project categories; (ii) the use of bankruptcy budgets and proposed staffing plans; (iii) the disclosure of market rates and rate increases throughout the case; (iv) the submission of billing records in fully searchable electronic formats; (v) the use of independent fee committees and fee examiners; and (vi) the use of standard forms and templates for fee applications.⁶

¹ These monetary thresholds are to be aggregated for jointly administered cases. For cases that fall outside the parameters of the new guidelines (i.e., cases in which debtors do not meet the \$50 million monetary thresholds, single asset real estate cases, etc.), the existing guidelines, found at 28 C.F.R., Pt. 58, App. A, continue to apply.

² All bankruptcy cases, except those filed in Alabama and North Carolina, are overseen by U.S. Trustees. Cases filed in these two states fall outside of the USTP's oversight and instead are administered by Bankruptcy Administrators. See <http://www.uscourts.gov/bankruptcycourts/administrators.html>.

³ See 28 U.S.C. § 586(a)(3)(A), 28 C.F.R. Pt. 58, App. A.

⁴ 28 C.F.R. Pt. 58, App. A, ¶ (a)(5).

⁵ http://www.justice.gov/ust/eo/rules_regulations/guidelines/docs/Fee_Guidelines_Cliff_White_Statement.pdf.

⁶ http://www.justice.gov/ust/eo/rules_regulations/guidelines/index.htm.

These guidelines were not issued without public debate. Some lawyers and industry analysts have criticized the new guidelines as being overly burdensome and have argued that increased disclosure requirements could threaten the attorney-client privilege or the confidentiality of legal strategies. After reviewing these concerns, the DOJ revised the guidelines in 2012 to some extent, but maintained its position that the "cornerstone" of these guidelines is "enhanc[ing] disclosure and transparency in the compensation process and [ensuring] that attorneys' fees and expenses are based on market rates."⁷

A full link to the new chapter 11 guidelines (which are formally titled "Appendix B–Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 for Attorneys in Larger Chapter 11 Cases"), as well as an analysis of the public commentary concerning their issuance, can be found on the DOJ's website at:

http://www.justice.gov/ust/eo/rules_regulations/guidelines/index.htm

FOR MORE INFORMATION, CONTACT:

[Andrea L. Weed](#) in Birmingham at (205) 458-5431 or aweed@burr.com

or the Burr & Forman attorney with whom you regularly work.

No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.

⁷ http://www.justice.gov/ust/eo/rules_regulations/guidelines/docs/Fee_Guidelines_Cliff_White_Statement.pdf.