

## **The U.S. Trustee's New Chapter 11 Fee Guidelines**

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Following the culmination of two public comment periods spanning more than a year, the Office of the United States Trustee, a unit of the U.S. Department of Justice (the “DOJ”) assigned to oversee bankruptcy cases, issued new final guidelines on June 11 governing the payment of attorneys’ fees and expenses in large chapter 11 cases—cases with \$50 million or more in assets and \$50 million or more in liabilities. The guidelines, which will apply to cases filed on or after November 1, 2013, are intended to “enhance disclosure and transparency in the compensation process and to help ensure that attorneys’ fees and expenses are based on market rates,” according to a June 11 press release from the DOJ. According to the DOJ, the new guidelines reflect “significant changes that have occurred in the legal industry as well as the increasing complexity of business bankruptcy reorganization cases.”

Among other things, the new guidelines provide for: (i) mandatory use of budgets and staffing plans; (ii) disclosure of rate increases that occur during a representation; (iii) fee rates based upon the location of the attorney’s home office; (iv) submission of billing records in an open, searchable electronic format; (v) use of independent fee committees and fee examiners; and (vi) use of model forms and templates for applications seeking payment of fees and reimbursement of expenses.

During the course of the public comment periods before and after the U.S. Trustee issued an updated version of the proposed guidelines on November 2, 2012, some bankruptcy practitioners

and industry commentators expressed conflicting views concerning the need for new guidelines. Some critics warned that the extensive disclosure requirements were burdensome and could reveal litigation strategy or confidential information. The DOJ altered or clarified some of the guidelines in response, but many bankruptcy professionals remain unconvinced.

According to the DOJ press release, the original bankruptcy-fee guidelines, which were issued in 1996, will be updated in phases, and the changes governing large chapter 11 cases will be the first phase. The release also states that until additional superseding guidelines are adopted, the 1996 guidelines will “continue in effect for the review of fee applications filed in larger chapter 11 cases by professionals who are not attorneys; in all chapter 11 cases below the large case threshold; and in cases under other chapters of the Bankruptcy Code.”

The new fee guidelines are not legally binding, but the U.S. Trustee intends to lobby bankruptcy courts to incorporate them into their local rules of procedure.

The guidelines are available at:

[http://www.justice.gov/ust/eo/rules\\_regulations/guidelines/index.htm](http://www.justice.gov/ust/eo/rules_regulations/guidelines/index.htm).