AGREEMENT FOR PROFESSIONAL SERVICES

AS PARTY OF THE FIRST PART: The **PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY** (hereinafter, the "Authority"), a public corporation of the Government of Puerto Rico created by Act No. 2-2017 ("Act 2"), represented herein by its Director of the Office of Administrative Affairs, Guillermo Camba Casas, of legal age, single, and resident of Guaynabo, Puerto Rico, duly authorized and empowered to execute this Agreement pursuant to Resolution No. 2018-044 of the Board of Directors of the Authority.

AS PARTY OF THE SECOND PART: PIETRANTONI MÉNDEZ & ÁLVAREZ LLC (hereinafter, the "Consultant"), a limited liability company organized and existing under the laws of Puerto Rico, with offices at Popular Center 19th Floor, 208 Ponce de León Ave., San Juan, Puerto Rico, 00918, represented herein by its Managing Member, Jaime E. Santos Mimoso, of legal age, married, and a resident of Guaynabo.

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AS PARTY OF THE THIRD PART: THE PUERTO RICO TREASURY DEPARTMENT, a department of the Executive Branch of the Government of Puerto Rico created by Section 6 of Article IV of the Constitution of Puerto Rico, represented herein by its Acting Secretary, Francisco Parés Alicea, of legal age, single, and a resident of San Juan, Puerto Rico, acting on behalf of the Commonwealth of Puerto Rico (hereinafter referred to as the "Department of Treasury" and, collectively with the Authority and the Consultant, the "Parties").

WITNESSETH

WHEREAS, on January 18, 2017, the Puerto Rico Fiscal Agency and Financial Advisory Authority Act, Act No. 2-2017, was enacted and established the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") as a

public corporation and instrumentality of the Commonwealth of Puerto Rico (the "Commonwealth"), with legal existence and fiscal and administrative autonomy, separate and independent from the Commonwealth and its instrumentalities and political subdivisions; and

WHEREAS, the Authority was conceived for the purpose of acting as fiscal agent, financial advisor, and reporting agent for all the entities comprising the Government of Puerto Rico and to assist them in facing the serious fiscal and economic crisis that Puerto Rico is currently undergoing, including the Puerto Rico Sales Tax Financing Corporation ("COFINA"); and

WHEREAS, the Authority is the only entity of the Government of Puerto Rico authorized to, on behalf of the Government of Puerto Rico or any component thereof, negotiate, restructure, or enter into agreements with creditors in connection with any debt of the Government of Puerto Rico, whether present or future debt; and

WHEREAS, on May 5, 2017, the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") filed a voluntary petition for relief for COFINA pursuant to section 304(a) of the Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. No. 114-187, 130 Stat. 549 (2016) ("PROMESA"), in the United States District Court for the District of Puerto Rico (the "Title III Court"), thereby commencing a case under Title III of PROMESA for COFINA (the "Title III Case"); and

WHEREAS, on September 20, 2018, AAFAF and COFINA entered into that certain Amended and Restated Plan Support Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the "Amended PSA"), by and among the Oversight Board, AAFAF, COFINA, certain holders and insurers of COFINA's "Senior" and "First Subordinate" bonds, and Bonistas del Patio, Inc.; and

WHEREAS, on October 19, 2018, the Oversight Board certified for submission a plan of adjustment for COFINA (the "COFINA Plan") pursuant to

Section 104(j) of PROMESA and the COFINA Plan and related documents, including a proposed disclosure statement, were filed with the Title III Court; and

WHEREAS, on November 16, 2018, the Oversight Board certified for submission an amended plan of adjustment for COFINA (the "Amended Plan") pursuant to Section 104(j) of PROMESA and the Amended Plan and related documents, including a proposed disclosure statement, were filed with the Title III Court; and

WHEREAS, on November 26, 2018, the Oversight Board certified for submission a second amended plan of adjustment for COFINA (the "Second Amended Plan") pursuant to Section 104(j) of PROMESA and the Second Amended Plan and related documents, including a proposed disclosure statement, were filed with the Title III Court; and

WHEREAS, by order entered on November 29, 2018, the Title III Court determined that the most recent proposed disclosure statement contained adequate information under applicable law and could be sent to holders of claims against COFINA to solicit their votes on, and elections of the form of distribution to be received under, the COFINA Plan, as amended; and

WHEREAS, on January 9, 2019, the Oversight Board certified for submission a third amended plan of adjustment for COFINA (the "Third Amended Plan") pursuant to Section 104(j) of PROMESA and the Third Amended Plan and related documents were filed with the Title III Court; and

WHEREAS, on January 9, 2019, the Oversight Board issued a press release disclosing that the voting process for the COFINA Title III plan of adjustment had concluded and, citing the unaudited voting results, stated that all classes of Senior and Junior COFINA bondholders had accepted the COFINA Plan, as amended; and

WHEREAS, on January 16-17, 2019, the Title III Court held a hearing to consider the confirmation of the COFINA Plan, as amended; and

WHEREAS, on February 4, 2019, the Title III Court approved the COFINA Plan and order its consummation, which, among many things, requires the issuance of securities by COFINA on the Effective Date for distribution or deemed distribution, as the case may be, to holders of the following claims: (a) Allowed Senior COFINA Bond Claims, (b) Allowed Senior COFINA Bond Claims (Ambac), as applicable, (c) Allowed Senior COFINA Bond Claims (National), as applicable, (d) Allowed Senior COFINA Bond Claims (Taxable Election), (e) Allowed Junior COFINA Bond Claims, (f) Allowed Junior Bond Claims (Assured), (g) Allowed Junior COFINA Bond Claims (Taxable Election) and, (h) if applicable, the Allowed GS Derivative Claim, as such claims are defined in the COFINA Plan, as amended (the "COFINA Bonds"); and

WHEREAS, the Authority was empowered to negotiate and execute any type of contract, including all those instruments and agreements necessary or convenient to exercise the powers and functions conferred to the Authority by Act 2; and

WHEREAS, the Consultant is full service law firm that specializes in multiple practice areas and provides a wide range of legal services to its clients from both the public and private sectors; and

WHEREAS, the Consultant has considerable and reputable experience in dealing with public finance law matters in Puerto Rico, including acting as bond counsel, disclosure counsel and local counsel for a significant number of bonds issuances; and

WHEREAS, the Authority wishes to engage the Consultant to act as local counsel in connection with (i) the restructuring of approximately sixteen billion dollars in publicly-traded municipal securities issued by COFINA; (ii) the issuance of approximately twelve billion dollars of COFINA Bonds; (iii) the consummation of the COFINA Plan, and (iv) the remarketing of the securities to be held by Assured

Guaranty Municipal Corp. under the COFINA Plan; and the Consultant is willing to provide them on and subject to the terms and conditions set forth below; and

WHEREAS, due to the nature of the services related to debt restructuring processes under PROMESA, the Parties acknowledge that funds for the payment of these services shall be issued for the benefit of the Commonwealth of Puerto Rico from an account under custody of the Department of Treasury and allocated for such purposes in the certified Budget of the General Fund of Expenditures of the Government of Puerto Rico, and

WHEREAS, in accordance with the foregoing, the Parties acknowledge that the Department of Treasury appears herein solely with the purpose of establishing the terms and conditions regarding payment of services rendered and expenses incurred by the Consultant under this Agreement.

NOW, THEREFORE, the Authority and the Consultant enter into this Agreement for Professional Services (the "Agreement") under the following:

TERMS AND CONDITIONS

FIRST - SERVICES: The Authority hereby engages the Consultant, and the Consultant hereby agrees, to provide specialized legal and consulting services (the "Services") in connection with the successful consummation of the following transactions: (i) the restructuring of approximately sixteen billion dollars in publicly-traded municipal securities issued by COFINA (the "Restructuring"); (ii) the issuance of approximately twelve billion dollars of COFINA Bonds (the "Issuance"); (iii) the consummation of the COFINA Plan (the "Plan Consummation" and, together with the Restructuring and the Issuance, the "Plan Transactions"); and (iv) the remarketing of the securities to be held by Assured Guaranty Municipal Corp. under the COFINA Plan (the "Remarketing Transaction" and, together with the Plan Transactions, the "Transactions"), on and subject to the terms and

conditions set forth in this Agreement and in the Consultant's proposal dated January 25, 2019, a copy of which is incorporated and made part hereof as an appendix to this Agreement (the "Proposal"). Consultant shall also perform any other work related to the Transactions as it may be requested by the Authority and agreed to by the Consultant. Consultant shall only be entitled to payment under this Agreement, pursuant to the terms of the Proposal, if any of the Transactions is successfully consummated. In the event any of the Transactions is not consummated, Consultant shall be entitled to payment for services provided to the Authority related to COFINA (or otherwise in anticipation of the Transaction that was not consummated) pursuant to the Professional Services Agreement by and between Consultant and the Authority dated as of July 30, 2018 (the "Master Agreement"), at the discounted hourly rates set forth therein. Consultant and the Authority acknowledge that Consultant has been providing certain services related to COFINA under the Master Agreement, subject to the terms established therein. For the avoidance of doubt, if the Consultant receives payment under this Agreement with respect to any Transaction, it shall not be entitled to payment under the Master Agreement for services related to such Transaction rendered prior to its consummation and, if Consultant has received any such payments, such amounts shall be deducted from the amounts payable under this Agreement or, at the option of the Authority, returned by the Consultant.

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Both Parties acknowledge and accept that all or some of the Services may be rendered to any entity of the Executive Branch with which the Authority enters into an interagency agreement with or as determined by the Office of the Chief of Staff of the Governor of Puerto Rico. The Services shall be rendered under the same terms and conditions with respect to compensation as set forth in this Agreement. For purposes of this provision, the term "entity of the Executive Branch" includes all agencies of the Government of Puerto Rico, as well as instrumentalities and public

corporations.

SECOND - TERM OF AGREEMENT: This Agreement shall be in effect from the date of its execution until **June 30, 2019**, unless earlier terminated as provided herein or extended by amendment executed in writing by all Parties.

THIRD - TERMINATION: Notwithstanding any provision to the contrary in this Agreement, the Authority shall have the right to terminate this Agreement at any time, for convenience, by providing the Consultant thirty (30) day's prior notice by registered mail, return receipt requested, or overnight express mail. This Agreement shall terminate on the date indicated in the notice, which shall be at least thirty (30) days following the date of such notice.

Likewise, the Consultant shall have the right to terminate this Agreement by providing the Authority thirty (30) day's prior written notice by registered mail, return receipt requested, or overnight express mail.

The rights, duties, and responsibilities of the Authority and the Consultant shall continue in full force and effect during the applicable notice period. The Authority shall be obligated to pay all fees incurred up to the date of termination, in accordance with the terms of this Agreement. The Consultant shall have no further right to compensation except for amounts accrued for Services rendered under this Agreement until said date.

The Consultant's failure to comply with its duties and responsibilities and to perform the Services as set forth herein, or failure to abide to its ethical or professional standards, or its negligence or unlawful behavior (including, without limitation, conviction in a Puerto Rico or United States Federal court under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, as amended, known as the Enabling Act of the Office of Government Ethics of Puerto Rico, of any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes typified in Act No. 2-2018, as amended, known as the Anti-

Corruption Code for a New Puerto Rico or any other felony that involves misuse of public funds or property, including but not limited to the crimes mentioned in Article 6.8 of Act No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico), shall constitute a breach of the Agreement by the Consultant that shall entitle the Authority to terminate this Agreement immediately upon notice to the Consultant and shall, without limitations as to any other rights, release and discharge the Authority from any further obligations and liabilities hereunder accruing after the delivery of the notice of termination.

The Consultant also acknowledges that the Office of the Chief of Staff of the Governor of Puerto Rico shall have the authority to terminate this Agreement at any time by providing written notice of termination to the Consultant.

The assignment of this Agreement by either Party shall be sufficient cause to terminate it immediately, unless the assignment is made by the Authority to (i) a successor entity of the Authority, in which case, such assignment shall be considered effective with only a written notice to the Consultant, or (ii) any entity of the Executive Branch as permitted pursuant to this Agreement. Upon such occurrence, this Agreement shall be binding and inure to the benefit of the Authority's successors and assigns.

FOURTH - INVOICES: The Consultant will submit to the Authority such invoices, together with any reports and other information regarding the Services as may be requested by the Authority (collectively, the "Invoices"), before submitting it to the United States District Court for the District of Puerto Rico presiding over the Tittle III Cases (the "U.S. District Court") as set forth in the *Order Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* (as amended, the "Interim Compensation Procedures"), to the extent applicable.

The Invoices shall describe in sufficient detail the Services for which compensation is requested and for reimbursement of expenses that, to the extent applicable, comply with (i) the memoranda and guidelines promulgated by the Fee Examiner appointed by the U.S. District Court and (ii) the Executive Office for the United States Trustees' *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. Sec. 330*, 28 CFR Part 58, Appendix A and Appendix B, as applicable to the specific professional services rendered and as such documents may be amended or supplemented from time to time, copies of which are included as appendices to this Agreement. The Consultant shall segregate the Invoices by whether the services were rendered in Puerto Rico or outside of Puerto Rico.

The Consultant further agrees to comply with (i) Sections 316 and 317 of PROMESA, (ii) the Case Management Procedures [Dkt. No. 2839], (iii) the Compensation Interim Procedures, (iv) the Fee Examiner Orders, and (v) any other relevant order issued by the U.S. District Court from time to time, as such documents may be amended or supplemented from time to time, copies of which are included as appendices to this Agreement, to the extent applicable. Furthermore, the Consultant agrees to reduce its fees and expenses as may be so ordered by the Authority and the U.S. District Court, as applicable, and acknowledges that the Authority may incorporate to this Agreement, after its execution, billing guidelines consistent with the guidelines above referenced, with which the Consultant will be required to comply.

The Invoices must include a written certification signed by an authorized representative of the Consultant, stating that no officer or employee of the Authority and the Department of Treasury will derive or obtain any benefit or profit of any kind from this Agreement. Invoices that do not include this certification will not be

approved for submittal to the U.S. District Court. This certification must read as follows:

> **"We certify under penalty of nullity that no public servant of the Puerto Rico Fiscal Agency and Financial Advisory Authority and the Puerto Rico Treasury Department will derive or obtain any benefit or profit of any kind from the contractual relationship which is the basis of this invoice. If such benefit or profit exists, the required waiver has been obtained prior to entering into the Agreement. The only consideration to be received in exchange for the delivery of goods or for the Services provided is the agreed-upon price that has been negotiated with an authorized representative of the Puerto Rico Fiscal Agency and Financial Advisory Authority and the Puerto Rico Treasury Department. The total amount shown on this invoice is true and correct. The Services have been rendered, and no payment has been received."**

The Invoices containing expenses must also be accompanied by copies of the receipts for or detailed entries showing the expenses for which the Consultant seeks reimbursement. If such required receipts are not provided to the Authority with the Invoices, the Authority will not approve the same.

All Invoices shall be signed in original and mailed to the following address or personally delivered to the attention of:

MAILING ADDRESS	PHYSICAL ADDRESS
PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY PREINTERVENTION PO Box 42001 San Juan, PR 00940-2001	**PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY** PREINTERVENTION De Diego Avenue No. 100 Roberto Sánchez Vilella Government Center – Central Building Floor P Santurce, PR 00907-2345

The Consultant shall also email a copy of all signed Invoices to the following address: **invoice@aafaf.pr.gov**

The Consultant agrees to submit checking account transfer data to the Authority in order to facilitate future payments by means of electronic transfers.

The Department of Treasury certifies that funds for the payment of Services rendered under this Agreement come from budgeted allocations. The Department of

Treasury hereby agrees and certifies that all disbursements for payments required under this Agreement shall be made from account number 111-025-1640-006-2019.

FIFTH – CONFIRMATION: Upon receipt of the Invoices, the Authority will review and approve the same. Once the Authority has completed the review process, in a reasonable amount of time, it will send the Consultant a certification from a principal responsible for the retention of the professional that authorizes the submission of the Invoices (a "Principal Certification") to the U.S. District Court as required in the Interim Compensation Procedures, to the extent applicable.

SIXTH - PAYMENT: The Department of Treasury shall pay a fixed fee to the Consultant for the Services rendered as stipulated in this Agreement, the Proposal and its appendices. The total amount payable by the Department of Treasury shall to the Consultant under this Agreement, including reimbursable expenses, shall not exceed **TWO MILLION FIVE HUNDRED THOUSAND DOLLARS ($2,500,000.00)** (the "Maximum Amount"). The Consultant understands, acknowledges and accepts that the Department of Treasury cannot pay more than the Maximum Amount without a prior written amendment to this Agreement executed by the Parties in accordance with applicable local law.

SEVENTH - SUBCONTRACTING: The Consultant shall not subcontract the Services under this Agreement, or contract third-party experts or other persons to render the Services under this Agreement, without prior written authorization from the Authority. A request to hire a subcontractor shall specify the issues in which such subcontractor would take part. The professional fees earned by these persons will be deducted from the Maximum Amount that the Consultant can receive under this Agreement.

From time to time, the Consultant may utilize the Services of personnel from its affiliates, if any, in providing Services under this Agreement, at its own cost,

without the need to seek the consent of the Authority. However, the Consultant shall remain primarily responsible for providing the Services hereunder. The Authority agrees that none of the Consultant's affiliates, or their respective partners, principals or employees, who perform work under this Agreement, will have any liability to the Authority in connection with the Services or this Agreement. Nevertheless, the Consultant assumes all liability as to the work performed by its affiliates, their respective partners, principals or employees under this Agreement, subject to the limitation on liability contained in the FIFTEENTH Clause of this Agreement.

The confidentiality covenants set forth in the TENTH Clause of this Agreement and the other requirements established in the THIRTEENTH Clause of this Agreement shall apply to these persons.

EIGHTH - REPORTS: The Consultant shall submit in writing any reports required by the Authority regarding the Services performed under this Agreement. If required by the Authority, at the completion of the assigned tasks, the Consultant will submit a final written report regarding the work it has performed. This requirement shall not be interpreted as a waiver by the Authority of the Consultant's ethical obligation and responsibility of keeping the Authority informed of the progress of the assigned matters. This obligation includes the Consultant's commitment to submit status and progress reports of all assigned matters as required by the Authority and preparing and delivering to the Authority's external auditors, in a timely manner, the legal letters periodically requested in connection with pending or threatened litigation, claims and assessments or loss contingencies, as part of the financial statements audit process for the Authority. The Consultant shall not invoice the time spent in preparing these status reports and letters to auditors, as it is understood that both are administrative obligations complementary to the services rendered hereunder. The Authority will provide to the Consultant all the

documentation necessary for the adequate fulfillment of the Consultant's obligations under this Agreement.

NINTH - OWNERSHIP OF DATA: All rights, title and interest in and to any data, information and other materials furnished to Consultant by the Authority hereunder (the "Authority Information") are and shall remain the Authority's sole and exclusive property. The Authority hereby grants to the Consultant a revocable, limited and non-exclusive license to use such Authority Information to the extent required to provide the Services described herein. Except as provided below, upon full and final payment to the Consultant hereunder, all Consultant's work product created in connection with the Services (the "Deliverables") shall become the property of the Authority.

The Authority acknowledges the proprietary and confidential nature of Consultant's ideas, methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models), templates, software systems, user interfaces and screen designs, general purpose consulting and software tools, websites, benefit administration systems, and data, documentation, and proprietary information that the Authority may have access to or receive under this Agreement (collectively, "Consultant Information"). To the extent that any Consultant Information is contained in any of the Deliverables, subject to the terms of this Agreement, Consultant hereby grants to the Authority a paid-up, perpetual, royalty-free, nonexclusive license to use such Consultant Information for the Authority's use in connection with the Deliverables. To the extent that Consultant utilizes any of its intellectual property or know-how, including, without limitation, the Consultant Information, in connection with the performance of Services, such property shall remain the property of Consultant and, except for the limited license expressly granted in the preceding paragraph, the Authority shall acquire no right or interest in such property. The Authority will honor Consultant's copyrights, patents, and

trademarks relating to Services, Deliverables and Consultant Information, and will not use Consultant's name or other intellectual property without Consultant's prior written consent.

The Authority will use reasonable efforts to cause its employees to minimize distribution and duplication and prevent unauthorized disclosure of the Consultant Information. Subject to applicable freedom of information act requirements, the Authority will not disclose Consultant Information to a third party without the prior written consent of Consultant.

TENTH - CONFIDENTIAL INFORMATION: The Consultant acknowledges the proprietary and confidential nature of all internal, non-public, information systems, financial, and business information now or hereafter provided to the Consultant relating to the Authority, the Government of Puerto Rico, its agencies, corporations and municipalities, (collectively, "Confidential Information"). The term "Confidential Information," however, shall not include information within the public domain or that is furnished to the Consultant by a third party who is under no obligation to keep the information confidential.

The Consultant and its employees, affiliates and authorized subcontractors agree to keep in strict confidence all Confidential Information provided by the Authority, its personnel, subsidiary corporations and affiliates and their personnel, the Government of Puerto Rico, its municipalities, agencies, and corporations, in connection with the execution of this Agreement. The Consultant further agrees, in connection with all Confidential Information, that, it (i) shall not make public or disclose any Confidential Information without the previous written consent of the Authority, (ii) shall use such Confidential Information only to perform its obligations under this Agreement; and (iii) will reproduce the Confidential Information only as required to perform its obligations under this Agreement.

In addition, the provisions of this Clause shall not prohibit the Consultant from making any disclosure pursuant to any subpoena or order of a court, or a governmental, administrative tribunal or authority which may assert jurisdiction over the Consultant or pursuant to applicable professional standards; provided that the Consultant shall promptly notify the Authority of any such disclosure obligations and reasonably cooperate with the Authority's efforts to lawfully avoid and/or minimize the extent of such disclosure.

The Consultant may divulge Confidential Information to the persons who need to know such Confidential Information to fulfill the purposes of this engagement, provided that such persons (i) shall have been advised of the confidential nature of the information and the Consultant shall direct them, and they shall agree in writing, to treat such information as Confidential Information and to return all divulged materials to the Consultant upon request but for one copy for record purposes only; and (ii) in each case, such persons shall be bound by obligations of confidentiality and non-use consistent with and at least as stringent as those set forth in this Agreement.

In connection with the Services, the Consultant will furnish the Authority any necessary reports, analyses or other such materials as the Authority may request. The Authority, however, acknowledges that the Consultant may develop for itself, or for others, problem solving approaches, frameworks or other tools and processes developed in performing the Services, and nothing contained herein precludes the Consultant from developing or disclosing such materials and information provided that the same do not contain or reflect Confidential Information.

Furthermore, the Consultant shall return all Confidential Information to the Authority within thirty (30) days following the date of termination of this Agreement or, at the Authority's election, destroy such information, certifying that all the information has been returned to the Authority or destroyed, but for one copy for

record purposes only and other than electronic information held in archive and/or backup files to the extent such files cannot be deleted without unreasonable effort or expense and created in the ordinary course pursuant to established data backup/archive procedures. The Consultant shall not invoice the time spent to gather and deliver such information, as it is understood that this is an administrative obligation complementary to the Services rendered hereunder. During this thirty (30) day period, these documents shall be available for inspection by the Office of the Comptroller of Puerto Rico.

This provision shall survive the expiration or earlier termination of this Agreement.

ELEVENTH - CONFLICT OF INTERESTS: The Consultant acknowledges that, in performing the Services pursuant to this Agreement, it has the obligation to exhibit complete loyalty towards the Authority, including having no adverse interest to this government entity.

The Consultant certifies that is not currently aware of any relationship that would create a conflict of interest with the Authority or those parties-in-interest of which the Authority has made the Consultant aware.

The project team members of the Consultant providing Services under this Agreement will not provide similar products and/or Services to any of the agencies, public corporations, municipalities or instrumentalities of the Government of Puerto Rico, as well as to any other private or public party that are deemed by Consultant to have an adverse interest to the Authority, during the term of this Agreement and for six (6) months after its expiration or earlier termination, in connection with matters relating to the Authority, without the express written consent of the Authority, which, unless prohibited by applicable law, will not be unreasonably withheld.

The Consultant represents conflicting interests when, on behalf of one client it must support that which it is its duty to oppose to comply with its obligations with another previous, present or potential client. Also, it represents conflicting interests when its conduct is described as such in the standards of ethics applicable to its profession or industry, or in Puerto Rico's laws and regulations. The conduct herein described by one of Consultant's directors, partners, or attorneys shall constitute a violation of this prohibition. The Consultant shall avoid even the appearance of the existence of conflicting interests.

The Consultant certifies that at the time of the execution of this Agreement, it does not have nor does it represent particular interests in cases or matters that imply a conflict of interests, or of public policy, between the Authority and the particular interests it represents. If such conflicting interests arise after the execution of this Agreement, the Consultant shall notify the Authority immediately.

Both Parties hereby declare that, to the best of their knowledge, no public officer or employee of the Authority, the Government of Puerto Rico, or any of its agencies, instrumentalities, public corporations or municipalities, or employee of the Legislative or Judicial branches of the Government has any direct or indirect interest in the present Agreement.

The Consultant certifies that neither it, nor any of its directors, executives, officers or employees, offered or paid, directly or indirectly, any commissions, referrals, contracts, or any other consideration having an economic value, to a third party as a condition for obtaining this Agreement or to influence in any way its execution. In addition, the Consultant certifies that it shall not pay any commissions, make any referrals, execute any contracts, or provide any other consideration having an economic value, to a third party for the Services to be rendered under this Agreement, except for any subcontracts authorized by the Authority in accordance with the provisions established herein.

The Consultant also certifies that none of its partners, directors, executives, officers and employees receives salary or any kind of compensation for the rendering of regular services by appointment (or otherwise) in any agency, instrumentality, public corporation, or municipality of the Government of Puerto Rico.

TWELFTH - INDEPENDENT CONTRACTOR STATUS: The Consultant has extensive experience in multiple practice areas and provides a wide range of legal services. The Authority and the Consultant agree that the Consultant's status hereunder, and the status of any agents, employees, affiliates and approved subcontractors engaged by the Consultant, shall be that of an independent contractor only and not that of an employee or agent of the Authority or any entity of the Executive Branch. The Consultant shall not have any power or right to enter into agreements on behalf of the Authority.

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THIRTEENTH - CONTRACTING REQUIREMENTS OF THE GOVERNMENT OF PUERTO RICO: The Consultant will comply will all applicable laws, regulations and executive orders that regulate the contracting process and requirements of the Government of Puerto Rico. Particularly, *Act No. 237-2004,* as amended, which establishes uniform contracting requirements for professional and consultant services for the agencies and governmental entities of the Commonwealth of Puerto Rico (3 L.P.R.A. § 8611 et seq.), and the Puerto Rico Department of Treasury Circular Letter Number 1300-16-16 issued on January 22, 2016, which is available at:

http://www.hacienda.pr.gov/publicaciones/carta-circular-num-1300-16-16.

The Consultant accepts and acknowledges its responsibility for requiring and obtaining a similar warranties and certifications required under this Clause from each and every approved subcontractor whose service the Consultant has secured in connection with the Services and shall forward such evidence to the Authority as to its compliance with this requirement.

Any person engaged by the Consultant in accordance with the conditions herein established who dedicates twenty-five percent (25%) or more of his or her time to provide Services related to the Agreement shall be considered subcontractors for the purposes of this Clause. Notwithstanding anything herein to the contrary, the Consultant shall have the right to rely conclusively on the aforementioned certifications from government agencies in making the representations in this Clause.

For the purposes of this Agreement, 'tax debt' shall mean any debt that the Consultant, or other parties which the Authority authorizes the Consultant to subcontract, may have with the Government of Puerto Rico for income taxes, real or personal property taxes, including any special taxes levied, license rights, tax withholdings for payment of salaries and professional services, taxes for payment of interest, dividends and income to individuals, corporations and non-resident accounting firms, unemployment insurance premiums, workers' compensation payments, Social Security for chauffeurs, and ASUME (as defined below).

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A. **Department of Treasury of Puerto Rico:** Pursuant to Executive Order Number OE-1991-24 of June 18, 1991 ("EO-1991-24") and Act No. 237-2004, as amended, the Consultant hereby certifies and guarantees that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last five (5) years. The Consultant, further certifies that it has complied and is current with the payment of any and all income taxes that are or were due to the Government of Puerto Rico. In compliance with this Clause, the Consultant certifies that at the execution of this Agreement it has presented to the Authority the corresponding certifications issued by the Department of Treasury of Puerto Rico (the "Department of Treasury"). The Consultant shall also provide, to the satisfaction of the Authority, and whenever requested by the Authority during the term of this Agreement, any

other documentation necessary to support its compliance with this Clause. The Consultant will be given a specific amount of time by the Authority to produce said documents. During the term of this Agreement, the Consultant agrees to pay and/or to remain current with any repayment plan agreed to by the Consultant with the Government of Puerto Rico. *Executive Order 1991OE24.*

B. **Department of Labor and Human Resources of Puerto Rico:** Pursuant to Executive Order Number 1992-52 of August 28, 1992, which amends EO-1991-24, the Consultant hereby certifies and warrants that it has made and will continue to make all payments required for unemployment benefits, workmen's compensation and social security for chauffeurs, whichever is applicable, or that in lieu thereof, has subscribed a payment plan in connection with any such unpaid items and is in full compliance with the terms thereof. In compliance with this Clause, the Consultant certifies that at the execution of this Agreement it has presented to the Authority the corresponding certifications issued by the Department of Labor and Human Resources of Puerto Rico. *Executive Order 1992OE52.*

C. **Department of State of Puerto Rico:** The Consultant shall provide to the Authority a certificate of incorporation and a Good Standing Certificate issued by the Department of State of Puerto Rico as proof that it is duly authorized to do business in Puerto Rico and has complied with its annual filing obligations.

D. **Municipal Revenue Collection Center (known in Spanish as "*Centro de Recaudación de Ingresos Municipales*", and hereinafter referred to by its acronym "CRIM"):** The Consultant hereby certifies and guarantees that it does not have any current debt with regards to real and personal property taxes that may be registered with CRIM. The Consultant further certifies that it is current with the payment of any and all property taxes that are or were due to

the Government of Puerto Rico or any instrumentality thereof. In compliance with this Clause, the Consultant certifies that at the execution of this Agreement it has presented to the Authority the corresponding certifications issued by CRIM. The Consultant shall also provide, whenever requested by the Authority during the term of this Agreement, any other documentation necessary to support its compliance with this Clause. The Consultant agrees to pay and/or to remain current with any payment plan agreed to by the Consultant with the Government of Puerto Rico with regards to its property taxes. 3 L.P.R.A. § 8611 et seq.; 21 L.P.R.A. § 5001 et seq.

E. **Child Support Administration (known in Spanish as "*Administración para el Sustento de Menores*", and hereinafter referred to by its acronym, "ASUME"):** The Consultant certifies that neither the Consultant nor any of its owners, affiliates or subsidiaries, if applicable, have any debt or legal procedures to collect child support payments registered with ASUME. In compliance with this Clause, the Consultant certifies that at the execution of this Agreement it has presented to the Authority the corresponding certification issued by ASUME. 3 L.P.R.A. § 8611 et seq.

F. **Social Security and Income Tax Withholdings:** In compliance with EO-1991-24 and C.F.R. Part 404 et. seq., the Consultant will be responsible for paying the Federal Social Security and Income Tax Contributions for any amount owed as a result of the income from this Agreement. *Executive Order 1991OE24;* C.F.R. Part 404 et. seq.

G. **Income Tax Withholdings Law:** The Consultant is an independent contractor and, as such, it shall be responsible for the payment of all of its income taxes, its subcontractors and its individual and employers' withholdings under the applicable tax laws of Puerto Rico or the United States. No withholdings or deductions shall be made from payments to the

Consultant for Services rendered, except (i) the special contribution of one point five percent (1.5%) of the gross amounts paid under this Agreement required by Act No. 48-2013, as amended, (ii) the corresponding income tax withholdings for services rendered in Puerto Rico in accordance with the Puerto Rico Internal Revenue Code and its regulations, unless evidence is provided to the Authority of a total or partial waiver having been issued to the Consultant by the Puerto Rico Department of Treasury. The Authority shall forward any such withholdings or deductions to the Department of Treasury. The Authority also will notify the Department of Treasury of all payments and reimbursements made to the Consultant. The Consultant will request the Authority not to make such withholdings if, to the satisfaction of the Authority, the Consultant timely provides a release from such obligation issued by the Department of Treasury. 3 L.P.R.A. § 8611 et seq., 2011 L.P.R. 232; 232-2011.

H. **Enabling Act of the Office of Government Ethics of Puerto Rico, Act No. 1-2012, as amended:** The Consultant certifies that it is in compliance with Act No. 1 of January 3, 2012, as amended, known as the Enabling Act of the Office of Government Ethics of Puerto Rico ("Act No. 1-2012").

I. **Act for the Improvement of Family Assistance and for the Support of the Elderly, Act. No. 168-2000, as amended:** The Consultant hereby certifies that if there is any judicial or administrative order demanding payment or any economic support under the Act for the Improvement of Family Assistance and for the Support of the Elderly (known in Spanish as "*Ley de Mejoras al Sustento de Personas de Edad Avanzada de Puerto Rico*"), Act. No. 168-2000, as amended, the same is current and in all aspects in compliance. 8 L.P.R.A. §711 et seq.

J. **Agreement Registration in the Office of the Comptroller of Puerto Rico, Act No. 18 of October 30, 1975, as amended:** Payment for Services rendered under this Agreement will not be made until this Agreement is properly registered in the Office of the Comptroller of Puerto Rico pursuant to Act No. 18 of October 30, 1975, as amended.

K. **Code of Ethics for Contractors, Suppliers, and Applicants for Economic Incentives of the Government of Puerto Rico, Chapter III of Act No. 2-2018:** The Consultant hereby recognizes and agrees that it shall be bound by and comply with all applicable provisions of the Code of Ethics for Contractors, Suppliers, and Applicants for Economic Incentives of the Government of Puerto Rico (known in Spanish as "*Código de Ética para Contratistas, Suplidores y Solicitantes de Incentivos Económicos del Gobierno de Puerto Rico*"), Chapter III of Act No. 2-2018. The Consultant acknowledges that it has received a copy of Act 2-2018, and agrees to abide and comply with its dispositions.

L. **Certification of other government agreements:** The Consultant hereby certifies that, at the time of execution of this Agreement, it does not have any other agreement with any agency, public corporation, municipality, or instrumentality of the Government of Puerto Rico, except for:

1. Government Development Bank for Puerto Rico
2. Puerto Rico Ports Authority
3. Puerto Rico Public–Private Partnerships Authority

The Consultant certifies that said agreements are not in conflict with the Services provided hereunder.

M. **Negative Certification of Criminal Procedures:** The Consultant certifies and guarantees that, at the execution of this Agreement, neither the Consultant, nor any of its partners, associates, officers, directors, and attorneys have been

convicted or have been found guilty in any Puerto Rico or United States Federal court for any of the crimes included under Articles 4.2, 4.3 or 5.7 of Act No. 1-2012, any of the crimes listed in Articles 250 through 266 of Act No. 146-2012, as amended, known as the Puerto Rico Penal Code, any of the crimes under Act No. 2-2018 or any other felony that involves misuse of public funds or property, including, but not limited to the crimes mentioned in Article 6.8 of Act No. 8-2017, as amended, known as the Act for the Administration and Transformation of Human Resources in the Government of Puerto Rico ("Act No. 8-2017"). The Authority shall have the right to terminate this Agreement in the event the Consultant is convicted in a Puerto Rico or United States federal court for any of the aforementioned crimes.

Furthermore, neither the Consultant, nor any of the aforementioned persons, has knowledge of any of the foregoing being the subject of any investigation in either a civil or a criminal procedure in a state or federal court, for criminal or civil charges related to the public treasury, the public trust, a public function, or a fault that involves public funds or property. If the status of the Consultant or any of its partners, associates, officers, directors, and attorneys with regards to the charges previously mentioned should change at any time during the term of the Agreement, the Consultant shall notify the Authority immediately. The failure to comply with this responsibility constitutes a violation of this Clause.

In addition to the foregoing, Act No. 2-2018 requires that any person or entity who wishes to be granted a contract with any municipality, agency, instrumentality or public corporation of the Government of Puerto Rico for the rendering of services must submit a sworn statement signed before a notary public stating neither the Consultant nor any president, vice president, executive director or any member of a board of officials or board of directors,

or any person performing equivalent functions for the Consultant, has been convicted or has plead guilty to any of the crimes listed under Article 6.8 of Act No. 8-2017 or any of the crime included in Act No. 2-2018.

N. **Investment Act for the Puerto Rican Industry, Act No. 14-2004, as amended:** In compliance with the dispositions of Act No. 14-2004, known as the Investment Act for the Puerto Rican Industry, the Consultant shall use articles extracted, produced, assembled, packaged or distributed by companies with operations in Puerto Rico or distributed by agents established in Puerto Rico while rendering the Services, provided such articles are available.

O. **Consequences of Non-Compliance:** The Consultant expressly agrees that the conditions outlined throughout this THIRTEENTH Clause are essential requirements of this Agreement. Consequently, should any one of these representations, warranties, and certifications be incorrect, inaccurate or misleading, in whole or in part, there shall be sufficient cause for the Authority to render this Agreement null and void and to require that the Consultant reimburse to the Authority all moneys received under this Agreement.

JAPA

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FOURTEENTH - INSURANCE: The Consultant represents that as of the date of execution of this Agreement, it maintains Professional Liability insurance coverage for errors, omissions and negligent acts that may arise from the Services rendered under this Agreement in the minimum amount of Five Million Dollars ($5,000,000.00).

The Consultant also represents that as of the date of execution of this Agreement, it maintains Commercial General Liability insurance in the minimum amount of One Million Dollars ($1,000,000.00).

With respect to the Commercial General Liability insurance policy, the certification to be provided by the Consultant must identify the Authority as

Additional Insured and provide Hold Harmless Agreement Clause. Also, the certificates should include the following cancellation notice:

> "CANCELLATION CLAUSE: It is understood and agreed that in the event of cancellation of this policy at the request of the insurance company, thirty (30) days written notice shall be given to the above mentioned additional insured, **PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY**. However, it is agreed that if cancellation is due to non-payment of premium, ten (10) days written notice will be given".

It shall be the Consultant's obligation to submit to the Authority the corresponding certifications from its insurance company evidencing the abovementioned Professional Liability and Commercial General Liability insurance coverage as required in this Clause. The insurance policies required herein must remain in effect during the term of this Agreement, including any amendments to extend said term.

FIFTEENTH - LIABILITY FOR LOSSES: If the Authority suffers any damages, losses, liabilities, and expenses (including reasonable attorneys' fees and expenses) (collectively, a "Loss" or "Losses") (regardless of whether such Loss is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose, statutory liability or otherwise) as a result of Consultant's breach of its obligations hereunder, the Consultant shall defend, indemnify and hold harmless the Authority and any entity of the Executive Branch from and against such Losses. If the Consultant incurs any costs or expenses as a result of a subpoena or request for production of documents or request to testify in connection with the Services provided pursuant to this Agreement, the Authority shall defend, indemnify and hold harmless the Consultant from and against such costs or expenses.

In no event will either Party be liable to the other Party for incidental, consequential, special, or punitive damages (including loss of profits, data, business or goodwill, or government fines, penalties, taxes, or filing fees), regardless of

whether such liability is based on breach of contract, tort, strict liability, breach of warranty, failure of essential purpose, statutory liability or otherwise, and even if advised of the likelihood of such damages. The Consultant hereby agrees to use reasonable efforts to mitigate any and all damages and other Losses to the Authority and any entity of the Executive Branch. To the extent permitted by law, all claims and Losses relating to, directly or indirectly, or arising from this Agreement (including the Services), however caused, regardless of the form of action and on any theory of liability, including contract, strict liability, negligence or other tort, shall be brought under and shall be subject to the terms of this Agreement.

SIXTEENTH - INFORMATION PROVIDED BY THE AUTHORITY: The Authority will submit to Consultant all information in Authority's control necessary for Consultant to perform the Services covered by this Agreement. The Authority is responsible for the accuracy and completeness of the information submitted to the Consultant in order to perform the Services and agrees to notify the Consultant, as soon as possible, of any problems or errors in such information that the Authority becomes aware of.

SEVENTEENTH - CONSULTANT NOT ENTITLED TO RIGHTS: The execution of this Agreement shall not generate any rights for the Consultant, its employees, officers, directors, agents, successors, assignees or subcontractors to receive any benefits that the officers or employees of the Authority, the Government of Puerto Rico or of any agency, instrumentality or municipality may be entitled as officers or employees of the Authority and the Government of Puerto Rico pursuant to law or regulation including, but not limited to, vacation and sick leave, workmen's compensation, or any other such benefits.

EIGHTEENTH - WAIVERS: The Consultant certifies that it is not required to obtain a waiver from any Puerto Rico government entity prior to or in connection with the execution of this Agreement or that, to the extent any such waiver is

required, the same has been obtained by the Consultant prior to the execution of this Agreement.

NINETEENTH - SEVERABILITY: Both Parties agree that the illegality of any of the provisions of this Agreement shall not invalidate it as a whole. In such case, if any clause or condition of this Agreement is declared null and void by a competent court of law, the remaining parts of this Agreement shall remain in full force and effect.

TWENTIETH - GOVERNING LAW AND VENUE: This Agreement and any dispute relating to the Services will be governed by and construed, interpreted and enforced in accordance with the laws of Puerto Rico. The court and authorities of Puerto Rico shall have exclusive jurisdiction over all controversies that may arise with respect to this Agreement. The Parties hereby waive any other venue to which they might be entitled by virtue of domicile or otherwise. Should either Party initiate or bring suit or action before any other court, it is agreed that upon application, any such suit or action shall be dismissed, without prejudice, and may be filed in accordance with this provision. The Party bringing the suit or action before a court not agreed to herein shall pay to the other Party all the costs of seeking dismissal including reasonable attorney's fees.

TWENTY-FIRST - SOLE AGREEMENT: It is understood that this Agreement is the sole agreement between the Parties with regard to the Services covered hereby and supersedes any prior agreements, written or verbal. The Agreement may not be changed orally, but may be amended in writing by mutual agreement of the Parties.

TWENTY-SECOND - COUNTERPARTS: This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original instrument, but all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties hereto set their hands in San Juan, Puerto Rico, as of this 4th day of February, 2019.

PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY

Guillermo Camba Casas
Director of the Office of Administrative Affairs
Tax Id. Number:

PIETRANTONI MÉNDEZ & ÁLVAREZ LLC

Jaime E. Santos Mimoso
Managing Member
Tax Id. Number:

Popular Center 19th Floor
208 Ponce de León Ave.
San Juan, Puerto Rico 00918
Tel.: (787) 274-1212
Fax: (787) 274-1470

[SIGNATURES CONTINUE ON THE NEXT PAGE]

PUERTO RICO TREASURY DEPARTMENT

Francisco Parés Alicea
Acting Secretary
Tax Id. Number:

APPENDIX INDEX

1. Proposal dated January 25, 2019

2. Fee Examiner memoranda and guidelines and United States Trustees' *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. Sec. 330*, 28 CFR Part 58, Appendix A and Appendix B

3. Case Management Procedures [Dkt. No. 2839], Compensation Interim Procedures, and the Fee Examiner Orders

PIETRANTONI MENDEZ & ALVAREZ LLC
POPULAR CENTER-19TH FLOOR
208 PONCE DE LEON AVENUE
SAN JUAN, PUERTO RICO 00918
SWITCHBOARD: (787) 274-1212

MANUEL RODRIGUEZ BOISSEN
MEMBER

MRODRIGUEZ@PMALAW.COM
DIR: (787) 274-5240
FAX: (787) 274-1470

January 25, 2019

Puerto Rico Fiscal Agency and Financial Advisory Authority
Roberto Sánchez Vilella Government Center
De Diego St., Stop 22
San Juan, Puerto Rico 00940-1089

Attention: General Counsel

Re: COFINA Restructuring Transaction

Ladies and Gentlemen:

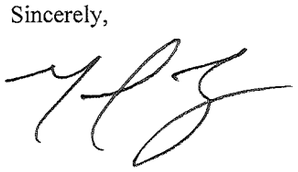
You have asked us to act as local counsel to the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF," for its Spanish acronym) in connection with (i) the issuance (the "Issuance") of approximately $12 billion in new Puerto Rico Sales Tax Financing Corporation ("COFINA," for its Spanish acronym) municipal securities (the "New Bonds") as part of the restructuring of approximately $16 billion in publicly-traded municipal securities issued by COFINA and (ii) the remarketing (the "Remarketing") of New Bonds to be held by Assured Guaranty Municipal Corp.

We have been providing legal services to AAFAF in connection with these matters under our existing agreement with AAFAF (the "Existing Agreement"). Our work has included significant research and analysis, contract drafting, and negotiations with various parties. Pursuant to the plan of adjustment for COFINA (the "COFINA Plan"), the expenses related to the restructuring of COFINA's securities, including the Issuance and the Remarketing, will be paid by the Department of Treasury of the Commonwealth of Puerto Rico ("Treasury"). The work related to the Issuance and the Remarketing requires, among other things, the delivery of legal opinions, as well as the drafting, review, negotiation and/or completion of bond and disclosure documents and ancillary agreements.

As you are aware, there are significant risks related to the Issuance and the Remarketing, particularly given their unprecedented nature, size and complexity. Given these risks and consistent with industry practice, we propose to charge a fixed fee for the successful completion of the Issuance and the Remarketing. As we had previously discussed, our fee would consist of: (a) one payment in the amount of $1.5 million payable upon consummation of the Issuance and (b) one payment in the amount of $1 million payable upon consummation of the Remarketing. We propose to enter into a new agreement with AAFAF and Treasury to cover these services and provide that the payments are to be made by Treasury, consistent with the COFINA Plan. We would not bill AAFAF under the Existing Agreement for services provided in connection with the Issuance or the Remarketing, unless any of such transactions is not consummated. In the event the Issuance or the Restructuring is not consummated, we would bill AAFAF based on the legal services rendered in connection with such transactions each month, at the discounted hourly rates set forth in the Existing Agreement.

We are proud to represent AAFAF in connection with these transactions. If you have any questions regarding our firm or our services, please contact me.

Sincerely,



545228

GODFREY & KAHN S.C.

ONE EAST MAIN STREET, SUITE 500 • POST OFFICE BOX 2719
MADISON, WISCONSIN 53701-2719

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MEMORANDUM

TO: PROMESA Title III Professionals

FROM: Brady Williamson, Fee Examiner

DATE: November 10, 2017

SUBJECT: Fee Review—Timeline and Process

On November 8, 2017, the Court entered the *First Amended Order Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Dkt. No. 1715] (the "Interim Compensation Order"), moving the deadline for submitting first interim fee applications to December 15, 2017, except as noted below for professionals based in Puerto Rico.[1]

As you prepare your first interim fee submissions, this introductory memorandum will provide some additional guidance on the fee review process. It's based, in part, on the experience gained in the *Energy Future* proceeding pending in Delaware and the *Lehman Brothers* proceeding in the Southern District of New York, where most of the PROMESA-Title III firms not based in Puerto Rico have practiced. The memorandum is also based on the U.S. Trustee Guidelines and an initial and cursory review of the limited number of monthly fee statements the Fee Examiner has received.

As you know, the Court appointed the Fee Examiner on October 6, 2017, when it entered the *Order Pursuant to PROMESA Sections 316 and 317 and Bankruptcy Code Section 105(A) Appointing a Fee Examiner and Related Relief* [Dkt. No. 1416] (the "**Fee Examiner Order**"). That Order also anticipated the retention of Godfrey & Kahn, S.C. as counsel and EDGE Legal Strategies, P.S.C., subject to Court approval. *See Application of Fee Examiner to Employ and Retain Godfrey & Kahn, S.C. as Counsel to the Fee Examiner Nunc Pro Tunc to October 6, 2017* [Dkt. No 1548].

You'll receive memoranda like this one, periodically, providing updates on the review process and addressing common matters, questions, and concerns that arise. This process is collaborative and, to that end, we are always available for individual discussion. Please do not hesitate to contact us at any time to discuss fee applications or provide feedback as part of a productive and open dialogue with professionals.

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[1] As noted in the Fee Examiner's filings and the Interim Compensation Order, any professional based in Puerto Rico may file a first interim fee application on or before November 15, 2017, noticed for Court consideration at the December 20, 2017 omnibus hearing.

This memorandum provides basic information about the initial timing of the fee examination process, the budget requirement, and instructions and suggestions on the process for submitting fee applications for review, including the substantive standards that apply. The goal is a constructive and collaborative process that, recognizing and reserving everyone's rights, makes it less onerous for the Court to review and approve professional fee applications efficiently and promptly. As of today, no professional has submitted an interim fee application, though we have received Monthly Fee Statements and data from some firms.

Schedule

Pursuant to the Interim Compensation Order, the schedule for the Fee Examiner's process is outlined below:

Fee Period	**First Interim** May 3, 2017 – September 30, 2017	**Second Interim** October 1, 2017 – January 31, 2018	**Third Interim** February 1, 2018 – May 31, 2018	**Fourth Interim** June 1, 2018 – September 30, 2018
End of Interim Compensation Period	September 30, 2017	January 31, 2018	May 31, 2018	September 30, 2018
Interim Fee Applications Due	December 15, 2017	March 19, 2018	July 16, 2018	November 16, 2018
Initial Letter Report to Retained Professionals	February 15, 2018	May 18, 2018	September 14, 2018	January 14, 2019
Final (Summary) Report Filed	February 28, 2018 (or 7 days prior to scheduled hearing date)	May 30, 2018 (or 7 days prior to scheduled hearing date)	7 days prior to scheduled hearing date	7 days prior to scheduled hearing date
Estimated Hearing Date	March 7, 2018 (Omnibus Hearing) or an earlier date as ordered by the Court	June 6, 2018 (Omnibus Hearing) or an earlier date as ordered by the Court	Mid-October	Mid-February

Budgets

Retained Professionals should provide a non-binding, confidential budget for each month beginning with January 2018. Please submit budgets no later than the 15th of the month prior to the budgeted month. Budgets should be e-mailed directly to the Fee Examiner, counsel, and the U.S. Trustee. These budgets—which are prospective—are advisory only. Budgets should be substantially in the format of Attachment A, setting forth an estimate of the projected fees and expenses for each month, a general description of the categories of anticipated services, and an

explanation for any significant increase over the previous month's fees. These are budgets—not caps, not minimums, not maximums—submitted and reviewed in good faith.

Fee Review Criteria

The Fee Examiner Order provides, among other things, that the Fee Examiner shall determine whether requested fees and expenses comply with:

1. PROMESA sections 316 and 317;
2. Rule 2016-2 of the Federal Rules of Bankruptcy Procedure;
3. The Local Bankruptcy Rules;
4. The Interim Compensation Order [and First Amended Interim Compensation Order]; and
5. The *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013* (the "U.S. Trustee Guidelines").

Initial Points

The Guidelines that follow are just that, guidelines and not rigid rules. On the face of the guidelines or as applied in the reports that you will receive, the process invites dialogue. Particularly in light of the hurricane, the approach to fee submission and review that has proven practical and effective elsewhere may well require adaptation. Just appointed on October 6, 2017, the Fee Examiner is well aware that a significant amount of professionals' work will have occurred prior to this memorandum. While these parameters are generally consistent with the requirements of PROMESA and the U.S. Trustee Guidelines, and accordingly considered standard bankruptcy billing practice, in some instances strict compliance may not be possible. Please try to conform your fee and expense requests to the guidelines below, keeping in mind that significant deviations from the requested formats may result in a delay in processing the application.

A number of firms have submitted monthly applications pursuant to the Interim Compensation Order. With some exceptions, it will not be our practice to object to monthly statements, in whole or in part. Yet an initial assessment of the monthly statements suggests prospective problems—for example, with vague and incomplete descriptions of the services provided (e.g., "analyze bankruptcy issues" and "miscellaneous emails" or "attention to…") or non-compensable administrative work. On expenses, it is already clear that transportation and meal charges will raise questions. One of the reasons we've asked to defer the due date for the initial interim compensation applications is to provide everyone with the opportunity to conform their billing practices to the standards.

Many firms increase rates at the beginning of the calendar year and, in addition, during the calendar year—whether characterized as "step increases" for associates or as "general" or "across the board rate increases." Rate increases, no less than the basic hourly rate itself, whether or not discounted for the circumstances here, are subject to the reasonableness standard. While the market rate for professional services in a difficult and complex case like this is always

a factor in setting and reviewing rates, it is not the only factor. That is especially true in the extraordinary environment—legal and practical—of these proceedings. The length of these proceedings cannot be predicted or projected, at least at this point, but rate increases proposed by firms here should be given careful consideration by the professionals before they are submitted as part of the monthly or interim fee process.

GUIDELINES

Contents of Interim and Final Fee Applications

Based upon the criteria outlined in the Fee Examiner Order and on the Fee Examiner's experience, each interim fee application should disclose:

1. Whether the applicant is seeking compensation under PROMESA sections 316 and 317 or another authority;

2. A summary of the terms and conditions of the Retained Professional's employment and compensation, including a statement consistent with Bankruptcy Rule 2016 and, for the first application, a copy of the engagement letter;

3. Identification of all professionals who billed time during the relevant period, including each professional's billing rates and year of bar admission;

4. A list of all rate increases of any kind—including rate increases due to increasing seniority—by timekeeper and amount, proposed by the Retained Professional since it began working on these cases;

5. A statement that the Retained Professional's client has (or has not) explicitly consented to all rate increases;

6. The precise time period covered by the application;

7. Time and service entries in the appropriate electronic format, discussed below, identifying participants, activities, and subject matters, arranged by specific project categories, including brief narrative summaries of each project and its benefit to the estate (non-working travel time should be a specific project category);[2]

8. Time entries, in tenths of an hour, without "lumping" services together unless the aggregate amount of time spent for those lumped services does not exceed 0.5 hours;

9. Explanations of tasks involving multiple individuals and the contributions of each individual; and

[2] Electronic data should mirror precisely the amounts sought in the interim or final fee application. If write-offs or other adjustments are made to the timekeeping, in the exercise of billing judgment, the electronic data will need to reflect those adjustments. Data submitted on time, complete and consistent with the amounts requested in the application, are all essential to the schedule outlined above.

10. A detailed itemization of actual, necessary expenses.

Means of Service Upon the Fee Examiner

Interim Fee Applications, supporting data, and budgets should be provided in the appropriate electronic format (described below) by e-mail to adalton@gklaw.com, kstadler@gklaw.com, and bwilliam@gklaw.com. In addition, please provide supporting data to the Office of the U.S. Trustee by e-mail to Guy.Gebhardt@usdoj.gov. To minimize expense, please **do not** serve hard copies of fee applications and supporting materials. Expenses for duplicating or mailing fee application materials will be recommended for disallowance.

Electronic Data Format for Billing and Expense Detail

All fee and expense detail should be submitted only in electronic format. *YOU NEED NOT PROVIDE PAPER COPIES OF BILLS OR INVOICES.*

1. For law firms: simultaneously with the submission of any interim or final fee application, please provide electronic versions of any billing information in unedited LEDES™ (Legal Electronic Data Exchange Standard) file format.

2. For non-law firms: simultaneously with the submission of any interim or final fee application, Retained Professionals other than law firms should provide electronic versions of any billing information in Excel format using the fields and formats outlined on the attached *Required Format for the Submission of Fee Requests by Professionals Other Than Law Firms.*

3. In the event that any documentation accompanying an Interim Fee Application contains internal codes, which could assist in evaluating the Interim Fee Application (such as codes for fee, project or expense categories), the professional should submit an explanation of how the codes relate to any fee, project or expense categories.

4. When submitting a summary or cover sheet of all individuals who billed time in the Interim Fee Application, the summary should list the individuals alphabetically by last name within their particular category (e.g., all partners should be listed alphabetically).

Expenses

The parameters set forth here are not hard and fast rules, and the Fee Examiner will consider atypical reimbursement requests that are actual and necessary, especially in light of the hurricane and its aftermath. With that in mind, the review and analysis generally will follow these principles:

Overhead and Administrative Charges

- In general, overhead and administrative expenses are not reimbursable, nor are infrastructure improvements, rent, utilities, office equipment, furnishings, insurance, custodial fees, internal storage fees, and property taxes.

- Internal photocopying and printing are reimbursable at 10 cents per page for black and white and, where color copies are necessary, 50 cents per page. Please provide vendor invoices for outside photocopying projects. The initial monthly statements already reflect excessive copying charges.

- Charges for internal printing, converting documents to electronic formats, scanning charges, and charges to convert and upload documents are not reimbursable.

- Word processing, proofreading, secretarial and other support expenses are not reimbursable, nor overtime charges.

- Telephone charges—including cellular phone fees and subscriptions, text fees, data fees, and roaming charges, other than actual charges for multi-party calls incurred by counsel in connection with the cases—are not reimbursable.

- Subscription, publication, or library charges are not reimbursable, nor office supplies.

Travel Expenses

- Neither the time nor travel expenses associated with traveling to other offices within a professional's own firm are reimbursable—except for travel to attend hearings, client or third party meetings, or to prepare for them. Meetings should be conducted telephonically or by video conference wherever possible.

- Clothing, dry-cleaning, accessories, and travel sundries are not reimbursable.

- Local travel expenses (train, bus, subway, mileage, car service, taxi) to or from a professional's home are not reimbursable unless a professional *has worked at least four hours on these cases on the day for which the expense is sought* and works after 9:00 p.m. local time *on these cases.*

- For travel to or from airports, the maximum allowable amounts are outlined below. In each instance, they represent charges from a city center to an appropriate airport:

San Juan	$75.00
New York	$100.00
Chicago	$ 75.00
San Francisco	$100.00
Los Angeles	$100.00
Other Cities	$ 75.00

- While professionals are free to travel in any manner they wish, the Fee Examiner will not recommend reimbursement for first class travel. Please provide receipts for any travel expense exceeding $300.00.

- Tips or other service charges are reimbursable only if part of another itemized expense (for example, taxi or car service gratuity included on the receipt). Documented wait staff tips are reimbursable up to the applicable expense caps outlined below. Housekeeping, valet, concierge, and bell services tips are *not* reimbursable.

- Hotel expenses should be limited to reasonable market rates for the locale, but will not be reimbursed above $500.00 for New York City and Washington, D.C., $350.00 for all other continental locations, and $300.00 for Puerto Rico. Taxes, service fees, and other charges are *included* in the reimbursement caps. Health or athletic facilities, in-room movies, or other entertainment charges are not reimbursable. In addition, in-room dining or other hotel food and beverage charges are subject to the meal guidelines in this memorandum.

Meals

- In-office meals are capped at $20.00 per person per meal and are reimbursable if:
    - The professional attends a necessary lunch-hour business meeting; or
    - The professional works *on these cases* after 8:00 p.m. and has worked more than four hours *on these cases* during the billing day for which meal reimbursement is sought.

- Coffee and snack charges are not reimbursable unless charged *in lieu of* in office meals allowable under the above-stated guideline.

- All catering orders must be supported by receipts or invoices. Catering invoices (internal and external) must indicate both the number of persons actually attending a business meeting and the amount charged per person.

- Out-of-office meals are capped at $40.00 per person per meal, reimbursable only if the professional has travelled to prepare for or attend a hearing, client or third party meeting, or other event. If a professional's attendance at a hearing, meeting, or other event is unnecessary, the Fee Examiner will recommend both the professional's fees and associated travel and meal expenses for disallowance.

- Regardless of the number of attendees, please provide receipts for any single meal costing more than $200.00 in the aggregate.

- Alcohol is never reimbursable.

Note that the meal reimbursement cap is *not* a per diem. Applicants may be reimbursed for either the actual cost of the meal, or the reimbursement cap, whichever is less.

Other Expenses

- Contract attorneys are reimbursable at their actual cost (that is, the rate charged by the agency or other provider placing the attorneys) without markup. Professionals should submit detailed billing statements for all contract attorneys, who are subject to the same standards of review for detail, accuracy and, ultimately, reasonableness as any other professional.

- In general, Retained Professionals should not submit reimbursement requests for any other firm's professional (legal, financial advisory, investment banking, or accounting) services. If retention terms allow for sub-retentions, contract professionals must nonetheless submit detailed billing statements. All professional fees are subject to the same standards of review for detail, accuracy and, ultimately, reasonableness.

- Charges for electronic research services (Westlaw, Lexis-Nexis) should be accompanied by a general description of the research performed. Please include invoices for research expenses with your submission.

- Expenses related to seeking committee or other representation (pitching) are not reimbursable, nor is client entertainment.

- Expenses incurred prior to the Retained Professional's *nunc pro tunc* retention date are not reimbursable unless otherwise permitted by the Court's order authorizing the Retained Professional's employment.

- Please provide receipts for all unusual or extraordinary expenses.

Please note that this list is not meant to be exhaustive, nor does it preclude individual explanations for unusual items—any of which may meet the section 316 and 317 standards or those suggested by the U.S. Trustee Guidelines and local rules. These general statements reflect the Fee Examiner's starting point for expense review, not its conclusion.

Fee Examiner Analysis of Billing Detail

The Fee Examiner's review is both quantitative and qualitative, including, at a minimum and without limitation, examining:

The hourly rates charged:

- Ensure that billing rates for each professional are the rates approved in the applicable engagement agreement, retention order, or supplement;

- Evaluate reasonableness of rates and the time spent in relation to the nature and character of the work and each professional's role and experience;
- Calculate blended rates;
- Evaluate multiple rates billed to particular projects; and,
- Eliminate charges for work performed by law students, clerks, or summer associates.

Hours billed:

- Evaluate hours billed against any limitations in the engagement agreement or retention order;
- Analyze average billable hours each day and identify extended periods of above average billing days;
- Calculate fees or billable hours for preparation of firm retention documents and fee applications as a percentage of total fees and hours—time spent preparing and editing time records is never compensable, nor is time spent preparing monthly fee statements (which should be minimal);
- Evaluate legal research to determine whether it is being conducted appropriately and at the lowest appropriate rate;
- Review clerical and administrative tasks to determine either the propriety of the billing rate for the task or whether the task is non-compensable;
- Ensure that time is billed in one-tenth of an hour increments unless a retention order permits another time increment;
- Identify vague task descriptions that do not permit a reviewer to determine the task's necessity;
- Identify improperly "lumped" or "block billed time";
- Ensure the use of properly segregated matter numbers for project categories, generally consistent with the following:
    - Debtor financing and cash collateral
    - Communications with creditors/debtors

- Asset sales
- Asset analysis and valuation
- Due diligence-analysis of loan and other security documents
- Lift stay or adequate protection matters
- Assumption and rejection of leases or executory contracts
- Avoidance actions (significant avoidance actions should have their own matter identifier)
- Budgeting
- Business operations
- Case administration
- Claims and claims objections
- Governance matters
- Retention applications and disclosures-self
- Retention applications and disclosures-others
- Fee applications-self
- Fee applications-others
- Litigation (each litigation matter should have its own matter identifier)
- Non-working travel
- Plan and disclosure statement
- Tax issues (individual governmental entity audits should have their own matter identifiers)

- Identify meetings, hearings, or other events attended by an excessive number of timekeepers given the nature of the hearing or meeting and the necessity of multiple attendees;
- Ensure that non-working travel is billed only at 50 percent of the timekeeper's standard hourly rate;
- Identify all calculation or billing errors;
- Identify instances of duplication or overlap in work performed by multiple Retained Professionals;
- Ensure that tasks are appropriately delegated to the professional with the lowest suitable billing rate for the task performed;

- Evaluate time spent monitoring or overseeing others' work without substantial contribution to work product; and

- Waiting time or "standby time" is not reimbursable.

Fee Examiner Contacts

We look forward to working you and trust that this memorandum will begin an open and productive dialogue with professionals subject to the Fee Examiner Order. The Fee Examiner and counsel can be reached using the contact information below. Please do not hesitate to contact the Fee Examiner's counsel if you have comments, questions or concerns about the fee review process.

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MEMORANDUM

TO: PROMESA Title III Professionals

FROM: Brady Williamson, Fee Examiner

DATE: January 3, 2018

SUBJECT: Status Report / Fee Review Process

Coupled with the November 10, 2017 initial memorandum we sent, this summary provides preliminary observations on the first interim fee applications and a reminder of basic practices for subsequent interim fee applications.

On or around December 15, 2017, 25 professional firms filed fee and expense applications pursuant to the *First Amended Order Setting Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Dkt. No. 1715] (the "Interim Compensation Order"). They reflect the work of more than 735 individual timekeepers, including two firms reporting more than 125 timekeepers each. Four firms account for more than three-fourths of the total fees requested.

We're now reviewing the applications, and we anticipate submitting initial letter reports to each professional by February 15, 2018. The report should start a dialogue with each firm, leading to a hearing at the March 7, 2018 omnibus on those applications for which there are no objections or pending Fee Examiner concerns. In this regard, we note that the Court approved the one consensual fee and expense application already submitted without the need for a hearing.

Notwithstanding the unique features of PROMESA and the unique circumstances in the Commonwealth, the guiding principle for fee and expense applications is still whether the fees and expenses are reasonable and necessary to the administration of the estates. Some firms now involved in these proceedings have little or no experience with the Chapter 11 process. Some firms were directly affected by the hurricane. Those factors cannot be ignored. However, our initial review of the applications leads to a series of observations that may lead to requests for further information and, ultimately, to suggested adjustments to fees and expenses. These observations include:

- The number of professionals from a single firm attending hearings and related proceedings is sometimes starkly excessive. *See, e.g., In re Fleming Companies*, 304 B.R. 85 (Bkr. D. Del. 2003) (asking whether "each attorney present contributed to the hearing in a meaningful way"). While there may be justification on occasion for more than a few professionals from a single firm attending the same hearing, those

occasions should be uncommon. Of course a firm is free to send as many partners, associates and staff to a hearing as they like, but they should not expect the Fee Examiner to recommend estate compensation for multiple attendees absent a compelling showing of each timekeeper's contributory role.

- The Fee Examiner generally will not recommend that the estates pay for more than a few professionals to review the docket each day, and the substantive review of other parties' filings should be related directly to a professional's work on the cases. Fees and expenses merely to "follow along" with the case, in short, will not be recommended for estate payment without a showing of the need for monitoring.

- Many fee applications lack specific descriptions of the services provided. Generally, "attention to" or "read" followed by a general term do not provide enough detail to recommend estate compensation. Actual examples:

  ATTEND TO ISSUES RE: DOCUMENT REVIEW.
  ADDRESS ISSUES REGARDING DOCUMENT REVIEW.
  ADDRESS ISSUES RE: DOCUMENT REVIEW.
  ADDRESS ISSUES REGARDING DOCUMENT REVIEW.

  These descriptions do not provide any meaningful detail about the work performed. In addition, reading these time entries, a reviewer would likely conclude that this timekeeper did not actually review documents. Neither the application nor the task descriptions provide sufficient information to conclude this work was reasonable and necessary.

- The review process does not anticipate permitting professionals to correct or restate time entries once submitted because after-the-fact revisions are not contemporaneous records of work performed. As a general approach, the Fee Examiner will recommend a percentage reduction for the pervasive use of vague task descriptions. Further, time spent recording tasks in the first instance or revising time entry prior to the submission of a fee statement or application will not be recommended for estate payment.

- Given the number of professionals involved and the ease with which most can be served electronically, the Fee Examiner strongly encourages professionals to waive service of process of paper documents whenever possible.

- The number of intra-office conferences seems excessive in more than a few applications. Professionals should take care that their task descriptions provide context for office conferences so that their necessity can be easily determined. Time spent briefing other timekeepers on events or discussing case matters generally will not often be recommended for compensation. Professionals should expect estate payment for "conferencing with" their colleagues when collaborative work on a specific project or task is required and when all conferencing timekeepers are contributing meaningfully to the work product.

- When recording time for non-working travel, the task description should include the destination as well as the reason for travel. The first interim applications include many entries with no description other than "Non-working travel."

- Fees or expenses billed by summer associates will be recommended for disallowance.

- Cell phone charges, per diem meal charges, and alcohol are never reimbursable.

- Pre-retention fees or expenses will be recommended for disallowance.

- Timekeepers must bill in tenths-of-an-hour increments. Timekeepers from one firm appear to have billed in quarter-hour increments and later rounded the hours to the nearest tenth. This is not an acceptable timekeeping practice in Chapter 11 cases and will be presumed improper under Title III as well.

Just before the holidays, the lead mediator here, Judge Barbara Houser, though in a completely unrelated matter, pointedly addressed a number of these issues. In *In Re Frazin*, she discussed overstaffing, vagueness, and multiple professionals attending hearings. In each instance, the court reduced the professional fees sought by significant amounts as neither reasonable nor necessary. *Frazin v. Haynes and Boone, LLP* (*In re Frazin*), No. 08-3021, slip op. at 60-64, 74-75 (Bankr. N.D. Tex. Dec. 22, 2017).

Eleven professional firms filed first interim fee applications but have yet to provide supporting electronic data. Any delay in providing the data may result in the fee application not being recommended for approval at the anticipated March hearing. Law firms should provide supporting data in LEDES format. (We have worked with some law firms to develop alternate formats for the first interim period, but LEDES is necessary for the second and subsequent periods). Further, the LEDES data should include either the name or number of each matter/project category. Non-law firm professionals should provide Excel fee and expense data in substantial compliance with the fields and formats in the attached *Required Format for the Submission of Fee Requests by Professionals Other Than Law Firms.*

Regardless of the data format, electronic data should include (or account for) any voluntary fee or expense reductions so the total fees and total expenses in the data match the figures requested in the fee application. In addition, individual travel charges should be segregated into separate line items. For example, airfare, lodging, meals, and taxi from a single trip should not be billed as a single charge but, instead, by category.

The purpose of this catalogue of concerns is not to pre-judge the applications but, rather, to suggest that each firm review its application before receiving its letter report in mid-February and anticipate discussion on some of the issues identified above. As always, we remain available to discuss fee-related matters and to hear any questions, comments, suggestions, or concerns about the process.

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Required Format for the Submission of Fee Requests by Professionals Other Than Law Firms

Note: The fields below are the minimum required; additional data fields may be provided.

FEES

FIELD:	INVOICE NUMBER	MATTER NAME	DATE	TIMEKEEPER NAME	POSITION/TITLE	HOURLY RATE	HOURS	FEES	TASK DESCRIPTION
FORMAT:	any	any	YYYYMMDD	Last, First	text	currency	number	currency	text
EXAMPLES:	GK012537-001	DIP Financing	20170521	Jordan, Michael J.	Analyst	$325	0.6	$195.00	Revise Exchange Analysis calculations in EFIH DIP budget.
	GK012539-107	Court Attendance	20170709	Embry, Elizabeth	Managing Director	$850	2.3	$1,955.00	Attend make whole litigation hearing.

EXPENSES

FIELD:	INVOICE NUMBER	MATTER NAME	DATE	NAME OF TIMEKEEPER WHO INCURRED EXPENSE	EXPENSE CATEGORY	UNIT COST	# OF UNITS	TOTAL	EXPENSE DESCRIPTION
FORMAT:	any	any	YYYYMMDD	Last, First	text	currency	number	currency	text
EXAMPLES:	GK012537-001	Corporate Governance	20170527	Smith, John	Photocopies	$0.10	128	$12.80	Photocopies: 128 pages.
	GK012539-107	Hearings	20170719	Jones, Samantha	Airfare			$489.23	Airfare (Coach): Roundtrip Dallas/Wilmington to attend 7/19/14 hearing

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Seizure and forfeiture.

19 CFR Part 161

Customs duties and inspection, Imports, Law enforcement.

Amendments to the Regulations

For the reasons stated above, parts 12, 145, and 161 of the Customs Regulations (19 CFR parts 12, 145, and 161), are amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for Part 12 continues and a specific authority citation for new § 12.150 is added to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.150 also issued under 19 U.S.C. 1595a and 1618; 22 U.S.C. 401.

2. Part 12 is amended by adding a centerheading and new § 12.150 to read as follows:

Merchandise Subject to Economic Sanctions

§ 12.150 Merchandise prohibited by economic sanctions; detention; seizure or other disposition; blocked property.

(a) *Generally.* Merchandise from certain countries designated by the President as constituting a threat to the national security, foreign policy, or economy of the United States shall be detained until the question of its release, seizure, or other disposition has been determined under law and regulations issued by the Treasury Department's Office of Foreign Assets Control (OFAC) (31 CFR Chapter V).

(b) *Seizure.* When an unlicensed importation of merchandise subject to OFAC's regulations is determined to be prohibited, no entry for any purpose shall be permitted and, unless the immediate reexportation or other disposition of such merchandise under Customs supervision has previously been authorized by OFAC, the merchandise shall be seized.

(c) *Licenses.* OFAC's regulations may authorize OFAC to issue licenses on a case-by-case basis authorizing the importation of otherwise prohibited merchandise under certain conditions. If such a license is issued subsequent to the attempted entry and seizure of the merchandise, importation shall be conditioned upon the importer:

(1) Agreeing in writing to hold the Government harmless, and

(2) Paying any storage and other Customs fees, costs, or expenses, as well as any mitigated forfeiture amount or monetary penalty imposed or assessed by Customs or OFAC, or both.

(d) *Blocked property.* Merchandise which constitutes property in which the government or any national of certain designated countries has an interest may be blocked (frozen) pursuant to OFAC's regulations and may not be transferred, sold, or otherwise disposed of without an OFAC license.

(e) *Additional information.* For further information concerning importing merchandise prohibited under economic sanctions programs currently in effect, the Office of Foreign Assets Control of the Department of the Treasury should be contacted. The address of that office is 1500 Pennsylvania Ave., N.W., Annex 2nd Floor, Washington, D.C. 20220.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for Part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

§ 145.56 [Amended]

2. Section 145.56 is amended by removing the words "North Korea, North Vietnam, Cuba, or Rhodesia" and adding, in their place, the words "certain designated countries"; and by adding the parenthetical words "(See also 19 CFR 12.150)" at the end of the section before the period.

PART 161—GENERAL ENFORCEMENT PROVISIONS

1. The general authority citation for Part 161 is revised, and a specific authority citation for section 161.2 is added, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1600, 1619, 1624, 1646a;

Section 161.2 also issued under 12 U.S.C. 95a; 18 U.S.C. 545; 19 U.S.C. 1595(a); 22 U.S.C. 401, 1934, 2349aa8–9;

42 U.S.C. 1804, 1807; 50 U.S.C. 1641 *et seq.*, 1701 *et seq.;*

50 U.S.C. App. 1–44, 2411.

* * * * *

2. Section 161.2 is amended by adding paragraph (a)(3) and removing the parenthetical authority citations at the end of the section. The revision reads as follows:

§ 161.2 Enforcement for other agencies.

(a) * * *

(1) * * *

(2) * * *

(3) Importations, exportations, and transactions involving identified goods, services, and technology with any of those countries designated as subject to economic sanctions under the laws and regulations administered by the Office of Foreign Assets Control of the Department of the Treasury.

* * * * *

Michael H. Lane,

Acting Commissioner of Customs.

Approved: April 8, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–12373 Filed 5–16–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

United States Trustees; Guidelines Relating to the Bankruptcy Reform Act of 1994

AGENCY: Department of Justice.

ACTION: Final internal procedural guidelines.

SUMMARY: The Department of Justice is establishing internal procedural guidelines for reviewing applications for compensation and reimbursement of expenses filed by case trustees and professionals under section 330 of Title 11, United States Code. These procedural guidelines are not intended to supersede local rules, but are to be read as complementing the procedures set forth in local rules.

To keep all published rules, regulations, and guidelines pertaining to the United States Trustee Program in one section of the Code of Federal Regulations, the title to 28 CFR 58 will be amended to include the Bankruptcy Reform Act of 1994.

EFFECTIVE DATE: January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha L. Davis, General Counsel, or Kathleen Dunivin Schmitt, Attorney, (202) 307–1399. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This action is in response to the Bankruptcy Reform Act of 1994, which amended 28 U.S.C. 586(a)(3)(A) to direct United States Trustees to review applications for compensation and reimbursement of expenses in accordance with procedural guidelines adopted by the Executive Office for United States Trustees. The guidelines are to be applied uniformly by the United States Trustees, except when circumstances warrant different treatment.

Executive Order 12866

These guidelines have been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Director, Executive Office for United States Trustees, has determined that these guidelines are not a "significant regulatory action" under Executive Order 12866 section 3(f), Regulatory Planning and Review. These guidelines pertain to the internal management of the Department and as such are not subject to central Office of Management and Budget review pursuant to section 6 of Executive Order 12866. Accordingly, these guidelines have not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

The Director, Executive Office for United States Trustees, in accordance with the Regulatory Flexibility Act (5 U.S.C. § 605(b)), has reviewed these guidelines and by approving them certifies that these guidelines will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 58

Bankruptcy, Trusts, and Trustees.

For the reasons set forth in the preamble, the Department of Justice proposes to amend 28 CFR part 58 as follows:

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACTS OF 1978 AND 1994

1. The heading of Part 58 is revised to read as set forth above.

2. The authority citation for Part 58 continues to read as follows:

Authority: 28 U.S.C. 509, 510, 586(e), 588(d).

3. Appendix A is added to Part 58 to read as follows:

Appendix A to Part 58—Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330

(a) *General Information.* (1) The Bankruptcy Reform Act of 1994 amended the responsibilities of the United States Trustees under 28 U.S.C. 586(a)(3)(A) to provide that, whenever they deem appropriate, United States Trustees will review applications for compensation and reimbursement of expenses under section 330 of the Bankruptcy Code, 11 U.S.C. 101, et seq. ("Code"), in accordance with procedural guidelines ("Guidelines") adopted by the Executive Office for United States Trustees ("Executive Office"). The following Guidelines have been adopted by the Executive Office and are to be uniformly applied by the United States Trustees except when circumstances warrant different treatment.

(2) The United States Trustees shall use these Guidelines in all cases commenced on or after October 22, 1994.

(3) The Guidelines are not intended to supersede local rules of court, but should be read as complementing the procedures set forth in local rules.

(4) Nothing in the Guidelines should be construed:

(i) To limit the United States Trustee's discretion to request additional information necessary for the review of a particular application or type of application or to refer any information provided to the United States Trustee to any investigatory or prosecutorial authority of the United States or a state;

(ii) To limit the United States Trustee's discretion to determine whether to file comments or objections to applications; or

(iii) To create any private right of action on the part of any person enforceable in litigation with the United States Trustee or the United States.

(5) Recognizing that the final authority to award compensation and reimbursement under section 330 of the Code is vested in the Court, the Guidelines focus on the disclosure of information relevant to a proper award under the law. In evaluating fees for professional services, it is relevant to consider various factors including the following: the time spent; the rates charged; whether the services were necessary to the administration of, or beneficial towards the completion of, the case at the time they were rendered; whether services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and whether compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in non-bankruptcy cases. The Guidelines thus reflect standards and procedures articulated in section 330 of the Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure for awarding compensation to trustees and to professionals employed under section 327 or 1103. Applications that contain the information requested in these Guidelines will facilitate review by the Court, the parties, and the United States Trustee.

(6) Fee applications submitted by trustees are subject to the same standard of review as are applications of other professionals and will be evaluated according to the principles articulated in these Guidelines. Each United States Trustee should establish whether and to what extent trustees can deviate from the format specified in these Guidelines without substantially affecting the ability of the United States Trustee to review and comment on their fee applications in a manner consistent with the requirements of the law.

(b) *Contents of Applications for Compensation and Reimbursement of Expenses.* All applications should include sufficient detail to demonstrate compliance with the standards set forth in 11 U.S.C. § 330. The fee application should also contain sufficient information about the case and the applicant so that the Court, the creditors, and the United States Trustee can review it without searching for relevant information in other documents. The following will facilitate review of the application.

(1) Information about the Applicant and the Application. The following information should be provided in every fee application:

(i) Date the bankruptcy petition was filed, date of the order approving employment, identity of the party represented, date services commenced, and whether the applicant is seeking compensation under a provision of the Bankruptcy Code other than section 330.

(ii) Terms and conditions of employment and compensation, source of compensation, existence and terms controlling use of a retainer, and any budgetary or other limitations on fees.

(iii) Names and hourly rates of all applicant's professionals and paraprofessionals who billed time, explanation of any changes in hourly rates from those previously charged, and statement of whether the compensation is based on the customary compensation charged by comparably skilled practitioners in cases other than cases under title 11.

(iv) Whether the application is interim or final, and the dates of previous orders on interim compensation or reimbursement of expenses along with the amounts requested and the amounts allowed or disallowed, amounts of all previous payments, and amount of any allowed fees and expenses remaining unpaid.

(v) Whether the person on whose behalf the applicant is employed has been given the opportunity to review the application and whether that person has approved the requested amount.

(vi) When an application is filed less than 120 days after the order for relief or after a prior application to the Court, the date and terms of the order allowing leave to file at shortened intervals.

(vii) Time period of the services or expenses covered by the application.

(2) Case Status. The following information should be provided to the extent that it is known to or can be reasonably ascertained by the applicant:

(i) In a chapter 7 case, a summary of the administration of the case including all moneys received and disbursed in the case, when the case is expected to close, and, if applicant is seeking an interim award, whether it is feasible to make an interim distribution to creditors without prejudicing the rights of any creditor holding a claim of equal or higher priority.

(ii) In a chapter 11 case, whether a plan and disclosure statement have been filed and, if not yet filed, when the plan and disclosure statement are expected to be filed; whether all quarterly fees have been paid to the United States Trustee; and whether all monthly operating reports have been filed.

(iii) In every case, 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.

(iv) Any material changes in the status of the case that occur after the filing of the fee

application should be raised, orally or in writing, at the hearing on the application or, if a hearing is not required, prior to the expiration of the time period for objection.

(3) Summary Sheet. All applications should contain a summary or cover sheet that provides a synopsis of the following information:

(i) Total compensation and expenses requested and any amount(s) previously requested;

(ii) Total compensation and expenses previously awarded by the court;

(iii) Name and applicable billing rate for each person who billed time during the period, and date of bar admission for each attorney;

(iv) Total hours billed and total amount of billing for each person who billed time during billing period; and

(v) Computation of blended hourly rate for persons who billed time during period, excluding paralegal or other paraprofessional time.

(4) Project Billing Format. (i) To facilitate effective review of the application, all time and service entries should be arranged by project categories. The project categories set forth in Exhibit A should be used to the extent applicable. A separate project category should be used for administrative matters and, if payment is requested, for fee application preparation.

(ii) The United States Trustee has discretion to determine that the project billing format is not necessary in a particular case or in a particular class of cases. Applicants should be encouraged to consult with the United States Trustee if there is a question as to the need for project billing in any particular case.

(iii) Each project category should contain a narrative summary of the following information:

(A) a description of the project, its necessity and benefit to the estate, and the status of the project including all pending litigation for which compensation and reimbursement are requested;

(B) identification of each person providing services on the project; and

(C) a statement of the number of hours spent and the amount of compensation requested for each professional and paraprofessional on the project.

(iv) Time and service entries are to be reported in chronological order under the appropriate project category.

(v) Time entries should be kept contemporaneously with the services rendered in time periods of tenths of an hour. Services should be noted in detail and not combined or "lumped" together, with each service showing a separate time entry; however, tasks performed in a project which total a de minimis amount of time can be combined or lumped together if they do not exceed .5 hours on a daily aggregate. Time entries for telephone calls, letters, and other communications should give sufficient detail to identify the parties to and the nature of the communication. Time entries for court hearings and conferences should identify the subject of the hearing or conference. If more than one professional from the applicant firm attends a hearing or conference, the applicant should explain the need for multiple attendees.

(5) Reimbursement for Actual, Necessary Expenses. Any expense for which reimbursement is sought must be actual and necessary and supported by documentation as appropriate. Factors relevant to a determination that the expense is proper include the following:

(i) Whether the expense is reasonable and economical. For example, first class and other luxurious travel mode or accommodations will normally be objectionable.

(ii) Whether the requested expenses are customarily charged to non-bankruptcy clients of the applicant.

(iii) Whether applicant has provided a detailed itemization of all expenses including the date incurred, description of expense (e.g., type of travel, type of fare, rate, destination), method of computation, and, where relevant, name of the person incurring the expense and purpose of the expense. Itemized expenses should be identified by their nature (e.g., long distance telephone, copy costs, messengers, computer research, airline travel, etc,) and by the month incurred. Unusual items require more detailed explanations and should be allocated, where practicable, to specific projects.

(iv) Whether applicant has prorated expenses where appropriate between the estate and other cases (e.g., travel expenses applicable to more than one case) and has adequately explained the basis for any such proration.

(v) Whether expenses incurred by the applicant to third parties are limited to the actual amounts billed to, or paid by, the applicant on behalf of the estate.

(vi) Whether applicant can demonstrate that the amount requested for expenses incurred in-house reflect the actual cost of such expenses to the applicant. The United States Trustee may establish an objection ceiling for any in-house expenses that are routinely incurred and for which the actual cost cannot easily be determined by most professionals (e.g., photocopies, facsimile charges, and mileage).

(vii) Whether the expenses appear to be in the nature nonreimbursable overhead. Overhead consists of all continuous administrative or general costs incident to the operation of the applicant's office and not particularly attributable to an individual client or case. Overhead includes, but is not limited to, word processing, proofreading, secretarial and other clerical services, rent, utilities, office equipment and furnishings, insurance, taxes, local telephones and monthly car phone charges, lighting, heating and cooling, and library and publication charges.

(viii) Whether applicant has adhered to allowable rates for expenses as fixed by local rule or order of the Court.

Exhibit A—Project Categories

Here is a list of suggested project categories for use in most bankruptcy cases. 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. They are generally more applicable to attorneys in chapter 7 and chapter 11, but may be used by all professionals as appropriate.

Asset Analysis and Recovery: Identification and review of potential assets including causes of action and non-litigation recoveries.

Asset Disposition: Sales, leases (§ 365 matters), abandonment and related transaction work.

Business Operations: Issues related to debtor-in-possession operating in chapter 11 such as employee, vendor, tenant issues and other similar problems.

Case Administration: Coordination and compliance activities, including preparation of statement of financial affairs; schedules; list of contracts; United States Trustee interim statements and operating reports; contacts with the United States Trustee; general creditor inquiries.

Claims Administration and Objections: Specific claim inquiries; bar date motions; analyses, objections and allowances of claims.

Employee Benefits/Pensions: Review issues such as severance, retention, 401K coverage and continuance of pension plan.

Fee/Employment Applicants: Preparation of employment and fee applications for self or others; motions to establish interim procedures.

Fee/Employment Objections: Review of and objections to the employment and fee applications of others.

Financing: Matters under §§ 361, 363 and 364 including cash collateral and secured claims; loan document analysis.

Litigation: There should be a separate category established for each matter (e.g., XYZ Litigation).

Meetings of Creditors: Preparing for and attending the conference of creditors, the § 341(a) meeting and other creditors' committee meetings.

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.

Relief From Stay Proceedings: Matters relating to termination or continuation of automatic stay under § 362.

The following categories are generally more applicable to accountants and financial advisors, but may be used by all professionals as appropriate.

Accounting/Auditing: Activities related to maintaining and auditing books of account, preparation of financial statements and account analysis.

Business Analysis: Preparation and review of company business plan; development and review of strategies; preparation and review of cash flow forecasts and feasibility studies.

Corporate Finance: Review financial aspects of potential mergers, acquisitions and disposition of company or subsidiaries.

Data Analysis: Management information systems review, installation and analysis, construction, maintenance and reporting of significant case financial data, lease rejection, claims, etc.

Litigation Consulting: Providing consulting and expert witness services relating to various bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.

Reconstruction Accounting: Reconstructing books and records from past transactions and bringing accounting current.

Tax Issues: Analysis of tax issues and preparation of state and federal tax returns.

Valuation: Appraise or review appraisals of assets.

Dated: April 25, 1996.

Joseph Patchan,

Director.

[FR Doc. 96–11799 Filed 5–16–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA 96–008]

RIN 2115–AA97

Safety Zone; Long Beach Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule with request for comments.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the United States in the vicinity of the South East side of Pier "J" in the Long Beach Outer Harbor, California. The event requiring the establishment of this safety zone is the Pier "J" breakwater construction project. Duration of this project is estimated to be 11 months. A safety zone is necessary to safeguard recreational and commercial craft from the dangers of the construction project and to prevent interference with the vessels engaged in these operations. The safety zone includes all waters within the boundaries defined by the line connecting the following coordinates:

Latitude	*Longitude*
33° 44.5′N.	118° 11.2′W.
33° 44.5′N.	118° 10.9′W.
33° 44.3′N.	118° 10.8′W.
33° 44.0′N.	118° 10.8′W.
33° 44.0′N.	118° 11.1′W.

Entry into, transit through, or anchoring within the safety zone by vessels or persons other than those engaged in the construction project, or vessels servicing the Maersk terminal is prohibited unless authorized by the Captain of the Port.

DATES: Effective Date: This rule is effective at 12:01 a.m. PDT on April, 24, 1996 and will remain in effect until 12:01 a.m. PST on March 31, 1997, unless cancelled earlier by the Captain of the Port Los Angeles-Long Beach, Ca.

Comments: Comments on this regulation must be received by June 17, 1996.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, Ca 90802. Comments received will be available for inspection and copying within the Port Safety Division at MSO Los Angeles-Long Beach. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel J. Walsh, Port Safety and Security Division, Marine Safety Office Los Angeles-Long Beach, (310) 980–4454.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures could not be done in a timely fashion in that the Coast Guard was not approached concerning the necessity for implementation of a safety zone until late in the planning process. The actual stipulations of the safety zone were not finalized until a date fewer than 30 days prior to the start of the project.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Those providing comments should identify the docket number (COTP Los Angeles-Long Beach, CA; 96–008) for the regulation and also include their name, address, and reason(s) for each comment presented. Persons wanting acknowledge of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Based upon the comments received, the scope of the regulation may be changed.

Discussion of Regulation

The project to construct a breakwater around the Pier "J" Maersk terminal entrance has already been initiated. A safety zone is necessary to safeguard recreational and commercial craft from the dangers of the construction project and to prevent interference with vessels engaged in these operations. This safety zone will be enforced by U.S. Coast Guard personnel. The Coast Guard Auxiliary and the Long Beach Lifeguards will assist in the enforcement of the safety zone. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port of his designated representative.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary. The safety zone does not extend into the vessel traffic lanes. It will have little or no impact on commercial vessels transiting through the harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632). As discussed in the "Regulatory Evaluation" section, because it expects the impact of this regulation to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the

not associated with the information collection; (c) for reasons other than to provide information or keep records for the Government; or (d) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 6, 2013.

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2013–14093 Filed 6–14–13; 8:45 am]

BILLING CODE 4810–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–014]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 20, 2013 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 731–TA–1202 and 1203 (Final)(Xanthan Gum from Austria and China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before July 2, 2013.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 12, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–14432 Filed 6–13–13; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United States Code 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 CFR 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.

DATES: *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. NW., Suite 6150, Washington, DC 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 Web site for public comment, holding a public meeting, and posting a revised draft of the Appendix B guidelines responding to the comments to its public Web site 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 CFR 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 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.

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

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

[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.

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.

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.

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

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.

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?

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

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.

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.

[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.

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.

Clifford J. White III,

Director, Executive Office for United States Trustees.

EXHIBIT A—CUSTOMARY AND COMPARABLE COMPENSATION DISCLOSURES WITH FEE APPLICATIONS

[*See* Guidelines ¶ C.3. for definitions of terms used in this Exhibit]

Category of timekeeper (using categories already maintained by the firm)	Blended hourly rate	
	Billed or collected firm or offices for preceding year, excluding bankruptcy	Billed in this fee application
Sr./Equity Partner/Shareholder		
Jr./Non-equity/Income Partner		
Counsel		

EXHIBIT A—CUSTOMARY AND COMPARABLE COMPENSATION DISCLOSURES WITH FEE APPLICATIONS—Continued

[*See* Guidelines ¶ C.3. for definitions of terms used in this Exhibit]

Category of timekeeper (using categories already maintained by the firm)	Blended hourly rate	
	Billed or collected firm or offices for preceding year, excluding bankruptcy	Billed in this fee application
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		

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 B—SUMMARY OF TIMEKEEPERS INCLUDED IN THIS FEE APPLICATION

Name	TITLE OR POSITION	Department, group, or section	Date of first admission[1]	Fees billed in this application	Hours billed in this application	Hourly rate billed		Number of rate increases since case inception
						In this application	In first interim application	

[1] If applicable.

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

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If the parties consent or the court so directs, a budget 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, the fee application should explain the variance. *See* Guidelines ¶ C.8. for project category information.

EXHIBIT C–1—BUDGET

Project category	Estimated hours	Estimated fees
Asset Analysis and Recovery		
Asset Disposition		

EXHIBIT C–1—BUDGET—Continued

Project category	Estimated hours	Estimated fees
Assumption and Rejection of Leases and Contracts		
Avoidance Action Analysis		
Budgeting (Case)		
Business Operations		
Case Administration		
Claims Administration and Objections		
Corporate Governance and Board Matters		
Employee Benefits and Pensions		
Employment and Fee Applications		
Employment and Fee Application Objections		
Financing and Cash Collateral		
Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category)—identify each separately by caption and adversary number, or title of motion or application and docket number		
Meetings and Communications with Creditors		
Non-Working Travel		
Plan and Disclosure Statement		
Real Estate		
Relief from Stay and Adequate Protection		
Reporting		
Tax		
Valuation		
Total		

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

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If the parties consent or the court so directs, a 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 are sought in the fee application for a greater number of professionals than identified in the staffing plan, the fee application should explain the variance.

EXHIBIT C–2—STAFFING PLAN

Category of timekeeper [1] (using categories maintained by the firm)	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)		

EXHIBIT C–2—STAFFING PLAN—Continued

Category of timekeeper [1] (using categories maintained by the firm)	Number of timekeepers expected to work on the matter during the budget period	Average hourly rate
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.

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 D–1—SUMMARY OF COMPENSATION REQUESTED BY PROJECT CATEGORY

[*See* Guidelines ¶C.8. for project category information.]

Project category	Hours budgeted [1]	Fees budgeted [1]	Hours billed	Fees sought
Asset Analysis and Recovery				
Asset Disposition				
Assumption and Rejection of Leases and Contracts				
Avoidance Action Analysis				
Budgeting (Case)				
Business Operations				
Case Administration				
Claims Administration and Objections				
Corporate Governance and Board Matters				
Employee Benefits and Pensions				
Employment and Fee Applications				
Employment and Fee Application Objections				
Financing and Cash Collateral				
Litigation: Contested Matters and Adversary Proceedings (not otherwise within a specific project category)—identify each separately by caption and adversary number, or title of motion or application and docket number				
Meetings and Communications with Creditors				
Non-Working Travel				
Plan and Disclosure Statement				
Real Estate				
Relief from Stay and Adequate Protection				
Reporting				
Tax				
Valuation				

EXHIBIT D–1—SUMMARY OF COMPENSATION REQUESTED BY PROJECT CATEGORY—Continued

[*See* Guidelines ¶C.8. for project category information.]

Project category	Hours budgeted [1]	Fees budgeted [1]	Hours billed	Fees sought
TOTAL				

[1] If applicable.

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 D–2—SUMMARY OF EXPENSE REIMBURSEMENT REQUESTED BY CATEGORY

[*See* Guidelines ¶C.12. for expense category information]

Category	Amount
Copies	
Outside Printing	
Telephone	
Facsimile	
Online Research	
Delivery Services/ Couriers	
Postage	

EXHIBIT D–2—SUMMARY OF EXPENSE REIMBURSEMENT REQUESTED BY CATEGORY—Continued

[*See* Guidelines ¶C.12. for expense category information]

Category	Amount
Local Travel	
Out-of-Town Travel: (a) Transportation	
(b) Hotel	
(c) Meals	
(d) Ground Transportation	
(e) Other (please specify)	
Meals (local)	
Court Fees	
Subpoena Fees	
Witness Fees	
Deposition Transcripts	

EXHIBIT D–2—SUMMARY OF EXPENSE REIMBURSEMENT REQUESTED BY CATEGORY—Continued

[*See* Guidelines ¶C.12. for expense category information]

Category	Amount
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 E—SUMMARY COVER SHEET OF FEE APPLICATION

Name of applicant	
Name of client	
Time period covered by this 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 E—SUMMARY COVER SHEET OF FEE APPLICATION—Continued

Blended rate in this application for all timekeepers	
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 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 and disclose the total compensation sought in this application using the rates originally disclosed in the retention application	

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

ANALYSIS OF COMMENTS RECEIVED AND SUMMARY OF SIGNIFICANT CHANGES IN RESPONSE TO COMMENTS

A. *INTRODUCTION*

On November 4, 2011, the United States Trustee Program ("USTP") posted for public comment an initial draft of the 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" or "Guidelines"). The Appendix B guidelines reflect eight core principles:

1. Ensuring that fee review is subject to client-driven market forces, accountability, and scrutiny.
2. Ensuring adherence to the requirements of section 330 of the Bankruptcy 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.
3. Enhancing meaningful disclosure by professionals and transparency in billing practices.
4. Increasing client and constituent accountability for overseeing the fees and billing practices of their own professionals.
5. Encouraging the development of budgets and staffing plans to bring discipline, predictability, and client involvement and accountability to the compensation process.
6. Decreasing the administrative burden of review.
7. Maintaining the burden of proof on the fee applicant, and not the objecting party.
8. Increasing public confidence in the integrity and soundness of the bankruptcy compensation process.

The USTP received more than two dozen comment letters on the initial draft of the Appendix B guidelines posted on November 4, 2011. The USTP thereafter convened a public meeting regarding the Appendix B guidelines on June 4, 2012. Seven commenters appeared at the public meeting, and this discussion is reflected in the transcript of the public meeting.

The USTP reviewed the written and oral comments to the initial draft of the Appendix B guidelines, and on November 2, 2012, posted its analysis of those comments and a summary of the significant revisions incorporated in the second draft of the Appendix B guidelines. *See* ¶ B.2. below.[1] At the same time, the USTP also posted the second draft of the Appendix B guidelines for an additional and final comment period ending November 23, 2012.

The USTP received six comment letters on the second draft. After reviewing the comments to the second draft, the USTP finalized and issued the Appendix B guidelines. The USTP's analysis of the comments on the second draft and a summary of the significant revisions incorporated in the final Appendix B guidelines as issued follow the USTP's comment analysis on the initial draft. *See* ¶ C. below.[2]

All comments to the initial and second drafts of the Appendix B guidelines, as well as the transcript of the June 4, 2012, public meeting, are available for review on the USTP's website, at *http://www.justice.gov/ust/eo/rules_regulations/guidelines/public_comments.htm*. An analysis of the primary comments received on both drafts and a summary of the significant changes made in response to the comments follow.

B. SUMMARY OF SIGNIFICANT CHANGES AND ANALYSIS OF COMMENTS RECEIVED AFTER *POSTING INITIAL DRAFT GUIDELINES FOR COMMENT ON NOVEMBER 4, 2011*

1. Summary of Significant Changes Following Posting of Initial Draft Appendix B *Guidelines for Comment on November 4, 2011*

a. **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. Guidelines ¶ A.2.[3] The initial threshold was $50 million in assets and liabilities combined.

b. **DISCLOSURES FOR CUSTOMARY AND COMPARABLE COMPENSATION AND CLIENT VERIFICATIONS:** The disclosures that the USTP will request regarding customary and comparable compensation have been amended. Guidelines ¶ 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. Guidelines ¶ C.3.a-b. Applicants have the flexibility to report

[1] Summary of Significant Changes and Analysis of Comments Received After Posting Initial Draft Guidelines for Comment on November 4, 2011.

[2] Summary of Significant Changes and Analysis of Comments Received After Posting Revised Draft Guidelines for Final Comment on November 2, 2012.

[3] All references are to the final Appendix B guidelines as issued.

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. Guidelines ¶ 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. Guidelines ¶ C.3.a.iv.(c). Disclosure in accordance with ¶ C.3.a.-b. of the Guidelines 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 Bankruptcy 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. Guidelines ¶ C.4.

c. 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. Guidelines ¶ 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, Guidelines ¶ E.8., and that professionals provide budgets and staffing plans to the United States Trustee retrospectively with the fee application. Guidelines ¶¶ C.6.a., E.7.-8. Budgets may be redacted to protect privileged or confidential information. Guidelines ¶¶ C.6.b., E.8. The 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. Guidelines ¶¶ E.3.-4.

d. 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"). Guidelines ¶ C.8.b.; Exhibits C-1, D-1. 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 guidelines' project categories, all but one of which is included in the long-established Uniform Task Based Management System ("UTBMS") bankruptcy code set.[4] These tasks are: Assumption and Rejection of Leases and Contracts; Avoidance Action Analysis; Corporate Governance and Board Matters; Litigation; Non-Working Travel; Real Estate; and Reporting.

e. CO-COUNSEL RETENTIONS AND STAFFING EFFICIENCIES: Debtors and official committees are encouraged to use co-counsel arrangements to achieve better staffing and fee efficiencies. Guidelines ¶¶ B.2.c., F. These arrangements include using less expensive co-counsel for certain routine, commoditized, or discrete matters to avoid duplication, overlap, and inefficiencies.

f. DEBTORS' ESTIMATE OF FEES INCURRED IN ORDINARY COURSE AND NOT BECAUSE OF BANKRUPTCY: This requested disclosure has been deleted.

g. 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. Guidelines ¶¶ B.2.f., C.6.b., E.8.

h. 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?" Guidelines ¶ C.5.f. The client's verification at the time of the fee application has been deleted.

2. Discussion of Initial Public Comments after Posting Initial Draft for Comment on *November 4, 2011 and the Public Meeting Held June 4, 2012*

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 cases, we do not perceive the same cost control-driven constraints [that we see in non-bankruptcy engagements or bankruptcy engagements not subject to section 330] . . . ." 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**

[4] The UTMBS 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. *See www.LEDES.org.* 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.*

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 Procedure 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 initial 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. 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 the Appendix B 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),[5] 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.

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 DISCLOSURES

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

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

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 Appendix B 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.[6]
- 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 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 Appendix B 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 Bankruptcy 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. Guidelines ¶ C.4.

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. Guidelines ¶ C.3.c.

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 Bankruptcy 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 Appendix B guidelines reinforce the legislative

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

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 Appendix B 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 limited "safe harbor" option at ¶ C.4.

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 Appendix B 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 Appendix B 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 Appendix B 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 Bankruptcy Code's comparable services requirement.

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

11) ***Comment:*** **The Appendix B guidelines should only obtain comparability data from domestic practitioners because international billing practices vary widely.**

Response: The USTP agrees and has revised the Guidelines to clarify that comparability data should be reported for U.S. professionals only. Guidelines ¶ C.3.a.i.

d. BUDGETS AND STAFFING PLANS

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.[7] 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,

[7] *See http://www.acc.com/legalresources/resource.cfm?show=743131; see also http://www.acc.com/ValueChallenge/resources/avcresources.cfm?rs_vc=365.*

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 C. First, the USTP separated the budget template from the staffing template. Second, the USTP budget template at Exhibit C uses the modified project categories in ¶ C.8.b. of the Guidelines, as described more fully in the response to Comment 18 below. Third, in the revised Appendix B 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.**

Response: The USTP addressed this concern in the initial draft of the Appendix B 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., 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 C-1. 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 C, 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 Bankruptcy 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 Appendix B 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. Guidelines ¶¶ C.6., E.1. 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 Appendix B 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.2.1., C.5.b.; Exhibit C.

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 Appendix B guidelines, both as originally proposed and as revised, include a suggested project category for "budgeting." Guidelines ¶ C.8.b.; Exhibits C-1, D-1.

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

e. PROJECT CODES AND CATEGORIES

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 UTBMS activity codes used with task codes in legal billing.

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* Guidelines ¶C.8.b. All but one of these tasks ("Reporting") is included in the long-established 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 C-1, D-1.

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.

f. CO-COUNSEL AND STAFFING EFFICIENCIES

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 section 327(a) bankruptcy counsel must not mask disqualifying conflicts and connections, and co-counsel must avoid duplication of services.

The USTP revised the Appendix B guidelines to provide that retention applications should clearly specify lead counsel and clearly delineate secondary counsel's responsibility. *See* Guidelines ¶F. In general, all bankruptcy matters should presumptively be handled by lead counsel unless the retention application specifically assigns them to 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

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. APPLICATIONS FOR EMPLOYMENT AND RELATED VERIFICATIONS

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 Bankruptcy 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 Bankruptcy 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 Appendix B 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.

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

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

i. FEE APPLICATIONS

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 Appendix B 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. 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 Appendix B 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 Appendix B guidelines to clarify its position. *See* Guidelines ¶ B.2.f.

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

Response: The Appendix B 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 and judicially recognized 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 Appendix B 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.l. 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 to receive both a rate

higher than their home forum rate and 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 Appendix B 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. Guidelines ¶¶ B.3.c., e.

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 Appendix B 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 Bankruptcy 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 REVIEW ENTITIES

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 Appendix B 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 ¶ G.

The success of the fee examiner in the case of *In re General Motors Corp.*, No. 09–50026 (Bankr. S.D.N.Y. filed June 1, 2009), and of the fee committee in the case of *In re Lehman Brothers Holdings, Inc.*, No. 08–13555 (Bankr. S.D.N.Y. filed Sept. 15, 2008), has 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 Appendix B 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.

C. SUMMARY OF SIGNIFICANT CHANGES AND ANALYSIS OF COMMENTS RECEIVED AFTER POSTING REVISED DRAFT GUIDELINES FOR FINAL COMMENT ON NOVEMBER 2, 2012

1. Summary of Significant Changes Following Posting of Revised Draft Appendix B ***Guidelines for Final Comment on November 2, 2012***

a. DISCLOSURES OF CUSTOMARY AND COMPARABLE COMPENSATION: Applicants should include a concise description of the methodology used to calculate hourly blended rates if the calculation includes any fee arrangements not billed by the hour. Guidelines ¶ C.3.a.iv.(d).

b. BUDGETS: Absent the parties' consent, the United States Trustee may seek a court order encouraging the prospective sharing of budgets by counsel for the debtors-in-possession and the official committees. Guidelines ¶ E.8.

c. CO-COUNSEL RETENTION: Guidance regarding the use of secondary counsel, either efficiency or conflicts co-counsel, has been clarified as follows:

1) When a new matter within the authorized scope of engagement for efficiency or conflicts co-counsel is assigned by lead counsel to that co-counsel, co-counsel need not file a supplemental retention application and obtain an amended order. Rather, co-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 engagement, co-counsel should file a supplemental retention application and obtain an amended order to expand the scope of the engagement to include that matter. Guidelines ¶ F.1.c.

2) The use of conflicts counsel to litigate a specific matter as to which lead counsel's involvement is limited to negotiation is 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. Guidelines ¶ F.3.c.

d. ORDINARY COURSE PROFESSIONALS: The Guidelines will not apply to counsel retained and paid 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. Guidelines ¶ A.3.

e. ELECTRONIC BILLING RECORDS: The applicant should provide electronic billing data to the court, the debtor-in-possession (or trustee), official committees, the United States Trustee, and the fee review committee, examiner or auditor. Other parties in interest should receive the electronic billing data upon request. Guidelines ¶ C.10.

f. APPLICATIONS FOR EMPLOYMENT AND RELATED VERIFICATIONS: Applicants who represented the client in the 12 months prepetition should disclose in the application for employment specific and material information regarding their prepetition billing rates and financial terms to explain the reasons for any difference between prepetition and postpetition billing rates and terms. Guidelines ¶ D.1.c. In the verification provided by an applicant who also represented the client prepetition, the disclosure of the applicant's "effective rate" has been deleted, and instead, the applicant should disclose and explain any postpetition change in "billing rates and material financial terms." *Id.* The client verification has been revised to delete the undefined term "market rate" and instead to use terms expressly contained in the statute. Thus, the client should disclose the steps taken to ensure that the applicant's billing rates and terms are comparable to the applicant's billing rates and terms for other engagements and to those of other comparably skilled professionals. Guidelines ¶ D.2.b.-c.

g. MONTHLY INVOICES: The United States Trustee will not object to the extent that monthly invoices under a monthly compensation order effectively serve as the interim fee applications and the applicant seeks no additional compensation for preparing the interim fee application because the time was expended on the related monthly invoices (or vice versa). Guidelines ¶ B.2.f.(iv).

h. "FEES ON FEES": The USTP's position on fees for contesting or litigating objections to applications for compensation has been amended. "Fees on fees" are generally inappropriate unless they fall within a judicial exception applicable within the district allowing such fees. The word "binding" has been deleted from the exception. Guidelines ¶ B.2.g.

i. STEP INCREASES: The disclosure of rate increases and calculations of their effect may exclude annual "step increases" historically awarded in the ordinary course to attorneys throughout the firm due to advancing seniority and promotion, if the firm distinguishes between "step increases" and other types of rates increases. Nevertheless, applicants should not attempt to characterize actual rate increases that are unrelated to an attorney's advancing seniority and promotion as "step increases" in 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. Guidelines ¶ B.2.d.

j. OVERHEAD: Actual charges for multi-party conference calls related to the case will be considered a reimbursable expense, not overhead. Guidelines ¶ B.3.e.

k. EFFECTIVE DATE: The effective date of the Guidelines has been changed from July 1, 2013 to November 1, 2013, to afford sufficient time for the courts to incorporate the Guidelines into local rules and practice and for the bankruptcy bar to become familiar with the new disclosure provisions.

l. EXHIBITS: The Guidelines have been revised to incorporate certain information that was previously included in exhibits and to renumber the remaining exhibits. The project categories and expense categories formerly at Exhibit E have been incorporated into the Guidelines at ¶ C.8. (project categories for billing records) and ¶ C.12. (expense categories). The "United States Trustee Considerations on the Retention and Compensation of Co-Counsel" formerly at Exhibit B have been incorporated into the Guidelines at ¶ F.

2. Discussion of Public Comments after Posting Revised Draft for Final Comment on *November 2, 2012*

The USTP received six comment letters in response to the USTP's posting of the revised draft of the Appendix B guidelines. Many of the comments contained several sub-parts. The USTP appreciates the comments and has considered each carefully. Those

comments that simply repeated earlier arguments against any reform or improvement of the fee review process were addressed in the preceding analysis of the initial draft, *see* ¶ B.2. above, and will not be revisited here. The USTP's responses to the most significant comments are discussed below, and the comments are categorized by the same subject matters used above in ¶ B to categorize comments on the initial draft.[9]

a. GENERAL COMMENTS

N/A

b. SCOPE OF THE APPENDIX B GUIDELINES

1) ***Comment:*** **Use of the Appendix B guidelines by the United States Trustee should be discretionary, rather than mandatory, in cases that meet the revised threshold.**

Response: Consistent with 28 U.S.C. § 586(a)(3)(A), the Appendix B guidelines are internal procedures that the United States Trustees will apply in reviewing applications for compensation filed by attorneys employed under section 327 or 1103 in chapter 11 cases that meet the threshold. The Guidelines provide transparency in the USTP's review of fee applications by providing notice of the USTP's policy positions in the absence of controlling law or rules in the jurisdiction. They also create greater efficiency in the review of the applications by the court, parties in interest, as well as the USTP, and provide uniformity and predictability in enforcement nationally. In administering any particular case, the United States Trustee may exercise discretion in applying the Guidelines based on the facts of that case. The exercise of such discretion in a specific case will not be routine or obviate the Guidelines in any particular district.

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

c. COMPARABLE COMPENSATION DISCLOSURES

2) ***Comment:*** **The disclosure of blended rates for comparable services should exclude rates from dissimilar areas of practice, such as insurance defense.**

Response: This comment misconstrues the statutory standard specified in section 330(a)(3)(F). That section expressly requires that reasonableness should be determined "based on the customary compensation . . . in cases other than cases under this title [11]." 11 U.S.C. § 330(a)(3)(F). Thus, a disclosure of blended rates that takes into account the rates charged in non-bankruptcy matters simply reflects Congress's stated intent that bankruptcy practitioners be compensated on terms comparable to other areas of practice, and no worse and no better. *See* Guidelines ¶ C.3. The applicant retains the right, and is encouraged, to supplement its disclosure with additional information explaining the different rate structures of the various practice groups in the firm and their impact on the firm's blended rate.

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

3) ***Comment:*** **The Appendix B guidelines permit bankruptcy boutiques to exclude estate-billed engagements from the blended rate computation for comparable services, but do not permit full-service law firms to do so. This exclusion should apply to all law firms.**

Response: This comment may misunderstand the Appendix B guidelines as they apply to full-service firms. Consistent with section 330(a)(3)(F), the blended rate computation for comparable services rendered by full-service firms is based on non-bankruptcy matters billed by the firm, but not matters arising in bankruptcy cases (whether estate-paid or not). Guidelines ¶ C.3.a.iv.(a). Because bankruptcy boutiques often do not conduct a significant volume of work in non-bankruptcy matters, they are subject to a slightly different computation, which includes non-estate paid bankruptcy work (as the closest approximation to what those firms would likely bill outside of bankruptcy) while continuing to exclude estate-paid work. Guidelines ¶ C.3.a.iv.(b). There is no need to extend this specific exclusion to full-service firms because all bankruptcy-related work is already excluded from the blended rate computation for full-service firms.

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

4) ***Comment:*** **The limited safe harbor on the disclosure of comparable billing data should be an absolute safe harbor from a United States Trustee objection or further disclosure.**

Response: The United States Trustee has a statutory duty to review and comment on applications for compensation as "appropriate." 28 U.S.C. § 586(a)(3)(A). Accordingly, the USTP cannot prospectively limit the United States Trustee's prosecutorial discretion or authority to remedy billing abuses or insufficient disclosures. The limited safe harbor, however, is an effort to provide professionals with some comfort that making these types of disclosures will normally be sufficient to avoid the United States Trustee seeking further comparable billing information from the applicant. Guidelines ¶ C.4. Among other things, an absolute safe harbor would lead to the anomalous result where a party that fully disclosed that its bankruptcy rates are higher than its non-bankruptcy rates would be immune from an objection while admitting that it has violated the statutory standard for reasonable compensation.

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

5) ***Comment:*** **The comparable billing data is proprietary, should be sought only from external sources, should be provided confidentially to the United States Trustee, and should only be obtained through discovery by the United States Trustee, not through proactive disclosure.**

Response: The suggestion that specific disclosures of customary and comparable compensation should be provided only upon request instead of proactively by the applicant improperly shifts the evidentiary burden under section 330 away from the applicant and onto the court, the United States Trustee, and other parties in interest. An applicant seeking to be paid by the bankruptcy estate under section 330 has an affirmative burden to prove that the compensation sought is reasonable, including by offering evidence sufficient to satisfy section 330(a)(3)(F). The court and other parties in interest, in addition to the United States Trustee, are entitled to information necessary to evaluate the reasonableness of an application for compensation. The statute and public interest requires transparency of the bankruptcy compensation process for the multiple stakeholders in the case. Finally, it is inefficient and uneconomical for the court and parties to have the United States Trustee propound identical discovery requests in every larger chapter 11 case when the United States Trustee will presumptively seek this information.

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

6) ***Comment:*** **If an applicant includes a discounted or alternative arrangement in the blended hourly rate disclosures, the applicant should also explain its calculation methodology. Applicants should be required to disclose the specifics of any discount or**

[9] Summary of Significant Changes and Analysis of Comments Received After Posting Initial Draft Guidelines for Comment on November 4, 2011.

other alternative billing arrangement in non-bankruptcy matters.

Response: The USTP agrees that a concise statement of methodology on how the applicant calculated the blended hourly rates would be helpful and would enable those reviewing the information to determine whether the disclosed data fully and accurately reflects the information necessary for the comparison contemplated by section 330. The Appendix B guidelines have been so amended. *See* Guidelines ¶ C.3.a.iv.(d). Because the effect of discounts and alternative billing arrangements should generally be reflected in the blended hourly rate, a requirement that applicants disclose the specifics of every discount would be unlikely to produce a benefit that would outweigh the burden of making such disclosures. If the blended hourly rate does not capture the effect of discounts and alternative billing, the explanation of how the rate was calculated should explain this and may lead to further inquiry by the United States Trustee. The USTP adopted a middle ground by seeking blended rates and explanations rather than other potentially useful and informative disclosures that are more burdensome.

7) ***Comment:*** **In its response to the comments to the Appendix B guidelines as initially posted November 4, 2011, the USTP stated that "[a] law firm that maintains that it is impossible to provide" information relevant to the blended rate disclosures "may explain in the fee application and attest in its statement why it is unable to do so." *See* Response to Comment 9 in ¶ B.2.c. above. A commentator replied that the standard should be changed from "impossible" to "impracticable," and some applicants may not easily produce the requested disclosures because it is cost prohibitive to produce.**

Response: The USTP agrees that an impracticability standard is more appropriate. Nevertheless, as the USTP explained in its response to the prior comments, most law firms that are retained in the larger cases that meet the threshold should have the technology and resources necessary to provide this information. *See, e.g.,* Response to Comment 9 in ¶ B.2.c. above; Response to Comment 21 in ¶ B.2.g. above. Therefore, with rare exception, cost should not be a basis for asserting impracticability in providing the blended rate disclosures.

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

d. BUDGETS AND STAFFING PLANS

8) ***Comment:*** **The sharing of budgets and staffing plans between debtors-in-possession and official committees should be voluntary.**

Response: The USTP encourages counsel for the debtors-in-possession and official committees to prospectively share their respective budgets once agreed to by their clients or amended, subject to an appropriate confidentiality agreement and redaction to protect privileged or confidential information. As the USTP previously explained in response to the comments to the Appendix B guidelines as originally posted November 4, 2011, the confidential and prospective exchange of budgets between these fiduciaries facilitates communication, potentially avoids duplication, and promotes efficiency in the administration of the bankruptcy case, consistent with the requirements of section 1103 of the Bankruptcy Code. *See* Response to Comment 13 in ¶ B.2.d. above. The USTP has clarified the Appendix B guidelines to provide that, in the absence of the parties' agreement, the United States Trustee may seek a court order expressly authorizing the prospective sharing of budgets by counsel for the debtors-in-possession and the official committees. Guidelines ¶ E.8.

9) ***Comment:*** **Budgets should not be required; they should only be encouraged. Moreover, even if not required, detailed budgets should not be sought in every case because they are unnecessary, costly, and burdensome and constrain the professionals' flexibility in handling the case. Other commenters said that the USTP-sought budgets would be redundant of cash collateral and debtor-in-possession ("DIP") loan budgets already used in every case.**

Response: In its response to the comments to the Guidelines as originally posted November 4, 2011, the USTP highlighted that it had revised the Appendix B guidelines to provide that the United States Trustee will seek budgets and staffing plans only with the consent of the parties or by court order. *See* Response to Comment 15 in ¶ B.2.d. above. The USTP also fully addressed the concerns about the effectiveness and burden to applicants of providing budgets and staffing plans. *See* Response to Comments 12 and 14 in ¶ B.2.d. above. It is undisputed that clients frequently require budgets inside and outside of bankruptcy, and that secured lenders in bankruptcy cases typically require debtors and their counsel to prepare budgets as a condition to the estate's use of cash collateral. The USTP believes that such sound practices ought to be followed as part of the fee review process. Moreover, the budgeting guidelines are not redundant of cash collateral and DIP loan budgets, which typically include a single line-item for professional fees, insofar as the guidelines include a reasonable amount of additional and relevant detail, such as a description of major areas of activity.

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

10) ***Comment:*** **Budgets should not use the bankruptcy project or task codes.**

Response: As the USTP explained in its response to the comments to the Guidelines as originally posted November 4, 2011, budgets serve at least two important purposes: they help ensure that professional fees will be incurred in a more disciplined manner, and are a helpful tool to evaluate applications for compensation. *See* Response to Comments 12 and 14 in ¶ B.2.d. above. By using a common set of project and task codes, the Appendix B guidelines serve both of these purposes by ensuring that the budgeted and actual fees can be directly and transparently compared. *See* Exhibit D–1.

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

11) ***Comment:*** **Budgets should not be sought during the first sixty days of a case.**

Response: The Appendix B guidelines do not impose an inflexible timetable for adopting a budget. Consistent with practices for submitting cash collateral and DIP loan budgets, the USTP's position is that budgets should be adopted earlier, rather than later.

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

e. PROJECT CODES AND CATEGORIES

N/A

f. CO-COUNSEL AND STAFFING EFFICIENCIES

12) ***Comment:*** **No supplemental application for employment and corresponding order should be necessary when lead counsel transfers a matter to conflicts co-counsel.**

Response: The USTP has clarified the Appendix B guidelines to provide that when a new matter within the authorized scope of engagement for either efficiency or conflicts co-counsel is assigned by lead counsel to that co-counsel, co-counsel need not file a

supplemental retention application and obtain an amended order. Rather, co-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 engagement, co-counsel should file a supplemental retention application and obtain an amended order to expand the scope of the engagement to include that matter. Guidelines ¶ F.1.c.

13) ***Comment:*** **The Appendix B guidelines should not provide that the USTP will object to the use of conflicts counsel in situations in which lead counsel may negotiate, but not litigate, a particular matter.**

Response: The USTP has revised the Appendix B guidelines to clarify that the use of conflicts counsel to litigate a specific matter as to which lead counsel's involvement is limited to negotiation is 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. Guidelines ¶ F.3.c.

14) ***Comment:*** **The Appendix B guidelines should clarify that they do not limit the use of ordinary course professionals, local counsel, or special counsel.**

Response: The USTP agrees and has amended the Appendix B guidelines accordingly. *See* Guidelines ¶ B.2.c.

15) ***Comment:*** **The Appendix B guidelines should not apply to ordinary course professionals or special counsel.**

Response: The Appendix B guidelines have been clarified to provide that they do not preclude the use of counsel retained and paid as an ordinary course professional pursuant to appropriate court order or local rule. Guidelines ¶ B.2.c. The USTP acknowledges that ordinary course professionals are distinguishable from other counsel retained by the estate, including special counsel, because the court's order authorizing the retention or local rule governs whether and when they are required to file a fee application. Thus, the Appendix B guidelines have been further clarified to provide that generally they will not apply to an ordinary course professional, unless the professional is required to file a fee application under the court's order authorizing retention or local rule. Guidelines ¶ A.3.

g. ELECTRONIC DATA

16) ***Comment:*** **Electronic records should be provided only to the debtor, official committees, and the United States Trustee.**

Response: Section 330 provides for an open and public bankruptcy compensation process whereby all parties in interest and the court have access to relevant information necessary to evaluate whether the applicant has sustained its burden that the compensation sought to be paid from the estate is reasonable. Nevertheless, the USTP agrees that it is likely more efficient that, in the ordinary course, an applicant provide the billing data in an electronic format to the court, the United States Trustee and those parties in interest most likely to use the information electronically, provided that other parties in interest may obtain it upon request. Accordingly, the USTP has revised the Appendix B guidelines to provide that an applicant should provide electronic billing data to the court, the debtor in possession (or trustee), official committees, the United States Trustee, and the fee review committee, examiner, or auditor. Other parties in interest should receive the electronic billing data upon requesting it from the applicant. Guidelines ¶ C.10.

h. APPLICATIONS FOR EMPLOYMENT AND RELATED VERIFICATIONS

17) ***Comment:*** **If an applicant has represented the client at any time during the 12 months prepetition, then it should disclose in the retention application the specifics of its billing arrangement, including discounted rates, write-down policies, or other material terms affecting the billing and compensation arrangement. Similarly, if the applicant has changed the terms of its billing arrangements with the client during the postpetition period, the applicant should explain why.**

Response: The USTP agrees that these specific disclosures and explanations would be helpful and meaningful. The USTP has amended the Appendix B guidelines to provide that applicants who represented the client in the 12 months prepetition should disclose specific and material information regarding their prepetition billing rates and financial terms to explain the reasons for any difference between prepetition and postpetition billing rates and terms. Guidelines ¶ D.1.c.

18) ***Comment:*** **The applicant's disclosure with the application for employment currently asks whether the applicant is billing its client at the same "effective rate" as was in effect prepetition. This may cause confusion because alternative arrangements may not readily translate into hourly rates and elsewhere the Appendix B guidelines use the term blended hourly rate.**

Response: The USTP agrees and has amended the Appendix B guidelines to delete references to "effective rate." Instead, the applicant should disclose and explain any postpetition change in "billing rates and material financial terms." Guidelines ¶ D.1.c.

19) ***Comment:*** **The client verification with the application for employment should not verify that the engagement is at "market rate." Rather, the client should only verify that the rate and terms are proper under the circumstances because clients should be free to select the best counsel for the engagement.**

Response: The Bankruptcy Code requires that the compensation for an estate-paid engagement be reasonable as compared to customary compensation for similarly skilled practitioners in cases other than under Title 11. That means a market rate. Nevertheless, the USTP has clarified the Appendix B guidelines to conform to the language of section 330. Guidelines ¶¶ D.2.b., d.

i. FEE APPLICATIONS

N/A

j. COMPENSATION FOR PARTICULAR MATTERS

20) ***Comment:*** **Compensation for preparing monthly invoices when a case has a monthly compensation order should be allowed if it is not duplicative of preparing interim fee applications. Conversely, compensation for preparing interim fee applications should be allowed if it is not duplicative of preparing monthly invoices.**

Response: The USTP agrees and has revised the Appendix B guidelines to provide that the United States Trustee will not object to the extent that monthly invoices under a monthly compensation order effectively serve as the interim fee application and the applicant seeks no additional compensation for preparing the interim fee application because the time was expended on the related monthly invoices (or vice versa). Guidelines ¶ B.2.f.(iv).

21) ***Comment:*** **Applicants should be compensated for responding to inquiries and negotiating issues related to applications for compensation.**

Response: The USTP disagrees. Applicants should and do have the incentive to prepare an unobjectionable

application for compensation in the first instance. Reasonable and proportionate time for fee application preparation is compensable. Applicants should not be rewarded with additional compensation for responding to inquiries and objections that should have been avoided, particularly when the statutory standards are well-developed and the USTP guidelines are clear.

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

22) ***Comment:*** **The Appendix B guidelines make an exception for objecting to "fees on fees" for activities that fall within a "judicially-recognized and binding exception (such as litigating an objection to the application where the applicant substantially prevails)." The use of the word "binding" suggests only authority by the applicable court of appeals on an issue would be considered binding, whereas the prevailing law in the lower courts would not.**

Response: The USTP has clarified its position to provide that fees for contesting or litigating objections to applications for compensation are generally inappropriate unless they fall within a judicial exception applicable within the district allowing such fees. The term "binding" has been deleted from the exception. Guidelines ¶ B.2.g.

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

23) ***Comment:*** **The USTP standard that it will object to fees for responding to objections to fees unless the applicant substantially prevails on the objection should be the court's decision and is inconsistent with the Bankruptcy Code.**

Response: This standard represents the litigating position of the USTP that applicants who pursue unmeritorious positions in defending their fees, and thereby waste the resources of the court and parties, should not be entitled to payment of fees. The USTP's position follows the bankruptcy court's decision in *In re Motors Liquidation Co.*, No. 09–50026, Bench Decision on Pending Fee Issues, at 2 (Bankr. S.D.N.Y. Nov. 23, 2010) (ECF No. 7896), which appropriately takes into account inherent litigation risks and the reasonableness of the applicant's arguments.

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

24) ***Comment:*** **The Appendix B guidelines should not treat phone charges related to multi-party, case-specific conference calls as overhead and should instead consider them a reimbursable expense.**

Response: The USTP agrees and has revised the Appendix B guidelines to provide that actual charges for multi-party conference calls related to the case will be considered a reimbursable expense, not overhead. Guidelines ¶ B.3.e.

k. FEE REVIEW ENTITIES

25) ***Comment:*** **If the court appoints a fee committee, fee examiner, or other reviewer, the United States Trustee should defer all compensation and expense inquiries and objections to such reviewed to avoid subjecting the applicant to multiple and competing demands for information.**

Response: The United States Trustee has an independent statutory duty to review and comment on applications for compensation. 28 U.S.C. § 586(a)(3)(A). That duty cannot be delegated. Nevertheless, the United States Trustee will not lightly deviate from positions taken by the fee committee, examiner or other reviewer.

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

26) ***Comment:*** **The United States Trustee should use discretion and only seek a fee committee or examiner when circumstances dictate. Similarly, the appointment should be sought at the earliest stages of the case.**

Response: The Appendix B guidelines already address these issues and provide that the United States Trustee will "ordinarily" seek appointment of a fee review entity. Guidelines ¶ G.1. The Guidelines acknowledge that the appointment is ultimately the court's decision. Similarly, the United States Trustee will ordinarily seek a fee committee, examiner or other review entity "as soon as practicable after the order for relief." Guidelines ¶ G.2.

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

27) ***Comment:*** **The scope of fee review entities should be expanded to include active consultation with and oversight of the clients regarding the retention of professionals and the terms of those retentions, which should reflect market-driven considerations.**

Response: The USTP strongly concurs that section 330(a)(3)(F) expresses Congress' intention that professional compensation in bankruptcy be market driven. Oversight of professionals retained on behalf of the estate must be limited to ensuring that they satisfy the requirements set by Congress in the Bankruptcy Code, including sections 327 and 330, without overreaching. Moreover, while the United States Trustee ordinarily will seek the appointment of a fee review entity as soon as practicable after the order for relief, it typically will not be in place when most applications for employment are filed early in the case. Consequently, the Appendix B guidelines are not being changed to give the fee review entities any additional express responsibilities.

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

l. MISCELLANEOUS COMMENTS

28) ***Comment:*** **One commenter suggested that the Appendix B guidelines "provide a useful template for any court that wishes to systematize a law firm's explanation of its fees and expenses" in larger chapter 11 cases, and that if the courts adopted these as local rules that "would create a single set of expectations for what belongs in fee applications in such cases." Prof. Rapoport Letter, dated November 6, 2012.**

Response: The USTP agrees and will urge courts to incorporate the Appendix B guidelines into their local rules or general orders, as many have with the existing Appendix A guidelines. Uniformity and consistency in the USTP's review of fee applications will benefit the courts, the applicants, and the public, in addition to the USTP. Moreover, before the Guidelines go effective, the USTP will engage in a systematic training and outreach effort related to the Appendix B guidelines, including coordination and training with relevant professional associations.

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

29) ***Comment:*** **The requested disclosures for rate increases should not include annual "step increases" related to the advancement of an attorney but should be limited only to increases of the overall rate structure.**

Response: The USTP agrees. The USTP has revised the Appendix B guidelines to provide that the disclosure of rate increases and calculations of their effect may exclude annual "step increases" historically awarded in the ordinary course to attorneys throughout the firm due to advancing seniority and promotion, if the firm distinguishes between "step increases" and other types of rates increases. Guidelines ¶ B.2.d., n.2. Nevertheless, applicants should not attempt to characterize actual rate increases that are unrelated to an attorney's advancing seniority and promotion as "step increases" in 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.

June 12, 2013

Submitting on Behalf of the U.S. Trustees Office,
Jerri Murray,
Department Clearance Officer for PRA, U.S. Department of Justice

[FR Doc. 2013–14323 Filed 6–14–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Containing Procedures for Handling of Retaliation Complaints

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) revision titled, "Regulations Containing Procedures for Handling of Retaliation Complaints," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before July 17, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201305-1218-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The OSHA administers and enforces a number of provisions in various Federal laws and regulations prohibiting retaliatory action by an employer against an employee who is believed to have reported a possible violation of those laws or regulations, or who otherwise engages in an activity protected specified by an anti-retaliation provision. Any person may file a complaint alleging the employer violated these protection provisions with the OSHA for investigation. This ICR has been classified as a revision, because the OSHA is making Web-based and paper options available for filing complaints. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 17, 2013 (78 FR 3918).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0236. The DOL notes that existing information collection requirements remain in effect while they undergo review. New information collection requirements would only take upon OMB approval.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0236. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Regulations Containing Procedures for Handling of Retaliation Complaints.

OMB Control Number: 1218–0236.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 2,872.

Total Estimated Number of Responses: 2,872.

Total Estimated Annual Burden Hours: 2,872.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 11, 2013.

Michel Smyth,
Departmental Clearance Officer.

[FR Doc. 2013–14248 Filed 6–14–13; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 13–065]

NASA Advisory Council; Science Committee; Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Astrophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, July 16, 2013, 9:00 a.m. to 5:00 p.m., and Wednesday, July 17, 2013, 9:00 a.m. to 4:00 p.m., Local Time.

ADDRESSES: NASA Goddard Space Flight Center, Building 1, Rooms E100D

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:	PROMESA Title III
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	No. 17 BK 3283-LTS
as representative of	(Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO, *et al.*,	
Debtors.[1]	

ORDER FURTHER AMENDING CASE MANAGEMENT PROCEDURES

Upon the *Notice of Presentment of Order Further Amending Case Management Procedures* (the "Notice");[2] and the Court having found it has subject matter jurisdiction over this matter pursuant to PROMESA section 306; and it appearing that venue in this district is proper pursuant to PROMESA section 307; and the Court having found that the relief requested in the Notice is in the best interests of the Debtors, their creditors, and other parties in interest; and the Court having found that the Debtors provided adequate and appropriate notice under the circumstances and that no other or further notice is required; and the Court having reviewed the Notice; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Notice.

1. The *Fourth Amended Notice, Case Management and Administrative Procedures* attached hereto as **Exhibit A** is approved.

2. The *Fourth Amended Notice, Case Management and Administrative Procedures* (a) replaces the local counsel to the Puerto Rico Fiscal Agency and Financial Advisory Authority for purposes of service of documents and lift stay notices and (b) adds the new dates for omnibus hearings scheduled by the Court pursuant to the *Order Scheduling Additional Omnibus Hearing Dates* (Docket Entry No. 2661).

3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement, or interpretation of this order.

4. This Order resolves docket entry no. 2717.

Dated: April 4, 2018

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

Exhibit A

Fourth Amended Case Management Procedures

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:	PROMESA Title III
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	No. 17 BK 3283-LTS
as representative of	(Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO, *et al.*	
Debtors.[1]	

FOURTH AMENDED
NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES

On June 2, 2017, the Court entered an order (the "Procedures Order"): (a) incorporating the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Puerto Rico (the "Local Bankruptcy Rules") for these Title III cases; (b) approving and implementing the notice, case management, and administrative procedures (collectively, the "Case Management Procedures"); and (c) granting certain related relief.

Anyone may obtain a copy of the Procedures Order and any amendments thereto, as well as any document filed with the Court in these Title III Cases by: (a) accessing the website maintained by Prime Clerk LLC (the "Claims and Noticing Agent") at https://cases.primeclerk.com/puertorico (the "Case Website"); (b) contacting the Claims and Noticing Agent directly at (844)-822-9231 (toll free for U.S. and Puerto Rico) or (646)-486-7944 (for international callers); or (c) for a nominal fee, accessing the PACER system through the Court's website at www.prd.uscourts.gov. Finally, paper copies of all pleadings filed in these Title III Cases may be available from the Court

[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Clerk pursuant to the Court's procedures and miscellaneous fee schedule of the District of Puerto Rico.

Pursuant to the Procedures Order, all notices, motions, applications, briefs, memoranda, affidavits, declarations, objections, responses, replies, and other documents filed in these Title III Cases are subject to, and will not be deemed properly served, unless they are served in accordance with, these Case Management Procedures as they may be amended from time to time.

Additionally, while the Bankruptcy Rules and the Local Bankruptcy Rules apply to these Title III Cases, to the extent there is a conflict between the foregoing and the Case Management Procedures, the Case Management Procedures govern in all respects to the extent that such variance is permitted by the relevant rules.

These *Fourth Amended Notice, Case Management and Administrative Procedures* are implemented by the Court to (a) replace the local counsel to the Puerto Rico Fiscal Agency and Financial Advisory Authority for purposes of service of Documents and Lift Stay Notices (each as defined below) and (b) add the new dates for Omnibus Hearings (as defined below) scheduled by the Court pursuant to the *Order Scheduling Additional Omnibus Hearing Dates* [ECF No. 2661].

ALL PARTIES IN INTEREST ARE STRONGLY ENCOURAGED TO REVIEW THESE CASE MANAGEMENT PROCEDURES IN THEIR ENTIRETY AND CONSULT THEIR OWN LEGAL COUNSEL WITH RESPECT TO THE MATTERS DISCUSSED HEREIN PRIOR TO FILING ANY DOCUMENTS IN THESE TITLE III CASES.

Fourth Amended Case Management Procedures

I. General Case Administration and Pleadings

A. The Claims and Noticing Agent is authorized to establish the Case Website available at https://cases.primeclerk.com/puertorico, where, among other things, all pleadings, key dates, and information about these Title III Cases will be posted.

B. All documents filed in these Title III Cases, including, but not limited to, all notices, motions, applications, other requests for relief, all briefs, memoranda, affidavits, declarations, and other documents filed in support of such papers seeking relief (collectively, the "Pleadings"), objections or responses to the Pleadings (the "Objections"), statements related thereto ("Statements"), and replies thereto (the "Replies" and together with the Pleadings, the Statements, and the Objections, the "Documents") shall be filed electronically with the Court on the docket of *In re Commonwealth of Puerto Rico*, Case No. 17 BK 3283-LTS (the "Docket"), by registered users of the Court's case filing system in searchable portable document format ("PDF").

C. A hearing notice ("Notice of Hearing") shall be filed and served concurrently with all Pleadings and shall include the following: (i) the title of the Pleading; (ii) the parties upon whom any Objection to the Pleading is required to be served; (iii) the date and time of the applicable Objection Deadline (as defined below); (iv) the date of the

hearing at which the Pleading shall be considered by the Court; and (v) a statement that the relief requested may be granted without a hearing if no Objection is timely filed and served in accordance with the Case Management Procedures.

D. The applicable Objection Deadline and hearing date shall appear on the upper right corner of the first page of the Notice of Hearing and on the upper right corner of the first page of each Pleading. The applicable hearing date shall appear on the upper right corner of the first page of any filed Objection.

E. Unless prior permission has been granted, notices of motion are limited to five (5) pages, memoranda of law in support of motions or Objections are limited to thirty-five (35) pages and memoranda of law in support of Replies are limited to fifteen (15) pages. All memoranda shall be double-spaced, 12-point font, with 1" margins. Memoranda of ten (10) pages or more shall contain a table of contents and a table of authorities. The page(s) with the case caption shall not be counted for purposes of the foregoing page limits.

F. Nothing in the Case Management Procedures shall prejudice the right of any party to move the Court to request relief under Bankruptcy Code section 107(b) or Bankruptcy Rule 9018 to protect: (i) any entity with respect to a trade secret or confidential research, development, or commercial information, or (ii) any person with respect to a scandalous or defamatory matter, or personally identifiable information, contained in a Document filed in these Title III Cases.

G. If any Pleading or Objection seeks an evidentiary hearing, the evidentiary hearing request shall be prominently displayed on the Pleading or Objection. The Court retains full discretion regarding the scheduling of evidentiary hearings.

H. Scheduling requests (other than from the Debtors) must be brought by urgent motion ("Urgent Motion"). All Urgent Motions must be preceded by reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court in such Urgent Motion request. All Urgent Motions shall have a certification that the reasonable, good-faith communications took place, and if there is knowledge that there will be an objection to the Urgent Motion, the anticipation of an objection shall be prominently disclosed in the Urgent Motion. Courtesy copies of all Urgent Motions shall be e-mailed to the Court at swaindprcorresp@nysd.uscourts.gov.

I. All Pleadings, whether Urgent Motions or not, that are requesting relief, shall be accompanied by a proposed order. A copy of the proposed order shall be emailed to the Court at swaindprcorresp@nysd.uscourts.gov in Microsoft word format.

J. All communications filed in these Title III Cases that are informative and do not request any relief shall be labeled as an informative motion.

K. Counsel who have been admitted pursuant to a pro hac vice order in a Title III case shall be deemed admitted without further application for all adversary proceedings in connection with that Title III case and in all other jointly administered Title III cases. Notices of appearance must still be filed for each adversary proceeding.

II. Service

A. All Documents shall be served, in the manner described herein, on the following parties (collectively, the "Standard Parties"):

(i) Chambers of the Honorable Laura Taylor Swain (two copies shall be delivered to the chambers):

United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Suite No. 3212
New York, New York 10007-1312

(ii) Office of the United States Trustee for Region 21
Edificio Ochoa, 500 Tanca Street, Suite 301
San Juan, PR 00901-1922

(iii) Puerto Rico Fiscal Agency and Financial Advisory Authority (AAFAF):

Puerto Rico Fiscal Agency and Financial Advisory Authority
Roberto Sánchez Vilella (Minillas) Government Center
De Diego Ave. Stop 22
San Juan, Puerto Rico 00907
Attn: Gerardo J. Portela Franco
Mohammad Yassin, Esq.
E-Mail: Gerardo.Portela@aafaf.pr.gov
Mohammad.Yassin@aafaf.pr.gov

(iv) Counsel for AAFAF:

O'Melveny & Myers LLP
7 Times Square
New York, New York 10036
Attn: John J. Rapisardi, Esq.
Suzzanne Uhland, Esq.
Peter Friedman, Esq.
Diana M. Perez, Esq.
E-Mail: jrapisardi@omm.com
suhland@omm.com
pfriedman@omm.com
dperez@omm.com

Marini Pietrantoni Muñiz LLC
MCS Plaza, Suite 500
255 Ponce de León Ave.
San Juan, PR 00917
Attn: Luis C. Marini-Biaggi, Esq.
Carolina Velaz-Rivero Esq.
María T. Álvarez-Santos Esq.
E-Mail: lmarini@mpmlawpr.com
cvelaz@mpmlawpr.com
malvarez@mpmlawpr.com

(v) Counsel for AAFAF (PREPA):

Greenberg Traurig LLP
MetLife Building
200 Park Avenue
New York, New York 10166
Attn: Nancy A. Mitchell, Esq.
David D. Cleary, Esq.
Nathan A. Haynes, Esq.
Kevin D. Finger, Esq.
E-Mail: mitchelln@gtlaw.com
clearyd@gtlaw.com
haynesn@gtlaw.com
fingerk@gtlaw.com

Cancio, Nadal, Rivera & Díaz, P.S.C.
PO Box 364966
San Juan, PR 00936-4966
Attn: Arturo Diaz-Angueira, Esq.
Katiuska Bolaños-Lugo, Esq.
E-Mail: adiaz@cnrd.com
kbolanos@cnrd.com

(vi) Counsel for the Oversight Board:

Proskauer Rose LLP
Eleven Times Square
New York, New York 10036-8299
Attn: Martin J. Bienenstock
Paul V. Possinger
Ehud Barak
Maja Zerjal
E-Mail: mbienenstock@proskauer.com
ppossinger@proskauer.com
ebarak@proskauer.com
mzerjal@proskauer.com

O'Neill & Borges LLC
250 Muñoz Rivera Ave., Suite 800
San Juan, PR 00918-1813
Attn: Hermann D. Bauer, Esq.
E-Mail:
hermann.bauer@oneillborges.com

(vii) Counsel for the Creditors' Committee:

Paul Hastings LLP
200 Park Avenue
New York, New York 10166
Attn: Luc. A. Despins
James Bliss
James Worthington
G. Alexander Bongartz
E-Mail: lucdespins@paulhastings.com
jamesbliss@paulhastings.com
jamesworthington@paulhastings.com
alexbongartz@paulhastings.com

Casillas, Santiago & Torres LLC
El Caribe Office Building
53 Palmeras Street, Ste. 1601
San Juan, Puerto Rico 00901-2419
Attn: Juan J. Casillas Ayala
Diana M. Batlle-Barasorda
Alberto J. E. Añeses Negrón
Ericka C. Montull-Novoa
E-Mail: jcasillas@cstlawpr.com
dbatlle@cstlawpr.com
aaneses@cstlawpr.com
emontull@cstlawpr.com

(viii) Counsel for the Retiree Committee:

Jenner & Block LLP
919 Third Avenue
New York, New York 10022
Attn: Robert Gordon
Richard Levin
Catherine Steege
E-Mail: rgordon@jenner.com
rlevin@jenner.com
csteege@jenner.com

Bennazar, García & Milián, C.S.P.
Edificio Union Plaza PH-A piso 18
Avenida Ponce de León #416
Hato Rey, San Juan, Puerto Rico 00918
Attn: A.J. Bennazar-Zequeira
E-Mail: ajb@bennazar.org

(ix) The entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims in COFINA's Title III Case.

(x) Counsel to any other statutory committee appointed in these Title III Cases.

B. All paper and e-mail courtesy copies served on the Court shall include the applicable Case Management/Electronic Case Files ("CM/ECF") header information.

C. For purposes of service pursuant to Bankruptcy Rules 7004(b)(6), 7004(b)(9), and 7004(g), all service to the Debtors shall be made both to counsel to the Oversight Board and counsel to AAFAF, as listed above.

D. Any creditor or party in interest that wishes to receive notice in these Title III Cases and is not otherwise entitled to notice pursuant to the Case Management Procedures shall file a notice of appearance (a "Notice of Appearance") and request for service of papers in accordance with Bankruptcy Rules 2002 and 9010(b) and the Case Management Procedures. Any party that has previous filed a *pro hac vice* motion but not a Notice of Appearance should file a Notice of Appearance to ensure that such party receives notice of Documents filed in these Title III Cases. For purposes of these Title III Cases, creditors or parties in interest filing such Notices of Appearance shall be included in the CM/ECF system for noticing purposes and will be considered to have accepted, upon filing of such Notice of Appearance, to receive documents and notices through the CM/ECF system. Alternatively, if direct inclusion in the CM/ECF system is not possible, the filer of a Notice of Appearance shall be considered to have consented to receive electronic notices pursuant to Local Bankruptcy Rule 5005-4(g), unless the filing party complies with the certificate requirement set forth in the second paragraph of this Section II.D and the Court approves such certification.

The Notice of Appearance shall include the following: (i) the requesting party's name, address, and telephone number; (ii) the name and address of the requesting party's counsel, if any; (iii) the requesting party's email address for service by electronic transmission; (iv) the requesting party's address for service by U.S. mail, hand delivery, and/or overnight delivery; and (v) the requesting party's facsimile number for service by facsimile. Any creditor or party-in-interest that files a Notice of Appearance and request for service of papers in accordance with the Case Management Procedures shall

receive notice via electronic transmission. Any individual or entity that does not maintain and cannot practicably obtain an email address must include in its Notice of Appearance a certification stating the same and state the reasons why obtaining such email address is not feasible or unduly burdensome. Notice will be provided to these individuals or entities by U.S. mail, overnight delivery, or facsimile at the filing party's discretion. Notwithstanding Bankruptcy Rules 2002 and 9010(b), no request for service filed in these Title III Cases shall have any effect unless the foregoing requirements are satisfied.

E. The Claims and Noticing Agent shall maintain a master service list (the "Master Service List"), which shall include all persons and entities that have filed a Notice of Appearance pursuant to Bankruptcy Rules 2002 and 9010(b) and the Case Management Procedures (the "Rule 2002 Parties") and the Standard Parties. The Master Service List shall contain addresses, facsimile numbers, and email addresses. The Claims and Noticing Agent shall use reasonable efforts to update and post on its website the Master Service List as often as practicable, but in no event less frequently than every fifteen (15) days. The Master Service List and any updates thereto shall be filed electronically on the website of the United States Bankruptcy Court for the District of Puerto Rico, www.prb.uscourts.gov, and on the Case Website commencing as of the date that is no later than ten (10) days from the date hereof.

F. All Documents must be served, in the manner described herein, on the Master Service List and on any person or entity with a particularized interest in the subject matter of a certain Document (each, an "Affected Party"). Subject to Paragraph II.H, Documents filed in adversary proceedings are not required to be served on the Master Service List.

G. The proceedings with respect to which notice is limited to the Master Service List shall include all matters covered by Bankruptcy Rule 2002, with the express exception of the following: (a) notice of (i) the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c) and (ii) the time fixed for filing objections to, and the hearings to consider, approval of a disclosure statement and plan; and (b) notice and transmittal of ballots for accepting or rejecting a plan, which notices shall be given in accordance with Bankruptcy Rule 2002 and other applicable Bankruptcy Rules, unless otherwise ordered by the Court or otherwise prescribed by the Bankruptcy Code.

H. Pleadings related to a compromise or settlement must be served on the Master Service List and any Affected Parties, but need not be served on all creditors.

I. Parties shall serve the Court and the U.S. Trustee by U.S. mail, overnight delivery, or hand delivery. Service of courtesy copies on the Court must be made promptly, and must be completed within one business day after filing for all papers relating to Urgent Motions, or where the papers relate to a hearing scheduled to be held within one week of the filing date. Parties may serve the Standard Parties and the Affected Parties, with the exception of the Court and the U.S. Trustee, via the CM/ECF system described in Section II.D, and no further notice shall be required on such Standard Parties and Affected Parties unless the Bankruptcy Rules, the Local District Court Rules, or Local Bankruptcy Rules require otherwise or the Court orders otherwise.

J. [RESERVED]

K. Parties shall be authorized to rely to the maximum extent possible on CM/ECF notice for all Documents on the Rule 2002 Parties. To the extent it is known that one or more Affected Party will not receive CM/ECF notice, there shall be an obligation on the moving party to ensure service by the most efficient and timely manner possible on such Affected Parties (including service by e-mail unless the Affected Party has included a certification on its Notice of Appearance that it does not maintain an e-mail address).

L. All Documents served by email shall include access to an attached file containing the entire Document, including the proposed form(s) of order and any exhibits, attachments and other relevant materials in PDF format, readable by Adobe Acrobat or an equivalent program. Notwithstanding the foregoing, if a Document cannot be annexed to an email (because of its size, technical difficulties or otherwise), the party serving the Document may, in its sole discretion: (i) serve the entire Document by U.S. mail or overnight delivery, including the proposed form(s) of order and any exhibits, attachments and other relevant materials or (ii) email the parties being served and include a notation that the Document cannot be annexed and will be (a) mailed if requested or (b) posted on the Case Website.

M. Service by email shall be effective as of the date the Document is sent to the email address provided by the party. If service is made by email, the Debtors shall not be required to serve a paper copy of the Document on interested parties and email service shall satisfy the Court's rules for service.

N. If a party entitled to notice of a Document does not have an email address or an email address is not available in the Master Service List, the party shall be served by U.S. mail, overnight delivery, facsimile, or hand delivery, the choice of the foregoing being in the sole discretion of the party who is required to serve.

O. Upon the completion of noticing any particular matter, the party seeking relief shall file with the Court within three (3) business days either an affidavit of service or a certification of service attaching the list of parties that received notice; provided, however, that parties shall not be required to serve the affidavits of service on such recipients.

P. Upon the request of a non-Debtor Movant for the Claims and Noticing Agent to serve Pleadings, and provided the Oversight Board as the instructing entity permits the Claims and Noticing Agent to serve such Pleadings, the Claims and Noticing Agent shall serve such Pleadings and bill the related service expense directly to the applicable non-Debtor movant.

III. Scheduling

A. The Debtors shall be authorized to schedule, in cooperation with the Court, periodic omnibus hearings (the "Omnibus Hearings") at which Pleadings shall be heard. Upon scheduling, the Claims and Noticing Agent shall post the date of the Omnibus Hearings

on the Case Website. The next Omnibus Hearings shall be scheduled for the following dates and times:[2]

- 9:30 a.m. on the 25th day of April, 2018;
- 9:30 a.m. on the 6th day of June, 2018;
- 9:30 a.m. on the 25th day of July, 2018;
- 9:30 a.m. on the 12th day of September, 2018;
- 9:30 a.m. on the 7th day of November, 2018;
- 9:30 a.m. on the 19th day of December, 2018;
- 9:30 a.m. on the 30th day of January, 2019;
- 9:30 a.m. on the 13th day of March, 2019; and
- 9:30 a.m. on the 24th day of April, 2019.

B. All Omnibus Hearings may be scheduled for two consecutive days, if needed.

C. Those in attendance in the main courtroom at any hearing shall refrain from wearing cologne or perfume.

D. Subject to consultation with Chambers via email to swaindprcorresp@nysd.uscourts.gov, hearings in connection with individual and omnibus claim objections, applications for professional compensation and reimbursement, pre-trial conferences, asset sales and trials related to adversary proceedings, approval of a disclosure statement, confirmation of a plan, and any other Pleading filed by the Debtors may be scheduled for dates other than the Omnibus Hearing dates; provided, however, that hearings in connection therewith may be scheduled on a non-Omnibus Hearing date only after consultation with counsel to the Oversight Board and counsel to the Debtors (which consultation shall occur as soon as practicable); provided, further, that initial pre-trial conferences scheduled in connection with adversary proceedings involving the Debtors shall be set on the next available Omnibus Hearing date that is at least 45 days after the filing of the complaint; unless the Court expedites the pre-trial conference; provided, further, that hearings on all other Pleadings, except for those Pleadings specifically referenced in this Paragraph III.D, filed by any party must be scheduled for an Omnibus Hearing except for a Pleading requiring emergency or expedited relief in accordance with these Case Management Procedures.

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[2] All hearing times are in Atlantic Standard Time.

E. Except for filings that have previously been authorized by the Court in response to an Urgent Motion establishing such scheduling, if a Document is filed by a party other than the Debtors and purports to set a hearing date inconsistent with the Case Management Procedures (an "Inconsistent Filing"), the hearing shall be scheduled without the necessity of Court order for the first Omnibus Hearing date after the applicable notice period has expired and all applicable deadlines shall be accordingly extended, and the Debtors shall provide such party with notice of the Case Management Procedures within three (3) business days of receipt of the Inconsistent Filing.

F. If a movant, applicant, or other party determines that a motion, application, or pre-trial conference requires emergency or expedited relief, the movant, applicant, or other party may, for good cause shown, seek an expedited hearing or pre-trial conference pursuant to Urgent Motion, and the Debtors and other parties in interest, as applicable, shall have the right to contest such request for expedition. All requests for emergency or expedited relief shall comply with the applicable Local Bankruptcy Rule.

G. If a Pleading seeks relief pursuant to Bankruptcy Rule 2002(a) or Bankruptcy Rule 2002(b), the hearing to consider such Pleading shall be set in accordance with the time period set forth in Bankruptcy Rules 2002(a) and (b) and 9006. For all other Pleadings, with the exception of Pleadings filed pursuant to the Presentment Procedures (as described below), Pleadings shall not be considered unless filed and served in accordance with the Case Management Procedures at least twenty-two (22) calendar days before the next applicable hearing date; provided, however, that nothing in the Case Management Procedures shall prejudice the right of any party to move the Court to request an enlargement or reduction of any time period under Bankruptcy Rules 9006(b) and (c).

H. Notwithstanding the immediately preceding paragraph, a party may present a proposed order addressing administrative matters for approval by the Court; provided, however, that the presentment of a proposed order for administrative relief must be filed and served at least seven (7) calendar days before the presentment date, and Objections thereto must be filed and served at least one (1) calendar day before presentment date (the "Presentment Procedures").

I. The deadline to file an Objection (the "Objection Deadline") to any Pleading shall be (i) 4:00 p.m. (Atlantic Standard Time) on the date that is fifteen (15) calendar days before the applicable hearing date or (ii) any date otherwise ordered by the Court. The Objection Deadline may be extended with the consent of the movant or applicant. If such an extension has been agreed upon, the parties need not file a stipulation or other pleading with the Court reflecting the extension; provided, however, that movant shall provide notice of the extension to Chambers by e-mail to swaindprcorresp@nysd.uscourts.gov. However, if an Objection Deadline was set by a separate scheduling order of the Court, any extension must be noticed by the filing of an informative motion. The Objection shall not be considered timely unless filed with the Court and received by the movant and the Standard Parties on or before the applicable Objection Deadline. All parties filing an Objection shall include their

telephone number, facsimile number, and email in the signature block on the last page of the Objection.

J. Unless the Court orders otherwise, if any Pleading, including a Stay Relief Motion (as defined below), is adjourned, the Objection Deadline with respect thereto shall be extended to 4:00 p.m. (Atlantic Standard Time) on the date that is fifteen (15) calendar days prior to the applicable hearing and all other applicable deadlines shall be likewise extended.

K. The deadline to file Replies, joinders to an Objection, or any Statement shall be (i) for all parties other than the Debtors and any statutory committee, 4:00 p.m. (Atlantic Standard Time) on the date that is eight (8) calendar days before the applicable hearing date, (ii) for the Debtors and any statutory committee, 4:00 p.m. (Atlantic Standard Time) on the date that is seven (7) calendar days before the applicable hearing date, or (iii) any date and time otherwise ordered by the Court.

L. Sur-replies shall not be permitted or considered unless authorized by the Court.

M. Two (2) business days before a scheduled hearing, the Debtors shall, after consultation via email with the Court, file with the Court an agenda (the "Agenda") setting forth each matter to be heard at the hearing (updated after the initial submission, if necessary) and shall serve the Agenda by email or facsimile on (i) the Standard Parties, (ii) the Rule 2002 Parties, and (iii) any party that filed Documents referenced in the Agenda; provided, however, that where the Debtors have less than 48 hours' notice of a hearing, the Debtors shall file an agenda only to the extent feasible.

N. The Agenda shall include, to the extent known by the Debtors: (i) the docket number and title of each matter scheduled to be heard at the hearing, including the initial filing and any Objections, Statements, Replies, or Documents related thereto; (ii) whether the matter is contested or uncontested; (iii) whether the matter has been settled or is proposed to be continued; (iv) the identification number of any proof(s) of claim(s) implicated in the Document; and (v) other comments that will assist the Court; provided, however, that the matters listed on the Agenda shall be limited to matters of substance and shall not include administrative filings such as notices of appearance and affidavits of service.

O. The Agenda may include notice of matters that have been consensually adjourned to a later hearing date in lieu of parties filing a separate notice of such adjournment.

P. In the event a matter is properly noticed for hearing and the parties reach an agreement to settle the dispute prior to the hearing, the parties may announce the settlement at the scheduled hearing; provided, however, that the parties shall notify the Court, the Office of the United States Trustee, counsel for the Oversight Board, as representative of the Debtors, and the Creditors' Committee of such agreement as soon as practicable prior to the hearing. In the event the Court determines that notice of the dispute and the hearing is adequate notice of the effects of the settlement (*i.e.*, that the terms of the settlement are not materially different from what parties in interest could have expected

if the dispute were fully litigated), the Court may approve the settlement at the hearing without further notice of the terms of the settlement. In the event the Court determines that additional or supplemental notice is required, the Debtors shall serve such notice in accordance with the Case Management Procedures and a hearing to consider such settlement shall be on the next hearing day deemed appropriate by the Court.

Q. Subject to Paragraphs III.F and III.T, at least fifteen (15) business days prior to filing a Stay Relief Motion to continue a prepetition ordinary course civil action against a Debtor other than PREPA, the movant shall contact counsel for the Oversight Board (Attn: Hermann Bauer (Hermann.Bauer@oneillborges.com) and Ubaldo M. Fernández Barrera (ubaldo.fernandez@oneillborges.com)) and counsel for AAFAF (Attn: Diana M. Perez (dperez@omm.com), Luis C. Marini-Biaggi (lmarini@mpmlawpr.com) and Carolina Velaz-Rivero (cvelaz@mpmlawpr.com)), and, for all Lift Stay Notices related to PREPA, the movant shall contact counsel for the Oversight Board (Attn: Hermann Bauer (Hermann.Bauer@oneillborges.com) and Ubaldo M. Fernández Barrera (ubaldo.fernandez@oneillborges.com)) and counsel for AAFAF (Attn: Kevin Finger (fingerk@gtlaw.com)) by electronic-mail to advise them of the movant's intent to seek relief from the automatic stay (the "Lift Stay Notice" and the notice period, the "Lift Stay Notice Period"). The Lift Stay Notice Period and the procedures set forth below shall not apply to Stay Relief Motions that are filed by creditors seeking to enforce a financial debt claim.

The Lift Stay Notice shall include (i) the identity of the movant and its contact information, (ii) the claim(s), lawsuit(s), or other proceeding(s) for which movant seeks relief from the automatic stay, including the relevant case number and court information, (iii) the amount of the claim(s) and the asserted causes of action, (iv) a brief description of the status of the underlying claim(s), lawsuit(s), or proceeding(s), and (v) cause as to why the stay should be lifted.

During the Lift Stay Notice Period, the Debtors and the movant shall meet and confer (in person or telephonically) to attempt to resolve, in whole or in part, the movant's request for relief from the automatic stay.

If (i) the Debtors disagree with the movant's request for relief from the automatic stay and/or (ii) the Lift Stay Notice Period expires without the parties reaching an agreement governing the scope of the relief from the automatic stay, then the movant may file a Stay Relief Motion pursuant to the Case Management Procedures. Such Stay Relief Motion must include a certification that the movant has met and conferred with the Debtors regarding the requested relief. If movant did not meet and confer with the Debtors prior to filing a Stay Relief Motion, and cannot show exigent circumstances for failing to meet and confer, the Court shall deny the Stay Relief Motion without prejudice until the movant has met and conferred with the Debtors.

The Debtors, in their discretion (subject to the Oversight Board's consent) and without immediate leave of Court, may (i) enter into stipulations modifying or lifting the automatic stay and (ii) agree to modify or lift the automatic stay with respect to any prepetition ordinary course civil action against a Debtor.

The Debtors shall file an omnibus motion, every sixty (60) days, identifying each automatic stay modification agreed to by the Debtors during the relevant period and seeking Court approval of such modifications *nunc pro tunc* to the relevant modification date (an "Omnibus Lift Stay Motion").

Each Omnibus Lift Stay Motion shall include personalized information for each automatic stay modification including, as applicable, a brief description of the modification, case information (including case number and court), and counterparty.

For the avoidance of doubt, nothing in this Paragraph III.Q prejudices the rights of a party to request the consideration of any Stay Relief Motion on an expedited basis, or the rights of the Debtors or any other party in interest to contest such request for expedited consideration.

R. Subject to Paragraphs III.F, III.S, and III.T, a motion for relief from the automatic stay (a "Stay Relief Motion") in accordance with Bankruptcy Code section 362 shall be noticed for consideration on the Omnibus Hearing Date that is at least 22 days after the Stay Relief Motion is filed and notice thereof is served upon counsel for the Oversight Board, as representative of the Debtors. Unless otherwise ordered by the Court, the Objection Deadline with respect thereto shall be the later to occur of (i) fifteen (15) calendar days after the date of filing and service of the Stay Relief Motion and (ii) eight (8) calendar days prior to the hearing scheduled with respect thereto; effectively, this means that the Objection Deadline will be eight (8) calendar days prior to the hearing scheduled with respect to the Stay Relief Motion, except in certain situations where an expedited hearing is scheduled with respect to the Stay Relief Motion. The movant may file and serve a reply four (4) calendar days prior to the hearing.

S. If a moving party notices a Stay Relief Motion for an Omnibus Hearing Date that falls on or after the thirtieth (30th) day after the filing of the Stay Relief Motion, or consents to the adjournment of an Omnibus Hearing to a date that falls on or after the thirtieth (30th) day after the filing of the Stay Relief Motion, the moving party shall be deemed to have consented to the continuation of the automatic stay in effect pending the conclusion of, or as a result of, a final hearing and determination under Bankruptcy Code section 362(d), and shall be deemed to have waived its right to assert the termination of the automatic stay under Bankruptcy Code section 362(e) with respect to that Stay Relief Motion. Any moving party shall be permitted to request an expedited hearing on its Stay Relief Motion, as provided in Paragraph III.F, and in that case, the moving party shall not be deemed to have waived its right to assert the termination of the automatic stay under Bankruptcy Code section 362(e); provided, however, that any expedited hearing granted in accordance with this paragraph shall be without prejudice to the right of the parties to request, and/or the Court to otherwise treat, such expedited hearing as a preliminary hearing in accordance with Bankruptcy Code section 362(e). For the avoidance of doubt, any hearing on a Stay Relief Motion shall be scheduled as a final hearing (which the Court may later treat as a preliminary hearing in the Court's discretion) unless the Affected Parties agree otherwise or the Court orders otherwise. A hearing on a Stay Relief Motion will take place only if an Objection is timely filed; if no Objection is timely filed, an order may be entered granting the relief requested.

T. Notwithstanding Paragraphs III.Q, III.R, and III.S, nothing in the foregoing paragraphs prejudices the rights of a party to request the expedited consideration of any motion seeking relief from stay, or the rights of the Debtors or any other party in interest to contest such request for expedited consideration.

U. If the date any Document would be due falls on a day other than a business day, such Document must be filed and served by the first business day preceding such date, except where the Document relates to a hearing scheduled to be held within one week of the filing date, in which event the Document must be filed on the calendar date it is due.

IV. Disclosure Requirements

A. Every group, committee and entity described in Federal Rule of Bankruptcy Procedure 2019(b)(1) (each, a "Rule 2019(b) Group") that, on or before August 9, 2017, has taken a position before the Court[3] must file a verified statement that complies with the disclosure requirements enumerated by Federal Rule of Bankruptcy Procedure 2019 by August 24, 2017 at 5:00 p.m. (Atlantic Standard Time). For the avoidance of doubt and for the purposes of these Title III cases, compliance with Bankruptcy Rule 2019 includes disclosure of: (i) all economic interests with respect to each Debtor in whose Title III case the group, committee and/or entity has taken a position, including derivative interests, and (ii) the existence and amount of any bond insurance or other credit protection, including by a monoline insurer.

B. A Rule 2019(b) Group that first takes a position before the Court or solicits votes regarding the confirmation of a plan on behalf of another after August 9, 2017, must file a verified statement compliant with Federal Rule of Bankruptcy Procedure 2019(c) within five (5) calendar days of taking such position before the Court or soliciting such votes. Federal Rule of Bankruptcy Procedure 9011(b) applies to attorneys filing such statements.

C. If any fact disclosed in the Rule 2019(b) Group's most recently filed statement (including, but not limited to, information concerning the composition of the Rule 2019(b) Group) changes materially, the Rule 2019(b) Group must file a supplemental verified statement contemporaneously with or within 48 hours after the next instance in which the Rule 2019(b) Group takes a position before the Court or solicits votes on the confirmation of a plan. Federal Rule of Bankruptcy Procedure 9011 applies to

[3] For the avoidance of doubt, the phrase "takes a position before the Court" includes, but is not limited to, the filing of any Pleading, including informative motion practice containing factual or legal representations or arguments.

attorneys filing such supplemental statements. The absence of such a supplemental statement shall be deemed a representation that no material changes have occurred.

V. Other Case Management Procedures

A. Nothing in the Procedures Order shall prejudice the rights of any party in interest to seek an amendment or waiver of the provisions of the Case Management Procedures upon a showing of good cause.

B. The Debtors may seek to amend the Case Management Procedures from time to time throughout these Title III Cases, and shall present such amendments to the Court by notice of presentment in accordance with the Case Management Procedures.

C. Within three (3) business days of entry of the Procedures Order or any amendment thereto, the Claims and Noticing Agent shall serve a printed copy of the relevant Procedures Order upon all parties on the Master Service List and post a copy of that Procedures Order on the Case Website.

D. The Court retains jurisdiction to hear and determine all matters arising from or relating to the implementation of the Procedures Order.

E. The Court retains power to provide notice of *sua sponte* amendments to the Case Management Procedures and/or Procedures Order.

Dated: April 4, 2018

Exhibit A

Fourth Amended Case Management Procedures

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:	PROMESA Title III
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	No. 17 BK 3283-LTS
as representative of	(Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO, *et al.*	
Debtors.[1]	

FOURTH AMENDED NOTICE, CASE MANAGEMENT AND ADMINISTRATIVE PROCEDURES

On June 2, 2017, the Court entered an order (the "Procedures Order"): (a) incorporating the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Puerto Rico (the "Local Bankruptcy Rules") for these Title III cases; (b) approving and implementing the notice, case management, and administrative procedures (collectively, the "Case Management Procedures"); and (c) granting certain related relief.

Anyone may obtain a copy of the Procedures Order and any amendments thereto, as well as any document filed with the Court in these Title III Cases by: (a) accessing the website maintained by Prime Clerk LLC (the "Claims and Noticing Agent") at https://cases.primeclerk.com/puertorico (the "Case Website"); (b) contacting the Claims and Noticing Agent directly at (844)-822-9231 (toll free for U.S. and Puerto Rico) or (646)-486-7944 (for international callers); or (c) for a nominal fee, accessing the PACER system through the Court's website at www.prd.uscourts.gov. Finally, paper copies of all pleadings filed in these Title III Cases may be available from the Court

[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Clerk pursuant to the Court's procedures and miscellaneous fee schedule of the District of Puerto Rico.

Pursuant to the Procedures Order, all notices, motions, applications, briefs, memoranda, affidavits, declarations, objections, responses, replies, and other documents filed in these Title III Cases are subject to, and will not be deemed properly served, unless they are served in accordance with, these Case Management Procedures as they may be amended from time to time.

Additionally, while the Bankruptcy Rules and the Local Bankruptcy Rules apply to these Title III Cases, to the extent there is a conflict between the foregoing and the Case Management Procedures, the Case Management Procedures govern in all respects to the extent that such variance is permitted by the relevant rules.

These *Fourth Amended Notice, Case Management and Administrative Procedures* are implemented by the Court to (a) replace the local counsel to the Puerto Rico Fiscal Agency and Financial Advisory Authority for purposes of service of Documents and Lift Stay Notices (each as defined below) and (b) add the new dates for Omnibus Hearings (as defined below) scheduled by the Court pursuant to the *Order Scheduling Additional Omnibus Hearing Dates* [ECF No. 2661].

ALL PARTIES IN INTEREST ARE STRONGLY ENCOURAGED TO REVIEW THESE CASE MANAGEMENT PROCEDURES IN THEIR ENTIRETY AND CONSULT THEIR OWN LEGAL COUNSEL WITH RESPECT TO THE MATTERS DISCUSSED HEREIN PRIOR TO FILING ANY DOCUMENTS IN THESE TITLE III CASES.

Fourth Amended Case Management Procedures

I. General Case Administration and Pleadings

A. The Claims and Noticing Agent is authorized to establish the Case Website available at https://cases.primeclerk.com/puertorico, where, among other things, all pleadings, key dates, and information about these Title III Cases will be posted.

B. All documents filed in these Title III Cases, including, but not limited to, all notices, motions, applications, other requests for relief, all briefs, memoranda, affidavits, declarations, and other documents filed in support of such papers seeking relief (collectively, the "Pleadings"), objections or responses to the Pleadings (the "Objections"), statements related thereto ("Statements"), and replies thereto (the "Replies" and together with the Pleadings, the Statements, and the Objections, the "Documents") shall be filed electronically with the Court on the docket of *In re Commonwealth of Puerto Rico*, Case No. 17 BK 3283-LTS (the "Docket"), by registered users of the Court's case filing system in searchable portable document format ("PDF").

C. A hearing notice ("Notice of Hearing") shall be filed and served concurrently with all Pleadings and shall include the following: (i) the title of the Pleading; (ii) the parties upon whom any Objection to the Pleading is required to be served; (iii) the date and time of the applicable Objection Deadline (as defined below); (iv) the date of the

hearing at which the Pleading shall be considered by the Court; and (v) a statement that the relief requested may be granted without a hearing if no Objection is timely filed and served in accordance with the Case Management Procedures.

D. The applicable Objection Deadline and hearing date shall appear on the upper right corner of the first page of the Notice of Hearing and on the upper right corner of the first page of each Pleading. The applicable hearing date shall appear on the upper right corner of the first page of any filed Objection.

E. Unless prior permission has been granted, notices of motion are limited to five (5) pages, memoranda of law in support of motions or Objections are limited to thirty-five (35) pages and memoranda of law in support of Replies are limited to fifteen (15) pages. All memoranda shall be double-spaced, 12-point font, with 1" margins. Memoranda of ten (10) pages or more shall contain a table of contents and a table of authorities. The page(s) with the case caption shall not be counted for purposes of the foregoing page limits.

F. Nothing in the Case Management Procedures shall prejudice the right of any party to move the Court to request relief under Bankruptcy Code section 107(b) or Bankruptcy Rule 9018 to protect: (i) any entity with respect to a trade secret or confidential research, development, or commercial information, or (ii) any person with respect to a scandalous or defamatory matter, or personally identifiable information, contained in a Document filed in these Title III Cases.

G. If any Pleading or Objection seeks an evidentiary hearing, the evidentiary hearing request shall be prominently displayed on the Pleading or Objection. The Court retains full discretion regarding the scheduling of evidentiary hearings.

H. Scheduling requests (other than from the Debtors) must be brought by urgent motion ("Urgent Motion"). All Urgent Motions must be preceded by reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court in such Urgent Motion request. All Urgent Motions shall have a certification that the reasonable, good-faith communications took place, and if there is knowledge that there will be an objection to the Urgent Motion, the anticipation of an objection shall be prominently disclosed in the Urgent Motion. Courtesy copies of all Urgent Motions shall be e-mailed to the Court at swaindprcorresp@nysd.uscourts.gov.

I. All Pleadings, whether Urgent Motions or not, that are requesting relief, shall be accompanied by a proposed order. A copy of the proposed order shall be emailed to the Court at swaindprcorresp@nysd.uscourts.gov in Microsoft word format.

J. All communications filed in these Title III Cases that are informative and do not request any relief shall be labeled as an informative motion.

K. Counsel who have been admitted pursuant to a pro hac vice order in a Title III case shall be deemed admitted without further application for all adversary proceedings in connection with that Title III case and in all other jointly administered Title III cases. Notices of appearance must still be filed for each adversary proceeding.

II. Service

A. All Documents shall be served, in the manner described herein, on the following parties (collectively, the "Standard Parties"):

(i) Chambers of the Honorable Laura Taylor Swain (two copies shall be delivered to the chambers):

United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Suite No. 3212
New York, New York 10007-1312

(ii) Office of the United States Trustee for Region 21
Edificio Ochoa, 500 Tanca Street, Suite 301
San Juan, PR 00901-1922

(iii) Puerto Rico Fiscal Agency and Financial Advisory Authority (AAFAF):

Puerto Rico Fiscal Agency and Financial Advisory Authority
Roberto Sánchez Vilella (Minillas) Government Center
De Diego Ave. Stop 22
San Juan, Puerto Rico 00907
Attn: Gerardo J. Portela Franco
Mohammad Yassin, Esq.
E-Mail: Gerardo.Portela@aafaf.pr.gov
Mohammad.Yassin@aafaf.pr.gov

(iv) Counsel for AAFAF:

O'Melveny & Myers LLP
7 Times Square
New York, New York 10036
Attn: John J. Rapisardi, Esq.
Suzzanne Uhland, Esq.
Peter Friedman, Esq.
Diana M. Perez, Esq.
E-Mail: jrapisardi@omm.com
suhland@omm.com
pfriedman@omm.com
dperez@omm.com

Marini Pietrantoni Muñiz LLC
MCS Plaza, Suite 500
255 Ponce de León Ave.
San Juan, PR 00917
Attn: Luis C. Marini-Biaggi, Esq.
Carolina Velaz-Rivero Esq.
María T. Álvarez-Santos Esq.
E-Mail: lmarini@mpmlawpr.com
cvelaz@mpmlawpr.com
malvarez@mpmlawpr.com

(v) Counsel for AAFAF (PREPA):

Greenberg Traurig LLP
MetLife Building
200 Park Avenue
New York, New York 10166
Attn: Nancy A. Mitchell, Esq.
David D. Cleary, Esq.
Nathan A. Haynes, Esq.
Kevin D. Finger, Esq.
E-Mail: mitchelln@gtlaw.com
clearyd@gtlaw.com
haynesn@gtlaw.com
fingerk@gtlaw.com

Cancio, Nadal, Rivera & Díaz, P.S.C.
PO Box 364966
San Juan, PR 00936-4966
Attn: Arturo Diaz-Angueira, Esq.
Katiuska Bolaños-Lugo, Esq.
E-Mail: adiaz@cnrd.com
kbolanos@cnrd.com

(vi) Counsel for the Oversight Board:

Proskauer Rose LLP
Eleven Times Square
New York, New York 10036-8299
Attn: Martin J. Bienenstock
Paul V. Possinger
Ehud Barak
Maja Zerjal
E-Mail: mbienenstock@proskauer.com
ppossinger@proskauer.com
ebarak@proskauer.com
mzerjal@proskauer.com

O'Neill & Borges LLC
250 Muñoz Rivera Ave., Suite 800
San Juan, PR 00918-1813
Attn: Hermann D. Bauer, Esq.
E-Mail:
hermann.bauer@oneillborges.com

(vii) Counsel for the Creditors' Committee:

Paul Hastings LLP
200 Park Avenue
New York, New York 10166
Attn: Luc. A. Despins
James Bliss
James Worthington
G. Alexander Bongartz
E-Mail: lucdespins@paulhastings.com
jamesbliss@paulhastings.com
jamesworthington@paulhastings.com
alexbongartz@paulhastings.com

Casillas, Santiago & Torres LLC
El Caribe Office Building
53 Palmeras Street, Ste. 1601
San Juan, Puerto Rico 00901-2419
Attn: Juan J. Casillas Ayala
Diana M. Batlle-Barasorda
Alberto J. E. Añeses Negrón
Ericka C. Montull-Novoa
E-Mail: jcasillas@cstlawpr.com
dbatlle@cstlawpr.com
aaneses@cstlawpr.com
emontull@cstlawpr.com

(viii) Counsel for the Retiree Committee:

Jenner & Block LLP
919 Third Avenue
New York, New York 10022
Attn: Robert Gordon
Richard Levin
Catherine Steege
E-Mail: rgordon@jenner.com
rlevin@jenner.com
csteege@jenner.com

Bennazar, García & Milián, C.S.P.
Edificio Union Plaza PH-A piso 18
Avenida Ponce de León #416
Hato Rey, San Juan, Puerto Rico 00918
Attn: A.J. Bennazar-Zequeira
E-Mail: ajb@bennazar.org

(ix) The entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims in COFINA's Title III Case.

(x) Counsel to any other statutory committee appointed in these Title III Cases.

B. All paper and e-mail courtesy copies served on the Court shall include the applicable Case Management/Electronic Case Files ("CM/ECF") header information.

C. For purposes of service pursuant to Bankruptcy Rules 7004(b)(6), 7004(b)(9), and 7004(g), all service to the Debtors shall be made both to counsel to the Oversight Board and counsel to AAFAF, as listed above.

D. Any creditor or party in interest that wishes to receive notice in these Title III Cases and is not otherwise entitled to notice pursuant to the Case Management Procedures shall file a notice of appearance (a "Notice of Appearance") and request for service of papers in accordance with Bankruptcy Rules 2002 and 9010(b) and the Case Management Procedures. Any party that has previous filed a *pro hac vice* motion but not a Notice of Appearance should file a Notice of Appearance to ensure that such party receives notice of Documents filed in these Title III Cases. For purposes of these Title III Cases, creditors or parties in interest filing such Notices of Appearance shall be included in the CM/ECF system for noticing purposes and will be considered to have accepted, upon filing of such Notice of Appearance, to receive documents and notices through the CM/ECF system. Alternatively, if direct inclusion in the CM/ECF system is not possible, the filer of a Notice of Appearance shall be considered to have consented to receive electronic notices pursuant to Local Bankruptcy Rule 5005-4(g), unless the filing party complies with the certificate requirement set forth in the second paragraph of this Section II.D and the Court approves such certification.

The Notice of Appearance shall include the following: (i) the requesting party's name, address, and telephone number; (ii) the name and address of the requesting party's counsel, if any; (iii) the requesting party's email address for service by electronic transmission; (iv) the requesting party's address for service by U.S. mail, hand delivery, and/or overnight delivery; and (v) the requesting party's facsimile number for service by facsimile. Any creditor or party-in-interest that files a Notice of Appearance and request for service of papers in accordance with the Case Management Procedures shall

receive notice via electronic transmission. Any individual or entity that does not maintain and cannot practicably obtain an email address must include in its Notice of Appearance a certification stating the same and state the reasons why obtaining such email address is not feasible or unduly burdensome. Notice will be provided to these individuals or entities by U.S. mail, overnight delivery, or facsimile at the filing party's discretion. Notwithstanding Bankruptcy Rules 2002 and 9010(b), no request for service filed in these Title III Cases shall have any effect unless the foregoing requirements are satisfied.

E. The Claims and Noticing Agent shall maintain a master service list (the "Master Service List"), which shall include all persons and entities that have filed a Notice of Appearance pursuant to Bankruptcy Rules 2002 and 9010(b) and the Case Management Procedures (the "Rule 2002 Parties") and the Standard Parties. The Master Service List shall contain addresses, facsimile numbers, and email addresses. The Claims and Noticing Agent shall use reasonable efforts to update and post on its website the Master Service List as often as practicable, but in no event less frequently than every fifteen (15) days. The Master Service List and any updates thereto shall be filed electronically on the website of the United States Bankruptcy Court for the District of Puerto Rico, www.prb.uscourts.gov, and on the Case Website commencing as of the date that is no later than ten (10) days from the date hereof.

F. All Documents must be served, in the manner described herein, on the Master Service List and on any person or entity with a particularized interest in the subject matter of a certain Document (each, an "Affected Party"). Subject to Paragraph II.H, Documents filed in adversary proceedings are not required to be served on the Master Service List.

G. The proceedings with respect to which notice is limited to the Master Service List shall include all matters covered by Bankruptcy Rule 2002, with the express exception of the following: (a) notice of (i) the time fixed for filing proofs of claim pursuant to Bankruptcy Rule 3003(c) and (ii) the time fixed for filing objections to, and the hearings to consider, approval of a disclosure statement and plan; and (b) notice and transmittal of ballots for accepting or rejecting a plan, which notices shall be given in accordance with Bankruptcy Rule 2002 and other applicable Bankruptcy Rules, unless otherwise ordered by the Court or otherwise prescribed by the Bankruptcy Code.

H. Pleadings related to a compromise or settlement must be served on the Master Service List and any Affected Parties, but need not be served on all creditors.

I. Parties shall serve the Court and the U.S. Trustee by U.S. mail, overnight delivery, or hand delivery. Service of courtesy copies on the Court must be made promptly, and must be completed within one business day after filing for all papers relating to Urgent Motions, or where the papers relate to a hearing scheduled to be held within one week of the filing date. Parties may serve the Standard Parties and the Affected Parties, with the exception of the Court and the U.S. Trustee, via the CM/ECF system described in Section II.D, and no further notice shall be required on such Standard Parties and Affected Parties unless the Bankruptcy Rules, the Local District Court Rules, or Local Bankruptcy Rules require otherwise or the Court orders otherwise.

J. [RESERVED]

K. Parties shall be authorized to rely to the maximum extent possible on CM/ECF notice for all Documents on the Rule 2002 Parties. To the extent it is known that one or more Affected Party will not receive CM/ECF notice, there shall be an obligation on the moving party to ensure service by the most efficient and timely manner possible on such Affected Parties (including service by e-mail unless the Affected Party has included a certification on its Notice of Appearance that it does not maintain an e-mail address).

L. All Documents served by email shall include access to an attached file containing the entire Document, including the proposed form(s) of order and any exhibits, attachments and other relevant materials in PDF format, readable by Adobe Acrobat or an equivalent program. Notwithstanding the foregoing, if a Document cannot be annexed to an email (because of its size, technical difficulties or otherwise), the party serving the Document may, in its sole discretion: (i) serve the entire Document by U.S. mail or overnight delivery, including the proposed form(s) of order and any exhibits, attachments and other relevant materials or (ii) email the parties being served and include a notation that the Document cannot be annexed and will be (a) mailed if requested or (b) posted on the Case Website.

M. Service by email shall be effective as of the date the Document is sent to the email address provided by the party. If service is made by email, the Debtors shall not be required to serve a paper copy of the Document on interested parties and email service shall satisfy the Court's rules for service.

N. If a party entitled to notice of a Document does not have an email address or an email address is not available in the Master Service List, the party shall be served by U.S. mail, overnight delivery, facsimile, or hand delivery, the choice of the foregoing being in the sole discretion of the party who is required to serve.

O. Upon the completion of noticing any particular matter, the party seeking relief shall file with the Court within three (3) business days either an affidavit of service or a certification of service attaching the list of parties that received notice; provided, however, that parties shall not be required to serve the affidavits of service on such recipients.

P. Upon the request of a non-Debtor Movant for the Claims and Noticing Agent to serve Pleadings, and provided the Oversight Board as the instructing entity permits the Claims and Noticing Agent to serve such Pleadings, the Claims and Noticing Agent shall serve such Pleadings and bill the related service expense directly to the applicable non-Debtor movant.

III. Scheduling

A. The Debtors shall be authorized to schedule, in cooperation with the Court, periodic omnibus hearings (the "Omnibus Hearings") at which Pleadings shall be heard. Upon scheduling, the Claims and Noticing Agent shall post the date of the Omnibus Hearings

on the Case Website. The next Omnibus Hearings shall be scheduled for the following dates and times:[2]

- 9:30 a.m. on the 25th day of April, 2018;
- 9:30 a.m. on the 6th day of June, 2018;
- 9:30 a.m. on the 25th day of July, 2018;
- 9:30 a.m. on the 12th day of September, 2018;
- 9:30 a.m. on the 7th day of November, 2018;
- 9:30 a.m. on the 19th day of December, 2018;
- 9:30 a.m. on the 30th day of January, 2019;
- 9:30 a.m. on the 13th day of March, 2019; and
- 9:30 a.m. on the 24th day of April, 2019.

B. All Omnibus Hearings may be scheduled for two consecutive days, if needed.

C. Those in attendance in the main courtroom at any hearing shall refrain from wearing cologne or perfume.

D. Subject to consultation with Chambers via email to swaindprcorresp@nysd.uscourts.gov, hearings in connection with individual and omnibus claim objections, applications for professional compensation and reimbursement, pre-trial conferences, asset sales and trials related to adversary proceedings, approval of a disclosure statement, confirmation of a plan, and any other Pleading filed by the Debtors may be scheduled for dates other than the Omnibus Hearing dates; provided, however, that hearings in connection therewith may be scheduled on a non-Omnibus Hearing date only after consultation with counsel to the Oversight Board and counsel to the Debtors (which consultation shall occur as soon as practicable); provided, further, that initial pre-trial conferences scheduled in connection with adversary proceedings involving the Debtors shall be set on the next available Omnibus Hearing date that is at least 45 days after the filing of the complaint; unless the Court expedites the pre-trial conference; provided, further, that hearings on all other Pleadings, except for those Pleadings specifically referenced in this Paragraph III.D, filed by any party must be scheduled for an Omnibus Hearing except for a Pleading requiring emergency or expedited relief in accordance with these Case Management Procedures.

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[2] All hearing times are in Atlantic Standard Time.

E. Except for filings that have previously been authorized by the Court in response to an Urgent Motion establishing such scheduling, if a Document is filed by a party other than the Debtors and purports to set a hearing date inconsistent with the Case Management Procedures (an "Inconsistent Filing"), the hearing shall be scheduled without the necessity of Court order for the first Omnibus Hearing date after the applicable notice period has expired and all applicable deadlines shall be accordingly extended, and the Debtors shall provide such party with notice of the Case Management Procedures within three (3) business days of receipt of the Inconsistent Filing.

F. If a movant, applicant, or other party determines that a motion, application, or pre-trial conference requires emergency or expedited relief, the movant, applicant, or other party may, for good cause shown, seek an expedited hearing or pre-trial conference pursuant to Urgent Motion, and the Debtors and other parties in interest, as applicable, shall have the right to contest such request for expedition. All requests for emergency or expedited relief shall comply with the applicable Local Bankruptcy Rule.

G. If a Pleading seeks relief pursuant to Bankruptcy Rule 2002(a) or Bankruptcy Rule 2002(b), the hearing to consider such Pleading shall be set in accordance with the time period set forth in Bankruptcy Rules 2002(a) and (b) and 9006. For all other Pleadings, with the exception of Pleadings filed pursuant to the Presentment Procedures (as described below), Pleadings shall not be considered unless filed and served in accordance with the Case Management Procedures at least twenty-two (22) calendar days before the next applicable hearing date; provided, however, that nothing in the Case Management Procedures shall prejudice the right of any party to move the Court to request an enlargement or reduction of any time period under Bankruptcy Rules 9006(b) and (c).

H. Notwithstanding the immediately preceding paragraph, a party may present a proposed order addressing administrative matters for approval by the Court; provided, however, that the presentment of a proposed order for administrative relief must be filed and served at least seven (7) calendar days before the presentment date, and Objections thereto must be filed and served at least one (1) calendar day before presentment date (the "Presentment Procedures").

I. The deadline to file an Objection (the "Objection Deadline") to any Pleading shall be (i) 4:00 p.m. (Atlantic Standard Time) on the date that is fifteen (15) calendar days before the applicable hearing date or (ii) any date otherwise ordered by the Court. The Objection Deadline may be extended with the consent of the movant or applicant. If such an extension has been agreed upon, the parties need not file a stipulation or other pleading with the Court reflecting the extension; provided, however, that movant shall provide notice of the extension to Chambers by e-mail to swaindprcorresp@nysd.uscourts.gov. However, if an Objection Deadline was set by a separate scheduling order of the Court, any extension must be noticed by the filing of an informative motion. The Objection shall not be considered timely unless filed with the Court and received by the movant and the Standard Parties on or before the applicable Objection Deadline. All parties filing an Objection shall include their

telephone number, facsimile number, and email in the signature block on the last page of the Objection.

J. Unless the Court orders otherwise, if any Pleading, including a Stay Relief Motion (as defined below), is adjourned, the Objection Deadline with respect thereto shall be extended to 4:00 p.m. (Atlantic Standard Time) on the date that is fifteen (15) calendar days prior to the applicable hearing and all other applicable deadlines shall be likewise extended.

K. The deadline to file Replies, joinders to an Objection, or any Statement shall be (i) for all parties other than the Debtors and any statutory committee, 4:00 p.m. (Atlantic Standard Time) on the date that is eight (8) calendar days before the applicable hearing date, (ii) for the Debtors and any statutory committee, 4:00 p.m. (Atlantic Standard Time) on the date that is seven (7) calendar days before the applicable hearing date, or (iii) any date and time otherwise ordered by the Court.

L. Sur-replies shall not be permitted or considered unless authorized by the Court.

M. Two (2) business days before a scheduled hearing, the Debtors shall, after consultation via email with the Court, file with the Court an agenda (the "Agenda") setting forth each matter to be heard at the hearing (updated after the initial submission, if necessary) and shall serve the Agenda by email or facsimile on (i) the Standard Parties, (ii) the Rule 2002 Parties, and (iii) any party that filed Documents referenced in the Agenda; provided, however, that where the Debtors have less than 48 hours' notice of a hearing, the Debtors shall file an agenda only to the extent feasible.

N. The Agenda shall include, to the extent known by the Debtors: (i) the docket number and title of each matter scheduled to be heard at the hearing, including the initial filing and any Objections, Statements, Replies, or Documents related thereto; (ii) whether the matter is contested or uncontested; (iii) whether the matter has been settled or is proposed to be continued; (iv) the identification number of any proof(s) of claim(s) implicated in the Document; and (v) other comments that will assist the Court; provided, however, that the matters listed on the Agenda shall be limited to matters of substance and shall not include administrative filings such as notices of appearance and affidavits of service.

O. The Agenda may include notice of matters that have been consensually adjourned to a later hearing date in lieu of parties filing a separate notice of such adjournment.

P. In the event a matter is properly noticed for hearing and the parties reach an agreement to settle the dispute prior to the hearing, the parties may announce the settlement at the scheduled hearing; provided, however, that the parties shall notify the Court, the Office of the United States Trustee, counsel for the Oversight Board, as representative of the Debtors, and the Creditors' Committee of such agreement as soon as practicable prior to the hearing. In the event the Court determines that notice of the dispute and the hearing is adequate notice of the effects of the settlement (*i.e.*, that the terms of the settlement are not materially different from what parties in interest could have expected

if the dispute were fully litigated), the Court may approve the settlement at the hearing without further notice of the terms of the settlement. In the event the Court determines that additional or supplemental notice is required, the Debtors shall serve such notice in accordance with the Case Management Procedures and a hearing to consider such settlement shall be on the next hearing day deemed appropriate by the Court.

Q. Subject to Paragraphs III.F and III.T, at least fifteen (15) business days prior to filing a Stay Relief Motion to continue a prepetition ordinary course civil action against a Debtor other than PREPA, the movant shall contact counsel for the Oversight Board (Attn: Hermann Bauer (Hermann.Bauer@oneillborges.com) and Ubaldo M. Fernández Barrera (ubaldo.fernandez@oneillborges.com)) and counsel for AAFAF (Attn: Diana M. Perez (dperez@omm.com), Luis C. Marini-Biaggi (lmarini@mpmlawpr.com) and Carolina Velaz-Rivero (cvelaz@mpmlawpr.com)), and, for all Lift Stay Notices related to PREPA, the movant shall contact counsel for the Oversight Board (Attn: Hermann Bauer (Hermann.Bauer@oneillborges.com) and Ubaldo M. Fernández Barrera (ubaldo.fernandez@oneillborges.com)) and counsel for AAFAF (Attn: Kevin Finger (fingerk@gtlaw.com)) by electronic-mail to advise them of the movant's intent to seek relief from the automatic stay (the "Lift Stay Notice" and the notice period, the "Lift Stay Notice Period"). The Lift Stay Notice Period and the procedures set forth below shall not apply to Stay Relief Motions that are filed by creditors seeking to enforce a financial debt claim.

The Lift Stay Notice shall include (i) the identity of the movant and its contact information, (ii) the claim(s), lawsuit(s), or other proceeding(s) for which movant seeks relief from the automatic stay, including the relevant case number and court information, (iii) the amount of the claim(s) and the asserted causes of action, (iv) a brief description of the status of the underlying claim(s), lawsuit(s), or proceeding(s), and (v) cause as to why the stay should be lifted.

During the Lift Stay Notice Period, the Debtors and the movant shall meet and confer (in person or telephonically) to attempt to resolve, in whole or in part, the movant's request for relief from the automatic stay.

If (i) the Debtors disagree with the movant's request for relief from the automatic stay and/or (ii) the Lift Stay Notice Period expires without the parties reaching an agreement governing the scope of the relief from the automatic stay, then the movant may file a Stay Relief Motion pursuant to the Case Management Procedures. Such Stay Relief Motion must include a certification that the movant has met and conferred with the Debtors regarding the requested relief. If movant did not meet and confer with the Debtors prior to filing a Stay Relief Motion, and cannot show exigent circumstances for failing to meet and confer, the Court shall deny the Stay Relief Motion without prejudice until the movant has met and conferred with the Debtors.

The Debtors, in their discretion (subject to the Oversight Board's consent) and without immediate leave of Court, may (i) enter into stipulations modifying or lifting the automatic stay and (ii) agree to modify or lift the automatic stay with respect to any prepetition ordinary course civil action against a Debtor.

The Debtors shall file an omnibus motion, every sixty (60) days, identifying each automatic stay modification agreed to by the Debtors during the relevant period and seeking Court approval of such modifications *nunc pro tunc* to the relevant modification date (an "Omnibus Lift Stay Motion").

Each Omnibus Lift Stay Motion shall include personalized information for each automatic stay modification including, as applicable, a brief description of the modification, case information (including case number and court), and counterparty.

For the avoidance of doubt, nothing in this Paragraph III.Q prejudices the rights of a party to request the consideration of any Stay Relief Motion on an expedited basis, or the rights of the Debtors or any other party in interest to contest such request for expedited consideration.

R. Subject to Paragraphs III.F, III.S, and III.T, a motion for relief from the automatic stay (a "Stay Relief Motion") in accordance with Bankruptcy Code section 362 shall be noticed for consideration on the Omnibus Hearing Date that is at least 22 days after the Stay Relief Motion is filed and notice thereof is served upon counsel for the Oversight Board, as representative of the Debtors. Unless otherwise ordered by the Court, the Objection Deadline with respect thereto shall be the later to occur of (i) fifteen (15) calendar days after the date of filing and service of the Stay Relief Motion and (ii) eight (8) calendar days prior to the hearing scheduled with respect thereto; effectively, this means that the Objection Deadline will be eight (8) calendar days prior to the hearing scheduled with respect to the Stay Relief Motion, except in certain situations where an expedited hearing is scheduled with respect to the Stay Relief Motion. The movant may file and serve a reply four (4) calendar days prior to the hearing.

S. If a moving party notices a Stay Relief Motion for an Omnibus Hearing Date that falls on or after the thirtieth (30th) day after the filing of the Stay Relief Motion, or consents to the adjournment of an Omnibus Hearing to a date that falls on or after the thirtieth (30th) day after the filing of the Stay Relief Motion, the moving party shall be deemed to have consented to the continuation of the automatic stay in effect pending the conclusion of, or as a result of, a final hearing and determination under Bankruptcy Code section 362(d), and shall be deemed to have waived its right to assert the termination of the automatic stay under Bankruptcy Code section 362(e) with respect to that Stay Relief Motion. Any moving party shall be permitted to request an expedited hearing on its Stay Relief Motion, as provided in Paragraph III.F, and in that case, the moving party shall not be deemed to have waived its right to assert the termination of the automatic stay under Bankruptcy Code section 362(e); provided, however, that any expedited hearing granted in accordance with this paragraph shall be without prejudice to the right of the parties to request, and/or the Court to otherwise treat, such expedited hearing as a preliminary hearing in accordance with Bankruptcy Code section 362(e). For the avoidance of doubt, any hearing on a Stay Relief Motion shall be scheduled as a final hearing (which the Court may later treat as a preliminary hearing in the Court's discretion) unless the Affected Parties agree otherwise or the Court orders otherwise. A hearing on a Stay Relief Motion will take place only if an Objection is timely filed; if no Objection is timely filed, an order may be entered granting the relief requested.

T. Notwithstanding Paragraphs III.Q, III.R, and III.S, nothing in the foregoing paragraphs prejudices the rights of a party to request the expedited consideration of any motion seeking relief from stay, or the rights of the Debtors or any other party in interest to contest such request for expedited consideration.

U. If the date any Document would be due falls on a day other than a business day, such Document must be filed and served by the first business day preceding such date, except where the Document relates to a hearing scheduled to be held within one week of the filing date, in which event the Document must be filed on the calendar date it is due.

IV. Disclosure Requirements

A. Every group, committee and entity described in Federal Rule of Bankruptcy Procedure 2019(b)(1) (each, a "Rule 2019(b) Group") that, on or before August 9, 2017, has taken a position before the Court[3] must file a verified statement that complies with the disclosure requirements enumerated by Federal Rule of Bankruptcy Procedure 2019 by August 24, 2017 at 5:00 p.m. (Atlantic Standard Time). For the avoidance of doubt and for the purposes of these Title III cases, compliance with Bankruptcy Rule 2019 includes disclosure of: (i) all economic interests with respect to each Debtor in whose Title III case the group, committee and/or entity has taken a position, including derivative interests, and (ii) the existence and amount of any bond insurance or other credit protection, including by a monoline insurer.

B. A Rule 2019(b) Group that first takes a position before the Court or solicits votes regarding the confirmation of a plan on behalf of another after August 9, 2017, must file a verified statement compliant with Federal Rule of Bankruptcy Procedure 2019(c) within five (5) calendar days of taking such position before the Court or soliciting such votes. Federal Rule of Bankruptcy Procedure 9011(b) applies to attorneys filing such statements.

C. If any fact disclosed in the Rule 2019(b) Group's most recently filed statement (including, but not limited to, information concerning the composition of the Rule 2019(b) Group) changes materially, the Rule 2019(b) Group must file a supplemental verified statement contemporaneously with or within 48 hours after the next instance in which the Rule 2019(b) Group takes a position before the Court or solicits votes on the confirmation of a plan. Federal Rule of Bankruptcy Procedure 9011 applies to

[3] For the avoidance of doubt, the phrase "takes a position before the Court" includes, but is not limited to, the filing of any Pleading, including informative motion practice containing factual or legal representations or arguments.

attorneys filing such supplemental statements. The absence of such a supplemental statement shall be deemed a representation that no material changes have occurred.

V. Other Case Management Procedures

A. Nothing in the Procedures Order shall prejudice the rights of any party in interest to seek an amendment or waiver of the provisions of the Case Management Procedures upon a showing of good cause.

B. The Debtors may seek to amend the Case Management Procedures from time to time throughout these Title III Cases, and shall present such amendments to the Court by notice of presentment in accordance with the Case Management Procedures.

C. Within three (3) business days of entry of the Procedures Order or any amendment thereto, the Claims and Noticing Agent shall serve a printed copy of the relevant Procedures Order upon all parties on the Master Service List and post a copy of that Procedures Order on the Case Website.

D. The Court retains jurisdiction to hear and determine all matters arising from or relating to the implementation of the Procedures Order.

E. The Court retains power to provide notice of *sua sponte* amendments to the Case Management Procedures and/or Procedures Order.

Dated: April 4, 2018

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re: THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of THE COMMONWEALTH OF PUERTO RICO, *et al.*, Debtors.[1]	PROMESA Title III No. 17 BK 3283-LTS (Jointly Administered)

SECOND AMENDED ORDER SETTING PROCEDURES FOR INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS

Upon the *Joint Motion for Entry of an Order Further Amending the Interim Compensation Order* (the "**Motion**");[2] and the Court having found it has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a); and it appearing that venue is proper pursuant to PROMESA section 307(a); and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, and other parties in interest; and the Court having found that the Debtors provided adequate and appropriate notice of the Motion under the circumstances and that no other or further notice is required; and the Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before the Court (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and any objections to

[1] The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion and the Order Further Amending Case Management Procedures [Dkt. No. 2839] (the "**Case Management Procedures**").

the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is granted as set forth herein.

2. All Professionals in the Title III Cases may be paid interim payment of compensation and reimbursement of expenses in accordance with the following procedures (the "**Interim Compensation Procedures**"):

a. On or before the 15th day of each calendar month, or as soon as practicable thereafter, each Professional may serve a statement (a "**Monthly Fee Statement**") of compensation for services rendered and reimbursement of expenses incurred during any preceding month or months, by overnight mail or e-mail (in searchable pdf format) where applicable, on each of the following entities (collectively, the "**Notice Parties**"):

i. attorneys for the Oversight Board, Proskauer Rose LLP, Eleven Times Square, New York, NY 10036, Attn: Martin J. Bienenstock, Esq. (mbienenstock@proskauer.com) and Ehud Barak, Esq. (ebarak@proskauer.com), and Proskauer Rose LLP, 70 West Madison Street, Chicago, IL 60602, Attn: Paul V. Possinger, Esq. (ppossinger@proskauer.com);

ii. attorneys for the Oversight Board, O'Neill & Borges LLC, 250 Muñoz Rivera Ave., Suite 800, San Juan, PR 00918, Attn: Hermann D. Bauer, Esq. (hermann.bauer@oneillborges.com);

iii. attorneys for the Puerto Rico Fiscal Agency and Financial Advisory Authority, O'Melveny & Myers LLP, Times Square Tower, 7 Times Square, New York, NY 10036, Attn: John J. Rapisardi, Esq. (jrapisardi@omm.com), Suzzanne Uhland, Esq. (suhland@omm.com), and Diana M. Perez, Esq. (dperez@omm.com);

iv. attorneys for the Puerto Rico Fiscal Agency and Financial Advisory Authority, Marini Pietrantoni Muñiz LLC, MCS Plaza, Suite 500, 255 Ponce de León Ave, San Juan, PR 00917, Attn: Luis C. Marini-Biaggi, Esq. (lmarini@mpmlawpr.com) and Carolina Velaz-Rivero Esq. (cvelaz@mpmlawpr.com);

v. the Office of the United States Trustee for the District of Puerto Rico, Edificio Ochoa, 500 Tanca Street, Suite 301, San Juan, PR 00901 (re: *In re: Commonwealth of Puerto Rico*);

vi. attorneys for the Official Committee of Unsecured Creditors, Paul Hastings LLP, 200 Park Ave., New York, NY 10166, Attn: Luc. A Despins, Esq. (lucdespins@paulhastings.com);

vii. attorneys for the Official Committee of Unsecured Creditors, Casillas, Santiago & Torres LLC, El Caribe Office Building, 53 Palmeras Street, Ste. 1601, San Juan, PR 00901, Attn: Juan J. Casillas Ayala, Esq. (jcasillas@cstlawpr.com) and Alberto J.E. Añeses Negrón, Esq. (aaneses@cstlawpr.com);

viii. attorneys for the Official Committee of Retired Employees, Jenner & Block LLP, 919 Third Ave., New York, NY 10022, Attn: Robert Gordon, Esq. (rgordon@jenner.com) and Richard Levin, Esq. (rlevin@jenner.com), and Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654, Attn: Catherine Steege, Esq. (csteege@jenner.com) and Melissa Root, Esq. (mroot@jenner.com);

ix. attorneys for the Official Committee of Retired Employees, Bennazar, García & Milián, C.S.P., Edificio Union Plaza, PH-A, 416 Ave. Ponce de León, Hato Rey, PR 00918, Attn: A.J. Bennazar-Zequeira, Esq. (ajb@bennazar.org);

x. the Puerto Rico Department of Treasury, PO Box 9024140, San Juan, PR 00902-4140, Attn: Reylam Guerra Goderich, Deputy Assistant of Central Accounting (Reylam.Guerra@hacienda.pr.gov); Omar E. Rodríguez Pérez, CPA, Assistant Secretary of Central Accounting (Rodriguez.Omar@hacienda.pr.gov); Angel L. Pantoja Rodríguez, Deputy Assistant Secretary of Internal Revenue and Tax Policy (angel.pantoja@hacienda.pr.gov); Francisco Parés Alicea, Assistant Secretary of Internal Revenue and Tax Policy (francisco.pares@hacienda.pr.gov); and Francisco Peña Montañez, CPA, Assistant Secretary of the Treasury (Francisco.Pena@hacienda.pr.gov);

xi. counsel to any other statutory committee appointed;

xii. attorneys for the Fee Examiner, EDGE Legal Strategies, PSC, 252 Ponce de León Avenue, Citibank Tower, 12th Floor, San Juan, PR 00918, Attn: Eyck O. Lugo (elugo@edgelegalpr.com); and

xiii. attorneys for the Fee Examiner, Godfrey & Kahn, S.C., One East Main Street, Suite 500, Madison, WI 53703, Attn: Katherine Stadler (KStadler@gklaw.com).

b. Any Professional that fails to serve a Monthly Fee Statement for a particular month or months may subsequently serve a consolidated Monthly Fee Statement for such month or months. All Monthly Fee Statements shall comply with PROMESA and applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Puerto Rico (the "**Local Rules**").

c. In accordance with the procedures described in subparagraph (d) below, each Notice Party may file and serve upon the Professional that submitted the Monthly Fee Statement and the other Notice Parties, so as to be received on or before 4:00 p.m. (Atlantic Standard Time) on the 10th day (or the next business day if such day is not a business day) following service of the Monthly Fee Statement (the "**Objection Deadline**") any objection or reservation of rights to the requested fees and expenses. Upon expiration of the Objection Deadline, the Professionals that submitted a Monthly Fee Statement shall provide a statement (the "**Monthly Fee Objection Statement**") to the applicable Debtor(s) and the Puerto Rico Fiscal Agency and Financial Advisory Authority, providing the calculation of the fees and reimbursement requested, any amounts that were objected to, and the amount that should be paid after the holdback described further below. Upon receipt of the Monthly Fee Objection Statement, the Debtors in whose cases such Professionals are retained and/or employed shall promptly pay, and in no event pay later than fourteen (14) calendar days after receiving the Monthly Fee Objection Statement, the Professional an amount equal to the lesser of (i) 90% of the fees and 100% of the expenses requested in the applicable Monthly Fee Statement (the "**Maximum Monthly Payment**") or (ii) the Maximum Monthly Payment less 90% of the fee portion and 100% of the expense portion thereof subject to an objection (the "**Incremental Amount**") pursuant to subparagraph (d) below; provided that, in the case of Paul Hastings LLP, as counsel for the Official Committee of Unsecured Creditors, and Zolfo Cooper, LLC, as financial advisor to the Official Committee of Unsecured Creditors, the applicable Debtors shall promptly pay, and in no event pay later than fourteen (14) calendar days after receiving the Monthly Fee Objection Statement, 80% of the fees and 100% of the expenses requested in the applicable Monthly Fee Statement, but such 80% of fees or 100% of expenses shall not be paid with respect to such fees or expenses that are subject to an objection pursuant to subparagraph (d) below. The Fee Examiner (as defined below) may object to the Interim Fee Applications (as defined below) if not consensually resolved.

d. If any Notice Party wishes to object to a Professional's Monthly Fee Statement, it must (i) file a written objection (an "**Objection**") with the Court on or before the Objection Deadline and (ii) serve the Objection on the Professional that submitted the Monthly Fee Statement and each of the other Notice Parties, so it is received by each of these parties on or before the Objection Deadline. Thereafter, the objecting party and the affected Professional may attempt to resolve the Objection on a consensual basis. If the parties are unable to reach a resolution of the Objection, the affected Professional may either (i) file a request with the Court for payment of the fees and expenses subject to the Objection or (ii) forego payment of the Incremental Amount until the next interim or final fee application hearing, at which time the Court may consider and dispose of the Objection if requested by the parties. The failure of a Notice Party to file an Objection to a Professional's Monthly Fee Statement shall not preclude such party from filing an Objection to such Professional's Interim Fee Application pursuant to subparagraph (g) below.

e. Each Professional's initial Monthly Fee Statement shall cover the period from the Petition Date of the Commonwealth's Title III Case through the end of the full month preceding the filing date of the Monthly Fee Statement. Thereafter, Professionals may serve Monthly Fee Statements in the manner described above.

f. Consistent with PROMESA section 317, at four-month intervals (an "**Interim Fee Period**"), each of the Professionals may file with the Court and serve on the Notice Parties an application (an "**Interim Fee Application**") for interim Court approval and allowance of the payment of compensation and reimbursement of expenses sought by such Professional for the Interim Fee Period, including any holdback pursuant to PROMESA section 317. Each Interim Fee Application must include a brief description identifying the following:

   i. the Monthly Fee Statements subject to the request;

   ii. the amount of fees and expenses requested;

   iii. the amount of fees and expenses paid to date or subject to an Objection;

   iv. the deadline for parties to file Objections to the Interim Fee Application; and

   v. any other information requested by the Court or required by the Local Rules or the Fee Examiner in accordance with the order appointing the Fee Examiner [Dkt. No. 1416].

g. Objections, if any, to the Interim Fee Applications by any party other than the Fee Examiner shall be filed and served upon the Professional that filed the Interim Fee Application and the other Notice Parties so as to be received on or before the 20th day (or the next business day if such day is not a business day) following service of the applicable Interim Fee Application.

h. Requests by the Fee Examiner to adjourn the hearing on any Interim Fee Application (such Interim Fee Applications identified in the request, "**Adjourned Interim Fee Applications**," and the rescheduled hearing, the "**Adjourned Fee Hearing**"), if any, shall be filed and served upon the Professional that filed the Adjourned Interim Fee Application and the other Notice Parties so as to be received at least seven (7) calendar days prior to a scheduled hearing on interim fee applications. Objections by the Fee Examiner, if any, to any Adjourned Interim Fee Application shall be filed and served upon the Professional that filed the Adjourned Interim Fee Application and the other Notice Parties on or before fifteen (15) calendar days before the applicable Adjourned Fee Hearing pursuant to the Case Management Procedures.

i. Replies to objections to Interim Fee Applications, if any, may be submitted pursuant to the Case Management Procedures.

j. The Court shall schedule a hearing on Interim Fee Applications every four months pursuant to the schedule outlined below (an "**Interim Fee Hearing**"). The fee hearings may be held in conjunction with or separately from an Omnibus Hearing Date in the Court's discretion. If no Objections are timely filed, and if the Fee Examiner issues the Fee Examiner Report (defined below) recommending approval of the Interim Compensation Applications in full or in part, the Court may grant an Interim Fee Application without a hearing.

k. The Fee Examiner shall issue a letter report to each Professional listing and explaining each reduction to the Professional's fees and disbursements that the Fee Examiner recommends, and shall file a report at least seven calendar days before such hearing, which report shall disclose the consensual resolution with each Professional and each issue and amount not resolved (the "**Fee Examiner Report**").

l. The first Interim Fee Period shall cover the month in which the Petition Date of the Commonwealth's Title III Case occurred and the four full months immediately following such month. Accordingly, the first Interim Fee Period shall cover May 3, 2017, through September 30, 2017. Each Professional must file and serve its Interim Fee Application on or before the 45th day following the end of the applicable Interim Fee Period, with the exceptions outlined in the following schedule:

Fee Period	**First Interim** May 3, 2017 – September 30, 2017	**Second Interim** October 1, 2017 – January 31, 2018	**Third Interim** February 1, 2018 – May 31, 2018	**Fourth Interim** June 1, 2018 – September 30, 2018
End of Interim Compensation Period	September 30, 2017	January 31, 2018	May 31, 2018	September 30, 2018
Interim Fee Applications Due	December 15, 2017	March 19, 2018	July 16, 2018	November 16, 2018
Initial Letter Report to Retained Professionals	February 15, 2018	May 18, 2018	September 14, 2018	January 14, 2019
Final (Summary) Report Filed	February 28, 2018 (or 7 days prior to scheduled hearing date)	May 30, 2018 (or 7 days prior to scheduled hearing date)	October 31, 2018 (or 7 days prior to scheduled hearing date)	March 6, 2019 (or 7 days prior to scheduled hearing date)
Estimated Interim Fee Hearing Date	March 7, 2018 (Omnibus Hearing) or an earlier date as ordered by the Court	June 6, 2018 (Omnibus Hearing) or an earlier date as ordered by the Court	November 7, 2018 (Omnibus Hearing) or an earlier date as ordered by the Court	March 13, 2019 (Omnibus Hearing) or an earlier date as ordered by the Court

m. The pendency of an Objection to payment of compensation or reimbursement of expenses shall not disqualify a Professional from the future payment of

compensation or reimbursement of expenses under the First Amended Interim Compensation Procedures. Any Professional that fails to submit a Monthly Fee Statement or file an Interim Fee Application when due or permitted shall be ineligible to receive further interim payments of fees or reimbursement of expenses under the First Amended Interim Compensation Procedures until such time as a Monthly Fee Statement or Interim Fee Application is submitted by the Professional. There shall be no other penalties for failing to file a Monthly Fee Statement or an Interim Fee Application in a timely manner.

n. Payment and allowance of interim fees shall not bind any party in interest or the Court with respect to the final allowance of applications for payment of compensation and reimbursement of expenses of Professionals. All fees and expenses paid to Professionals under the Interim Compensation Procedures are subject to disgorgement until final allowance by the Court.

o. For all Professionals (except as otherwise agreed to by the Fee Examiner), any application made pursuant to PROMESA sections 316 and 317, shall be subject to Appendix A (non-attorney Professionals) or Appendix B (attorney-Professionals) of the U.S. Trustee's *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330 by Attorneys in Large Chapter 11 Cases Effective as of November 1, 2013* (the "**U.S. Trustee Guidelines**"), as applicable.

3. Notwithstanding anything to the contrary in this Order, this Order shall not apply to work of professionals that (a) was customarily required outside of the Title III Cases, excluding restructuring professionals who are performing legal, financial, or operational services for a Title III Debtor, but including, for the avoidance of doubt, professionals performing services related to the preparation of audited financial statements or (b) is related to post-Hurricane Maria services and is being billed in conformance with the Federal Emergency Management Agency's reimbursement guidelines and rules related thereto, and such professionals shall be exempt from the requirements of applying for Court approval of their fees and reimbursements that were customarily required outside Title III.

4. Each member of any statutory committee is permitted to submit statements of expenses (excluding third-party professional expenses of individual committee members) and supporting vouchers to the respective committee's counsel, which counsel shall collect and submit for reimbursement in accordance with the Interim Compensation Procedures.

5. Notice of interim and final fee applications is limited to (a) the Notice Parties (b) the Fee Examiner, and (c) all parties that have filed a notice of appearance with the Clerk of this Court, pursuant to Bankruptcy Rule 2002 and applicable provisions of the Local Rules, and requested such notice.

6. The Notice Parties and the Fee Examiner shall receive the Monthly Fee Statements, any Interim Fee Applications, any final fee applications, and any Hearing Notices, and all other parties entitled to notice pursuant to this Order shall only receive the Hearing Notices.

7. The amount of fees and disbursements sought shall be set out in U.S. dollars.

8. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

Compliance with Puerto Rico Law

9. Each Professional in the Title III Cases shall comply with Puerto Rico tax withholding law, to the extent applicable to such Professional.

10. Each Professional's written contract with its client regarding the services to be rendered in these Title III Cases shall be provided to the Department of Treasury by sending such contract to Reylam Guerra Goderich (Reylam.Guerra@hacienda.pr.gov) and Omar E. Rodríguez Pérez, CPA (Rodriguez.Omar@hacienda.pr.gov) and shall be published by the Department of Treasury on its web page; provided, however, that Professionals who are paid directly by a public corporation that is a Title III debtor, including the Puerto Rico Electric Power Authority, do not need to comply with the requirements of this paragraph. Any Professional without a written contract regarding the services to be rendered in these Title III Cases shall enter into one with its client and send it to the Department of Treasury within 30 days of this Order.

11. In addition to existing requirements under the guidelines set by the Fee Examiner and the U.S. Trustee Guidelines, all Monthly Fee Statements shall include the following:

a. A certification by the Professional stating the following:

"I hereby certify that no public servant of the Department of Treasury is a party to or has any interest in the gains or benefits derived from the contract that is the basis of this invoice. The only consideration for providing services under the contract is the payment agreed upon with the authorized representatives of [client]. The amount of this invoice is reasonable. The services were rendered and the corresponding payment has not been made. To the best of my knowledge, [professional] does not have any debts owed to the Government of Puerto Rico or its instrumentalities."

and

b. A certification from a principal responsible for the retention of the professional that authorizes the submission of the Monthly Fee Statement (a "**Principal Certification**").

With respect to Professionals paid directly by public corporations that are Title III debtors, including the Puerto Rico Electric Power Authority, the certification required by subsection (a) above shall substitute "no employee of the [applicable public corporation]," in place of "no public servant of the Department of Treasury."

12. Within 60 days of entry of this Order, all Professionals shall submit to the entity that pays such professional (the Department of Treasury or the applicable public corporation) a letter with a retroactive Principal Certification for all Monthly Fee Statements submitted through the date of this Order, to the extent such Monthly Fee Statements do not already include a statement substantially similar to the Principal Certification.

13. All Professionals shall segregate their invoices by Debtor and by whether the services were rendered in Puerto Rico or outside of Puerto Rico.

14. All Professionals shall submit to the Department of Treasury non-binding, confidential fee estimates for professional services to be rendered in the following fiscal years (from July 1 to June 30), which shall be detailed by each Debtor. Such fee estimates shall not be subject to review or approval by the Department of Treasury. With respect to Professionals paid directly by public corporations that are Title III debtors, including the Puerto Rico Electric Power Authority, such Professionals shall submit their fee estimates to the applicable public corporation.

Cooperation of Retained Professionals

15. This Order applies to all Professionals retained in these cases by the Debtors, the Government and AAFAF (as it relates to the Debtor entities in the Title III Cases), the Oversight Board (as representative of the Debtors), and the statutory committees, to the extent the Professionals render services in the Title III Cases.

16. Nothing alters or impairs the right of any party in interest in these cases to object to any applications subject to this Order.

17. Nothing herein is intended to, shall constitute, or shall be deemed to constitute the Oversight Board's consent, pursuant to PROMESA section 305, to this Court's interference with (a) any of the political or governmental powers of the Debtors, (b) any of the property or revenues of the Debtors, or (c) the use or enjoyment of the Debtors of any income-producing property.

18. The Debtors and the Oversight Board, as the Debtors' representative, are authorized to take all actions, and to execute all documents, necessary or appropriate, to effectuate the relief granted in this Order in accordance with the Motion.

19. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

20. This Order resolves Docket Entry No. 3133 in Case No. 17-3283.

SO ORDERED.

Dated: June 6, 2018

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:	
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	PROMESA Title III
as representative of	
THE COMMONWEALTH OF PUERTO RICO, *et al.*	No. 17 BK 3283-LTS (Jointly Administered)
Debtors.[1]	
In re:	
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	PROMESA Title III
as representative of	
PUERTO RICO ELECTRIC POWER AUTHORITY ("PREPA"),[2]	No. 17 BK 4780-LTS (Joint Administration Requested)
Debtor.	

[1] The Debtors in these title III cases, along with each Debtor's respective title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808).

[2] The last four (4) digits of PREPA's federal tax identification number are 3747.

ORDER PURSUANT
TO PROMESA SECTIONS 316 AND 317 AND
BANKRUPTCY CODE SECTION 105(A)
APPOINTING A FEE EXAMINER AND RELATED RELIEF

Upon the *Urgent Motion of the United States Trustee Pursuant to PROMESA Sections 316 and 317 and Bankruptcy Code Section 105(a) for Entry of Order Appointing a Fee Examiner and Related Relief* (the "Motion");[3] and the Court having found it has subject matter jurisdiction over this matter pursuant to PROMESA sections 306(a); and it appearing that venue is proper pursuant to PROMESA section 307(a); and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, and other parties in interest; and the Court having found that the United States Trustee provided adequate and appropriate notice of the Motion under the circumstances, including that the relief sought in the Motion is supported by good cause as contemplated by Bankruptcy Rule 9006, and that no other or further notice is required; and the Court having reviewed the Motion and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted as set forth herein.

[3] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion.

The Appointment of the Fee Examiner

2. Brady Williamson is hereby appointed to serve as Fee Examiner in the title III cases (and in all other title III cases filed by affiliates of the Debtors that are or become jointly administered with these title III cases, if any).

3. If the Fee Examiner position becomes vacant, the United States Trustee, after consultation with the Debtors and Statutory Committees, shall recommend a successor for appointment by the Court.

4. This Order applies to all professionals who will file Applications seeking compensation and expenses under PROMESA sections 316 and 317 in the title III cases (and in all other title III cases filed by affiliates of the Debtors that are or become jointly administered with these title III cases, if any) for services rendered in connection with the title III cases.

Responsibilities and Authority of the Fee Examiner

5. The Fee Examiner shall, among other things, review and report on, as appropriate, the Applications filed by the professionals.

6. The Fee Examiner is responsible for monitoring, reviewing, and assessing all Applications for compliance with:

a. The Motion;

b. PROMESA sections 316 and 317;

c. Rule 2016(a) of the Federal Rules of Bankruptcy Procedure;

d. The Local Bankruptcy Rules;

e. The Interim Compensation Order; and

f. U.S. Trustee Guidelines.

7. The Fee Examiner has the authority to:

a. Develop case-specific guidelines supplementing, but not in conflict with, the authorities listed above

b. Establish procedures to facilitate preparation and review of the Applications, including;

   i. the use of specific forms and billing codes;

   ii. the submission of Applications to the Fee Examiner by electronic mail contemporaneously with the filing of each Application; and

   iii. the submission to the Fee Examiner by electronic mail of the fee detail containing the time entries and the expense detail ("Fee Detail") in the LEDES electronic format (for law firms) or Excel spreadsheets (for all professionals other than law firms). The Fee Examiner and any professional submitting data in Excel will work together to ensure the Fee Detail contains all necessary information. Fee Detail should be submitted contemporaneously with the submission of each Application.

c. Establish procedures to resolve disputes with the professionals concerning the Applications, including:

   i. Communicating concerns to the professionals about their Applications and requesting further information as appropriate;

   ii. Presenting reports to the professionals of the Fee Examiner's review of Applications describing the Fee Examiner's concerns;

   iii. Providing a copy of the Fee Examiner's reports to the U.S. Trustee;

   iv. Negotiating with the professionals any concerns the Fee Examiner has concerning Applications; and

v. Resolving consensually any concerns the Fee Examiner has about Applications, subject to the Court's approval.

d. Request budgets and staffing plans from the professionals. Any budgets requested shall not limit the amount of fees or expenses that may be allowed or restrict the extent or scope of services that a professional may determine are necessary to fulfill professional responsibilities.

e. Appear and be heard on any matter before this Court or an appellate court regarding the Applications, including but not limited to:

i. Filing comments and summary reports with the Court on Applications;

ii. Objecting to Applications and litigating the objections;

iii. Conducting discovery, including filing and litigating discovery motions or objections; and

iv. Appealing, defending an appeal, or appearing in an appeal regarding an Application.

f. Retain professionals to represent or assist the Fee Examiner with his work under standards and procedures analogous to section 327 of the Bankruptcy Code and to have them compensated by the Debtors under standards and procedures analogous to those that apply to the professionals, including but not limited to PROMESA sections 316 and 317.

Cooperation of Retained Professionals

8. Professionals shall cooperate with the Fee Examiner in the discharge of his duties and shall promptly respond to requests from the Fee Examiner for information.

9. If a professional or its client provides privileged or work product information to the Fee Examiner and identifies the nature of such information to the Fee Examiner, the Fee Examiner shall treat such information as confidential. The disclosure of such information to the Fee Examiner shall not be deemed to be a waiver by the disclosing party of any applicable work product, attorney client, or other privilege.

Fee Examiner Compensation and Reimbursement of Expenses

10. The Fee Examiner shall be entitled to reasonable compensation, including reimbursement of reasonable, actual, and necessary expenses, from the Debtors. The Fee Examiner's compensation and reimbursement shall be subject retrospectively to Court approval under standards and procedures analogous to those that apply to the professionals.

11. The Fee Examiner shall file interim and final fee applications under standards and procedures analogous to sections 316 and 317 of PROMESA.

12. The Fee Examiner is required to keep reasonably detailed time records and submit them with any interim or final fee application along with a narrative summary of services rendered.

13. The Fee Examiner's compensation and terms of appointment attached as **Exhibit B** to the Motion are hereby approved.

Exculpation

14. The Fee Examiner shall be given the maximum immunity permitted by law from civil actions for all acts taken or omitted in the performance of his duties. In addition to such immunity, no action may be commenced against the Fee Examiner in connection with Fee Examiner matters except in this Court and only with the prior approval of this Court, which retains exclusive jurisdiction.

Reservations of Rights and Jurisdiction

15. Nothing in this Order shall alter or impair the right of the United States Trustee or any party in interest to object to Applications subject to this Order. Nothing in this Order shall alter or modify prior orders governing the retention of professionals.

16. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

17. This Order resolves docket entry nos. 1296 and 1306 (17-3283); and docket entry nos. 297 and 302 (17-4780).

SO ORDERED.

Dated: October 6, 2017

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge