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US Trustee Stands By Changes To Ch. 11 Fee Guidelines

By Hilary Russ

Law360, New York (February 08, 2012, 8:28 PM ET) -- The U.S. Trustee Program defended itself Tuesday from a barrage of criticism from top law firms and others who say proposed updates to the Chapter 11 billing guidelines threaten to create administrative, financial and ethical problems for bankruptcy attorneys.

"Written comments from many of the largest law firms reflect the view that the current system for reviewing attorneys' fees does not require reform," Jane Limprecht, a spokeswoman for the government, told Law360 in an email. "The [U.S. Trustee] disagrees and believes current fee applications do not provide sufficient information to allow the court and others to evaluate whether law firms are charging premium fees — that is, fees that are above those charged in nonbankruptcy cases and that are not allowable under the Bankruptcy Code."

Limprecht also said the U.S. Trustee's office was reviewing more than 20 comments on the new guidelines that it had received before the Jan. 31 cutoff date for public comments. The office first proposed the updates for Chapter 11 fee applications in major corporate cases — the first such changes in 15 years — in November.

The U.S. Trustee's office, as a watchdog over bankruptcy cases, already has the ability to review fee applications, and the courts must ultimately approve attorneys' fees. The proposed guidelines lay out six main areas of focus, including the submission of data electronically and the use of budgets to help guide work.

But more than 100 law firms around the country signed off on comments criticizing some provisions of the planned changes.

Some — including Marcia Goldstein, chair of the business restructuring practice at Weil Gotshal & Manges LLP, which represents Lehman Brothers Holdings Inc. as debtors counsel in the biggest bankruptcy in U.S. history — also wrote their own letters to the U.S. Trustee's office expressing concern about the guidelines.

Overall, attorneys say the rules will cause real headaches — including one provision that creates 480 subcategories to describe a particular task on a bill — and force them to possibly disclose privileged attorney-client or confidential business information.

Another thorny proposition calls for bankruptcy lawyers to disclose on their fee applications a host of different information about their rates. Not only must they lay out their usual rates for bankruptcy matters, but also their highest, lowest and average rates billed for private nonbankruptcy matters over the preceding year.

The moves are aimed in part at increasing transparency and boosting the public's confidence in the bankruptcy system amid the perception that lawyers have gotten rich off the suffering of companies and their creditors.

While many of those who submitted comments applauded the U.S. Trustee's goals of transparency and cost savings, as well as its thoughtful approach in revising the rules, they still disagreed with the resulting proposed revisions.

"[T]he proposed guidelines could end up unintentionally undermining their own stated goals, as well as the overall bankruptcy process, by inadvertently harming clients and impairing the ability of estate-retained professionals to adequately represent their clients, thus potentially leading professionals to forego representations of debtors and statutory committees in favor of work that carries less administrative burden and risk," the New York City Bar Association's bankruptcy and reorganization committee said in its public comments.

The American College of Bankruptcy also criticized various elements of the new rules, as did members of a working group at the American Bar Association, who were tasked in December with studying the guidelines.

Some law firms called for a series of meetings with officials in order to discuss their concerns about potential problems with the new guidelines, which the U.S. Trustee still hasn't finalized.

The office said Tuesday that it would "try to accommodate requests for additional meetings from those interested in providing concrete and constructive suggestions on how to improve the guidelines," according to Limprecht.

She also said officials from the agency, including Director Clifford J. White, had previously met with lawyers and other professionals before they even drafted the guidelines in order to get their input.

--Editing by Elizabeth Bowen.