

U.S. Department of Justice

United States Trustee Program



FY 2023 Performance Budget
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I. Overview of the United States Trustee Program

A. Introduction

The United States Trustee Program (USTP or Program) is a litigating component of the Department of Justice (Department or DOJ) whose mission is to promote the integrity and efficiency of the nation’s bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the American public. The USTP has standing to participate in every bankruptcy case in the 88 federal judicial districts under its jurisdiction¹ and oversees about one million ongoing bankruptcy cases annually.

As the statutory “watchdog” of the bankruptcy system,² the USTP is the only national enforcement agency that can identify and marshal resources against significant fraud, abuse, and emerging threats to the integrity of the bankruptcy system. The Program’s activities encompass a wide range of administrative, regulatory and enforcement functions, including the appointment and oversight of more than 1,100 private trustees who administer cases filed under chapters 7, 12, and 13 and distribute billions of dollars annually; and the appointment and oversight of chapter 11 subchapter V trustees appointed under the provisions of the Small Business Reorganization Act of 2019 (SBRA), Pub. L. 116-54.³ The USTP protects the interests of all stakeholders in the bankruptcy process by advocating for strict, equitable compliance with the law, addressing violations by debtors, creditors, and professionals alike. Over the past year, the Program’s efforts have advanced equity for stakeholders in a number of high-profile large chapter 11 reorganization cases, including in a nationally significant case for a debtor involved in the national opioid crisis.

For Fiscal Year (FY) 2023, the USTP is requesting \$260,277,000 for 1,105 direct positions (431 attorneys) and 1,092 direct full-time equivalent employees (FTEs).⁴ The FY 2023 request builds on the FY 2022 President’s Budget, which included 75 additional positions to address workload increases due to a quarter decline in staffing over the past decade and an anticipated increase in bankruptcy filings as government relief measures related to the COVID-19 pandemic are phased out. In addition, the FY 2023 request also includes \$392,000 to support the USTP’s criminal enforcement activities to address fraud and abuse in the bankruptcy system including initiatives against schemes targeting vulnerable and disadvantaged populations. The overall funding will be critical to supporting the USTP’s activities which require an appropriate level of base budgetary resources for staffing and importantly, the cost of operations in FY 2023 and beyond, as discussed further on page 14.

¹ The USTP has jurisdiction in all federal judicial districts except those in Alabama and North Carolina where bankruptcy court officials called Bankruptcy Administrators perform a similar function to that of the USTP.

² See 28 U.S.C. § 586(a)(3); see also H.R. Rep. No. 95-595, at 99 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6049. U.S. Trustees “serve as bankruptcy watchdogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena.”

³ Subchapter V of chapter 11 was created under the SBRA and became effective February 19, 2020. From the February 2020 subchapter V effective date through September 30, 2021, the USTP appointed over 200 different trustees to serve in approximately 2,800 subchapter V cases.

⁴ The USTP is also requesting one reimbursable position.

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The USTP is funded solely through appropriations that are offset by a portion of filing fees paid by all debtors as well as quarterly fees paid by chapter 11 debtors (excluding subchapter V debtors) that are deposited into the United States Trustee System Fund (U.S. Trustee System Fund or Fund). With the January 2021 enactment of the Bankruptcy Administration Improvement Act of 2020, Pub. L. No. 116-325 (BAIA), which amended the quarterly fee structure through December 31, 2026, the Program anticipates that appropriations will be fully offset by fee collections, interest earned on deposits to the Fund and the Fund balance through FY 2025. The USTP and the Department are, however, defending against constitutional challenges to a preceding amendment to the quarterly fee structure, the outcome of which could impact the balance of the Fund and appropriation offsets. For more information, please see section I.F. on page 17.

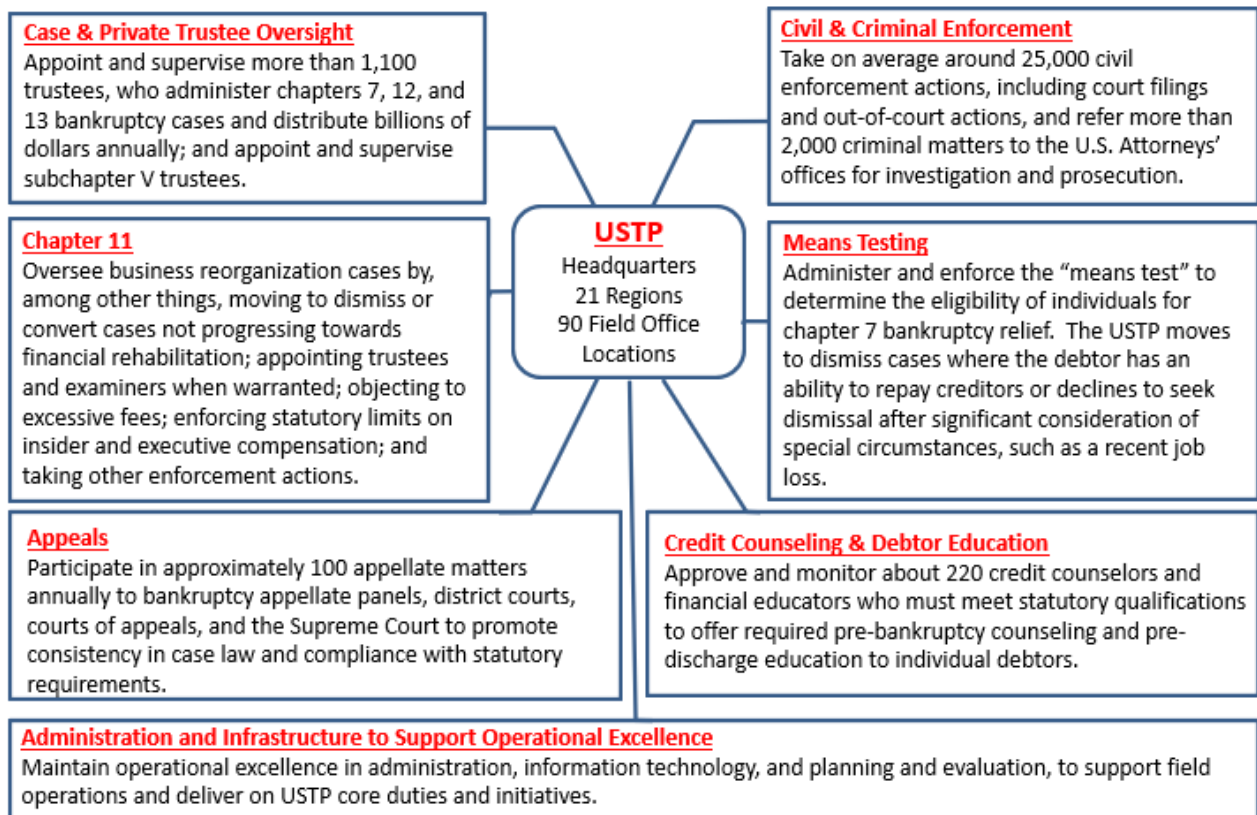
Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet at <https://www.justice.gov/doj/budget-and-performance>

B. Core Duties and Recent Activities

The USTP’s activities are extensive as discussed in the subsequent sections. Mission execution is enabled by the Program’s geographic structure. With guidance from the USTP’s Executive Office at the headquarters level, field staff address local issues in a consistent manner across the Program while headquarters and field resources can be strategically aggregated to target system-wide multi-jurisdictional violations.

The nation’s bankruptcy laws are premised on the notion that honest but unfortunate consumer debtors should be able to receive a fresh start and return to becoming economically productive members of society, and business debtors should be provided a breathing spell to reorganize their debts and operations to become profitable, job-creating enterprises.

1. Core Duties



2. Recent Activities and Current Focus Areas

Below are some of the Program's recent activities and current focus areas.

- a. Illegal Third-Party Releases in Chapter 11 Cases.** In the past year, the USTP has devoted significant resources to addressing non-consensual, non-debtor third-party releases in reorganization plans for bankruptcy cases. Several of these cases have been widely covered in the media including the high-profile case for a pharmaceutical company involved in the national opioid crisis. In a victory of national significance, the USTP obtained a reversal of a plan confirmation order approving broad third-party releases that would have shielded the company's founding family of owners and others from any civil liability for their role in the crisis even though they were not bankruptcy debtors. The ruling agreed with the USTP that the Bankruptcy Code does not allow such releases and the bankruptcy court that awarded them lacked constitutional authority to do so. Non-debtor releases prevent all creditors, including those who did not consent to the releases, from suing the released parties. The USTP has also taken the position that such releases violate due process and has taken a narrow view of the authority of the bankruptcy courts to approve them. Circuit courts are split on this issue, with two circuits holding that not even consensual releases approved by all creditors are permitted. In the bankruptcy case, the USTP and the Department carefully weighed the legal issues surrounding the reorganization plan, which released potentially hundreds of individuals and entities related to the founding family from liability to thousands of opioid victims and their survivors. The Program coordinated with multiple state Attorneys General who also objected to the plan (many state Attorney Generals did not object) as well as Department leadership and other components in drafting numerous legal briefs related to the appeal of the court's decision. The debtor has appealed the decision to the circuit court, and the case is ongoing. Beyond the USTP's current caseload, the Program will continue to uphold its duty to pursue similar actions in other cases, where appropriate.
- b. Criminal and Civil Enforcement.** Bankruptcy cases may involve conduct that violates both civil and criminal laws. The USTP pursues available civil enforcement remedies to address fraud and abuse issues and refers alleged wrongdoers, as required by statute, to the United States Attorneys and other law enforcement partners for potential criminal prosecution. For example, in a recent case, the District Court for the Middle District of Tennessee sentenced a former stockbroker and bankruptcy debtor to 29 months of imprisonment and ordered restitution in the amount of \$1.5 million after he pled guilty to one count of wire fraud and one count of securities fraud. The U.S. Trustee's Atlanta office had previously filed a four-count adversary complaint against the debtor, alleging that from February 2013 to late August 2016, he converted more than \$1.6 million in funds belonging to an elderly widow and then lied about his use of the funds in both his bankruptcy schedules and at his section 341 meeting of creditors. The Bankruptcy Court granted summary judgment in favor of the U.S. Trustee, denying the debtor's discharge and preventing the discharge of \$1.5 million of unsecured debt. The U.S. Trustee's Atlanta office assisted with the criminal prosecution in the Middle District of Tennessee

by providing extensive documentation of the debtor's criminal conduct to the U.S. Attorney. The SEC also brought a civil enforcement action against the debtor, resulting in a fraud judgment and an order permanently barring him from the securities industry. For more information on the USTP's criminal enforcement activities and the request for additional supporting resources, please see pages 32 and 47 respectively.

- c. **Subchapter V of Chapter 11 (SBRA) of Chapter 11 of the Code.** The USTP continues to devote considerable recurring base resources to executing program duties imposed by the SBRA as well as continuing duties now subject to shortened deadlines under the law. The law, enacted in August 2019, ushered in substantial changes to bankruptcy law and practice by creating a new subchapter V through which small business owners could file. The streamlined processes of the new subchapter provide a more efficient and economical path to reorganization for eligible debtors under the statute.⁵ Unlike with most chapter 11 cases, trustees must be appointed by the USTP in every subchapter V case whose primary function is to evaluate the viability of a debtor's business and facilitate the development of a consensual plan of reorganization. This requires Program staff to review each subchapter V case filed to select and appoint the most appropriately skilled trustee from the pool of about 250 Program-vetted candidates. After the trustee appointment, the USTP must closely evaluate and monitor each subchapter V filing. For example, to ensure the statutory objectives of the law are met, Program staff must ensure that debtors meet the eligibility requirements under the SBRA. This includes making sure debtors do not exceed relevant debt limits, were engaged in business at filing, have primarily business debts, are not single asset real estate debtors, and are not publicly traded entities or affiliates of such entities. In some cases, this has required reviewing documentation from debtors and in others, litigating the issues as well. In addition, the Program devotes significant resources towards ensuring that cases meet the statutory voting requirements that determine if plans are consensual or non-consensual.

By all current measures, it appears that the SBRA is working as Congress intended. Approximately three quarters of chapter 11 small business filers have been proceeding under the subchapter since it went into effect in February 2020, with 2,800 cases recorded through the end of September 2021, including those amended into the subchapter after filing. Median confirmation times to date have been approximately four months faster for subchapter V cases than for chapter 11 small businesses not electing subchapter V treatment and approximately two-thirds of confirmed subchapter V plans have been consensual plans. Based on results from FY 2020 filings, subchapter V cases are confirming plans at approximately double the percentage, while being dismissed at approximately half the percentage, of chapter 11 small business cases historically. The USTP remains dedicated to supporting the law in FY 2023 and beyond.

⁵ The SBRA is applicable to small business debtors that meet the statutory debt limitations but excludes single-asset real estate debtors. The SBRA set the debt limit at \$2.7 million, which was increased under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, to \$7.5 million. The COVID-19 Bankruptcy Relief Extension Act of 2021, H.R. 1651, extended the ability to file under the higher debt limit through March 26, 2022.

- d. Conflicts of Interest in Chapter 11 Business Reorganization Cases.** The USTP rigorously reviews applications to retain professionals in chapter 11 cases to ensure the adequate disclosure of connections and the absence of disqualifying conflicts of interest. In the past three years, the USTP has reached three separate significant settlements that highlight its efforts to address such issues. In February 2019, the USTP entered into a \$15 million, multi-district settlement agreement with one of the largest global consulting firms. This settlement was one of the highest repayments made by a bankruptcy professional for alleged non-compliance with disclosure rules and resolved disputes over the adequacy of the firm’s disclosures of connections in three chapter 11 bankruptcy cases. In December 2020, the USTP reached another settlement with the same firm related to its renewed application to be retained in one of the cases involved in the earlier settlement. The USTP again objected to the adequacy of the firm’s disclosures for the new retention application. Under the terms of the settlement,⁶ the firm withdrew its employment application and, as a result, agreed to forego recovery of any fees in connection with services it had already rendered in the case that would otherwise be subject to review and approval of the court. Although the total amount of fees that would have been waived is unknown, the firm rendered services throughout the case and likely would have sought approval for, and reimbursement of, millions of dollars in fees and expenses. Moreover, for the first time, the firm agreed that it would disclose all affiliate connections and all confidential client connections in any bankruptcy case in which it seeks to be retained in the future, unless the bankruptcy court orders otherwise.

Further, in April 2021, the USTP reached a settlement with three law firms representing debtors in the previously discussed pharmaceutical bankruptcy case (please see page 6) in which they agreed to relinquish \$1 million in fees earned and were required to supplement their prior disclosures so the court and other parties could make a determination as to their sufficiency. The firms had failed to adequately disclose a Joint Defense and Common Interest Agreement between the debtor and its founding family of owners which created obligations for the three firms to the founding family in defending against hundreds of opioid lawsuits involving potentially billions of dollars in liabilities. During the course of the case, the debtor invoked the agreement to avoid turning over documents to the official committee of unsecured creditors as it conducted its review of the debtor’s conduct.

- e. Other Large Chapter 11 Case Issues.** Overall chapter 11 filings by large public companies, including mega-cases, more than doubled during calendar year 2020 and reached their highest level since the 2008 Great Recession (Great Recession) potentially due to the impact of the pandemic.⁷ Such cases typically require significant USTP

⁶ While the settlement resolves any actions that could be brought by the USTP for the firm’s inadequate disclosures in the case, it does not impact the rights of other third parties, including any parties or government agencies not participating in the settlement. The settlement, as with the prior settlement, is limited to resolving the firm’s disclosure deficiencies and does not address nor resolve, among other things, claims relating to actual or potential conflicts of interest.

⁷ “Mega cases” often refer to cases with \$50 million or more in liabilities; many involve public companies and businesses with billions of dollars in assets and liabilities.

resources, and many of the proceedings for these cases continue in court for two to three years, or even longer. The complexity of such cases is driven by the amount of a debtor's assets and liabilities, number of creditors, nature of claims, and legal issues that could have a system-wide impact. The USTP carries out a wide range of statutory responsibilities in both the initial and ongoing stages of such cases, which can involve hundreds of millions to billions in liabilities and require numerous court appearances. These responsibilities are often executed by leveraging field and headquarters resources. Further, the Program may deploy chapter 11 "strike teams" when necessary, which include experienced chapter 11 Program attorneys from field offices around the country who assist with drafting pleadings and litigating issues as well as coordinate between regional offices and the Program's Executive Office. These combined approaches enable the USTP to consistently enforce and litigate issues across cases in a consistent manner, no matter the location of the filing. In recent years, the Southern District of Texas has become one of the traditional venues for mega cases, requiring additional USTP resources. Other jurisdictions however, outside of this venue as well as the Southern District of New York and the District of Delaware, also receive complex cases from time to time. For example, a highly publicized case for a large national advocacy group, filed in the Northern District of Texas in January 2021, exemplifies the success of the Program's overall approach to large cases and underscores the need for appropriately experienced staff across the USTP's workforce. The case was ultimately dismissed by the court based on bad faith following an uncontroverted trial testimony that established past and ongoing financial irregularities as well as secrecy surrounding the bankruptcy filing. The USTP played a critical role in the case that included the filing of a statement that analyzed the legal aspects of requests from various stakeholders including the New York Attorney General, a former vendor, a group of board members as well as an unsecured creditors' committee with vendors so intertwined with the organization's leadership that they could not act as fiduciaries for the larger creditor body. The requests ranged from the dismissal of the case to the appointment of a trustee or an examiner with expanded powers. In addition, the unsecured creditors' committee together with the debtor advocated for the appointment of a chief restructuring officer to which the Program separately objected. The USTP's actions in the case to avoid non-bankruptcy public policy issues while remaining focused on bankruptcy law was lauded.

- f. Violations by Consumer Debtor Attorneys and Debt Relief Agencies.** The USTP's efforts to address misconduct by attorneys and debt relief agencies build upon traditional enforcement activities. At a local level, the Program takes action against consumer debtor attorneys employing deceptive fee arrangements or engaging in other misconduct that violates bankruptcy law and harms those attorneys' clients. On a national level, the Program is addressing the special problems created by national consumer bankruptcy law firms whose system-wide violations create widespread, multi-jurisdictional issues. The USTP has successfully litigated and obtained favorable court decisions in several cases addressing misconduct in multiple districts. Though some of those cases are on appeal, the USTP has reached substantial settlements with some violators. More recently, the Program entered into a settlement with a national consumer bankruptcy law firm that

provided more than \$300,000 in relief to hundreds of consumers based in Montana and imposes a six-year practice ban on the firm in the state. Moreover, as a result of dozens of USTP actions filed since 2016 across multiple jurisdictions, the firm has paid or been ordered to pay almost \$900,000 in monetary relief, including returning fees to over 500 impacted consumers and paying court-ordered sanctions, attorney's fees, and costs. Additionally, bankruptcy courts have imposed practice bans on the firm in at least four jurisdictions.

- g. Debtor Fraud and Abuse.** The USTP combats debtor fraud and abuse primarily by seeking the following relief: dismissal of consumer cases when a debtor has an ability to repay debts under the means test or is found abusive under a bad faith or totality of the circumstances standard; dismissal of business cases when the debtor fails to file reports or show evidence of financial rehabilitation; appointment of an independent trustee to displace inadequate management in business reorganization cases; and denial of discharge for the concealment of assets and other misconduct. In FY 2021, the USTP took nearly 10,000 formal and informal actions to address fraud and abuse by consumer debtors seeking chapter 7 relief, with a total potential monetary impact of over \$430 million. Additionally, the Program filed almost 1,200 motions to convert or dismiss chapter 11 business cases because they were not progressing toward financial rehabilitation.
- h. Appellate Efforts.** One of the most important roles the USTP plays is to identify and raise issues for review on appeal, thereby ensuring the law is shaped, interpreted, and applied evenly in all judicial districts. In support of this effort, in FY 2021, the USTP participated in 100 new appellate matters that included six cases before the Supreme Court (Court), 24 appeals to the United States courts of appeals, and 70 appeals before district courts and bankruptcy appellate panels. The USTP's position prevailed in 89 percent of the appeals decided in FY 2021. Ongoing efforts include the Program's work to address significant court challenges to the USTP's quarterly fee structure as amended by the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72. The law adjusted the calculation of quarterly fees for the largest chapter 11 debtors for the calendar quarters beginning January 1, 2018 through March 31, 2021. Litigants argue, among other things, that the 2017 law is unconstitutional because the Judicial Conference mandated the collection of the increased fees in the bankruptcy administrator districts (North Carolina and Alabama, districts not in the USTP's jurisdiction) only as of October 2018, in cases filed on or after that date. The date is nine months after the USTP began collecting the increased fees in all open cases in its districts. The Department and the USTP are defending against these and other challenges, which also variously allege retroactivity, due process, and takings violations. The USTP has prevailed in most of these cases in which challenges have been brought in court, although most of those are on appeal. To date, the Fourth and Fifth circuits have rejected constitutional challenges, *see Hobbs v. Buffets, L.L.C. (In re Buffets, L.L.C.)*, 979 F.3d 366 (5th Cir. 2020) (rejecting uniformity, retroactivity, due process, and takings challenges) and *Siegel v. Fitzgerald (In re Circuit City Stores, Inc.)*, 996 F.3d 156 (4th Cir. 2021) (rejecting uniformity, retroactivity, and

due process challenges). The Second Circuit and Tenth Circuits, however, have found the statute to be unconstitutionally non-uniform, *see Clinton Nurseries, Inc. v. Harrington (In re Clinton Nurseries, Inc.)*, 998 F.3d 56 (2nd Cir. 2021), and *John Q. Hammons Fall 2006 LLC v. U.S. Trustee (In re John Q. Hammons Fall 2006 LLC)*, 15 F.4th 1011 (10th Cir. 2021) respectively. In January 2022, the Supreme Court accepted a request by the liquidating trustee in *Siegel* to review the Fourth Circuit's ruling, including the uniformity issue, which was supported by the Solicitor General. The Court may hear arguments and issue a ruling by the end of FY 2022. The Second and Tenth Circuit rulings are also before the Court. If an adverse ruling is reached by the Court following their review of the Fourth Circuit ruling, the balance of the U.S. Trustee System Fund could be depleted. Also in January 2022, the USTP prevailed in a case at the Eleventh Circuit which addressed the issue of uniformity, *see U.S. Trustee v. Bast Amron LLP (In re Mosaic Management Group, Inc.)*, 22 F.4th 1291 (11th Cir. 2022). A concurring opinion in the case discussed the proper remedy for a constitutional violation. Rather than require refunds of fees collected in the USTP districts, the concurring opinion would require the Judicial Conference to apply higher fees in the six bankruptcy administrator districts.

- i. **Creditor Abuse.** In FY 2021, the USTP announced agreements with three mortgage servicers that provide more than \$74 million in remediation to homeowners in bankruptcy. The agreements with Nationstar Mortgage, LLC, U.S. Bank National Association, and PNC Bank, NA, address noncompliance with the Bankruptcy Code and Rules that impacted more than 60,000 accounts of borrowers in bankruptcy dating back to 2011. The servicers' noncompliance resulted in various errors and deficiencies, including payment application errors; inaccurate, missing, and untimely filings in bankruptcy cases; and/or delayed escrow statements. The agreements require the servicers to implement improvements in their bankruptcy operations to ensure that the errors do not recur. These are the latest of 14 USTP national settlements with mortgage servicers and follow a FY 2019 agreement with Ditech Financial LLC that memorialized approximately \$35 million in remediation to more than 20,000 homeowners for violations of the Bankruptcy Code and Rules.
- j. **Ensuring Post-Pandemic Accessibility for Section 341 Meetings.** One of the USTP's first actions in response to the COVID-19 pandemic public health concerns was a pivot to an exclusively virtual format for section 341 meetings. These meetings are mandatory administrative proceedings in the bankruptcy process in which each debtor must appear and testify under oath. They are generally the only formal bankruptcy proceeding most debtors ever participate in. The Program's mandate eliminated the need for large numbers of debtors, creditors, professionals and other parties to gather in a crowded meeting room. Based on the Program's experience thus far, the flexibilities provided by virtual meetings place fewer burdens on debtors who do not, among other things, have to take critical time off from work to participate and result in greater creditor participation. The Program also learned that teleconference calls are not a perfect substitute for in-person meetings given the critical fact-finding role of such proceedings. Consequently,

the Program began phasing in a greater use of videoconferencing technologies which can, among other things, better convey the solemnity of the bankruptcy process and enable easier questioning and documentation review. The Program has since moved to accommodate virtual meetings on a permanent basis and issued comprehensive guidance to support the change. To promote consistent procedures, the guidance, among other things, outlines how trustees should conduct the meetings and provides criteria for determining when meetings must be initially conducted or continued in-person.

- k. Diversity and Inclusion Initiatives for Private Bankruptcy Trustees.** Leveraging resources from the USTP’s Diversity and Inclusion Working Group as well as other Program and Department staff, the USTP is working towards increasing diversity and inclusion across the more than 1,100 private bankruptcy trustees it recruits, appoints and oversees for chapters 7, 12 and 13 and the pool of trustee candidates for subchapter V cases. The Program’s goal is for the overall trustee base to reflect the talent that best serves the broad cross-section of individuals impacted by bankruptcy – not only in terms of the debtors who file for bankruptcy, but the tens of millions of creditors who are parties in the cases. Program activities have focused on broadening the audience for outreach campaigns to maximize their impact. These efforts have included the use of revamped printed material as well as digital and social media platforms, including updated USTP websites that publicize available trustee employment opportunities.⁸ Distribution of this content has been strategically expanded to not only Department-maintained lists of affinity and professional groups for new attorney opportunities, but also diverse outreach lists developed by the Program for the initial SBRA trustee recruitment drive which resulted in the current pool of approximately 250 individuals who are eligible for appointment as a trustee in small business cases in which the debtor has elected treatment under subchapter V. Importantly, collaborating with these groups has also enabled the Program to refine its trustee recruitment procedures to better reach historically underrepresented populations in the trustee base. Lastly, the USTP’s National Bankruptcy Training Institute has deployed a module that every local USTP office is delivering as part of its routine training to sensitize trustees on the special impacts that case administration may have on disadvantaged communities. The USTP will diligently continue these and other efforts in FY 2023 and beyond, based on the understanding that the Program and trustees can do a better job when they understand the effect their actions have on real people in real life.

C. Program Structure

The USTP is a national program with a field-based structure that enables it to effectively address systemic issues in the bankruptcy system at the local and national or multi-jurisdictional levels. The Program’s headquarters, the Executive Office for United States Trustees (EOUST), is

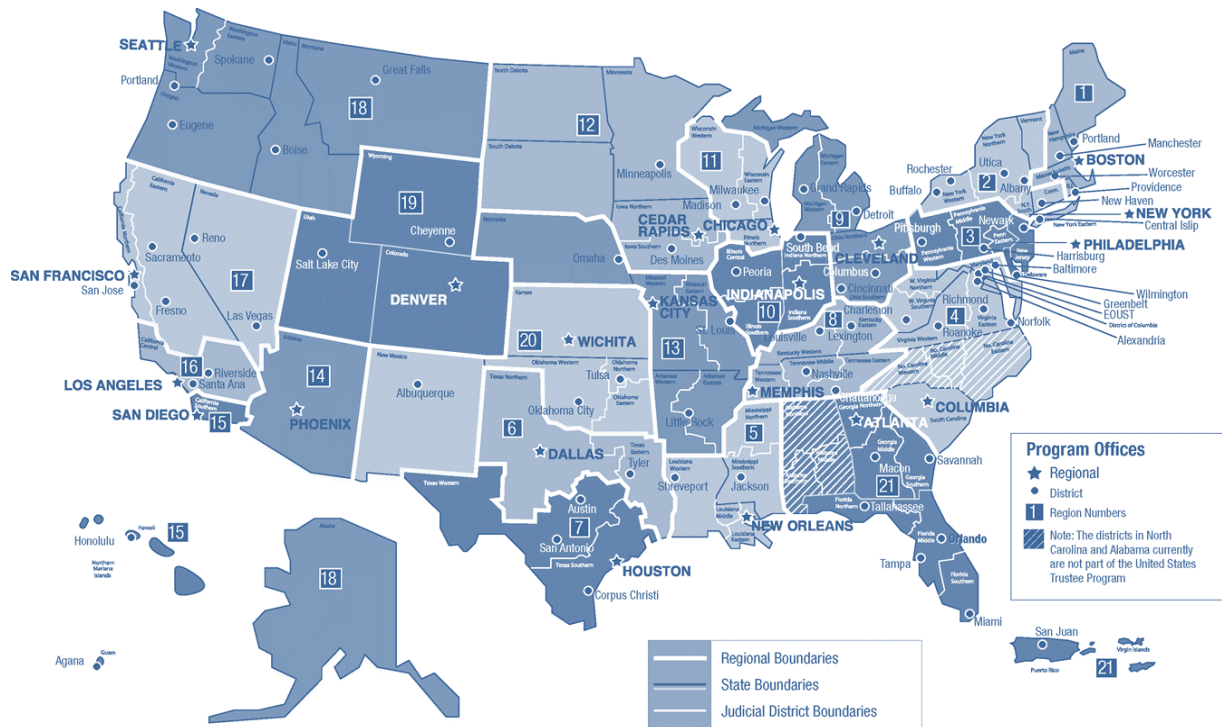
⁸ Available chapter 13 trustee positions can be found on the following website: <https://www.justice.gov/ust/advertisements-vacancies-private-bankruptcy-estate-trustees/public-notice-appointment-chapter-13-standing-trustees>. Available subchapter V trustee positions can be found on this website: https://www.justice.gov/ust/eo/private_trustee/vacancies/11ad

United States Trustee Program

located in Washington, D.C. and is led by a Director who serves under authority derived from the Attorney General. Field operations are composed of 21 geographic regions across the country directly supervised by United States Trustees. The 90 field offices within those regions are headed by Assistant United States Trustees. The Program's staff, totaling 992 direct and reimbursable FTEs in FY 2021, consists of attorneys, financial analysts, paralegals and professional support staff.

United States Trustee Program Map of Regions and Offices

A **regional and field office structure** enables the USTP to **appear before 300 judges in 250 bankruptcy courts**; preside over **statutory meetings of creditors held in 400 locations**; detect and address **local and multi-jurisdictional violations** through **coordinated enforcement efforts**; and ensure **maximum accessibility to the bankruptcy system by both debtors and creditors**.



1. Executive Office for United States Trustees (EOUST)

The EOUST oversees the Program's substantive operations, provides general policy and legal guidance, sets management direction on Program initiatives to address systemic fraud and abuse in the bankruptcy system, and handles the Program's administrative functions. Within the EOUST, the Office of the Director directly supervises the United States Trustees and the operations of the EOUST, and has primary responsibility as the liaison with the Department, Congress, the judiciary, private trustee organizations, and other stakeholders in the bankruptcy system, such as professional associations. As detailed in the Program's exhibit A, six other

major units comprise the EOUST covering general counsel, criminal enforcement, trustee oversight, planning and evaluation, general administration and IT functions.

2. USTP Field Offices

Currently, over 90 percent of staff are located in field offices across 44 states and Puerto Rico. As outlined in the preceding map, the Program's geographic presence enables it to participate in 250 bankruptcy courts and preside over statutory meetings of creditors held in 400 locations. Moreover, with this structure, the Program is able to leverage and aggregate resources across the EOUST and its field offices, as needed, to detect system-wide issues and execute coordinated and sustained enforcement efforts that advance consistent legal arguments against national or multi-jurisdictional violations. In the past decade, the result has been successful efforts to oppose illegal and unconstitutional releases of third parties to chapter 11 reorganization cases; address deficiencies in disclosures of connections to parties in a case by bankruptcy professionals; combat misconduct by national consumer law firms; object to deficiencies in the servicing of mortgages for borrowers in bankruptcy.

D. Challenges

The USTP faces several internal and external challenges.

Maintaining Funding to Support Operations and Critical Investments

The most immediate challenge facing the USTP is its ability to fund essential mission-support costs necessary to maintain operations. From FY 2008 to FY 2021, the USTP faced a reduction in staff and real budget of about 20 percent. The Program was able to offset these shortfalls in part by utilizing one-time funding from carryover realized from challenges in hiring, even at lower levels, as well as deobligations identified from the transition to a new financial management system. These one-time funding sources enabled the Program to execute, among other things, essential IT system requirements; increased security for a limited number of meeting rooms with heightened safety concerns where statutory section 341 administrative proceedings are conducted by the Program; USTP office repairs and renovations, including costs associated with relocating from commercial to secure federal space per a government-wide mandate⁹; and, more recently, the costs related to the SBRA. Now that the USTP is close to its authorized hiring level and its accounting transition is complete, the USTP lacks the previous level of funding flexibility to address future needs. For example, Program investments in the modernization of the USTP's bankruptcy systems and applications remain critical, including for one of the main systems that enables staff to review and manage case-related information for about one million ongoing cases annually. Continued investments in IT are necessary to eliminate the security risks posed by aging underlying platforms, some of which are over 30 years old. Moreover, many of the systems cannot capture additional data elements currently required by the Program to execute its duties nor be updated to allow for modern capabilities

⁹ Disposing of Unneeded Federal Real Estate—Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency, 2010 DAILY COMP. PRES. DOC. (June 16, 2010).

related to scalability, flexibility, availability and enhanced security. Further, with ever evolving IT security threats, the Program must keep pace with critical data security upgrades to protect its information against potential malicious cyber-attacks. In the wake of highly-publicized cybersecurity incidents, deferring these costs would put the Program's operations and data at risk.

Evolving and Complex Caseload

The USTP's sustained heavy workload in civil enforcement, along with the sheer sophistication and evolving nature of fraud schemes and abusive activities, presents challenges for USTP staff to move cases through the system efficiently. In addition to carrying out statutory duties, including means testing in chapter 7 consumer cases and trustee oversight, the Program must monitor developing and complex issues associated with chapter 11 bankruptcy filings, fraudulent or abusive conduct by debtors, and misconduct by creditors and professionals to effectively execute its duties. More information on the USTP's activities in these areas can be found in section IV which begins on page 24.

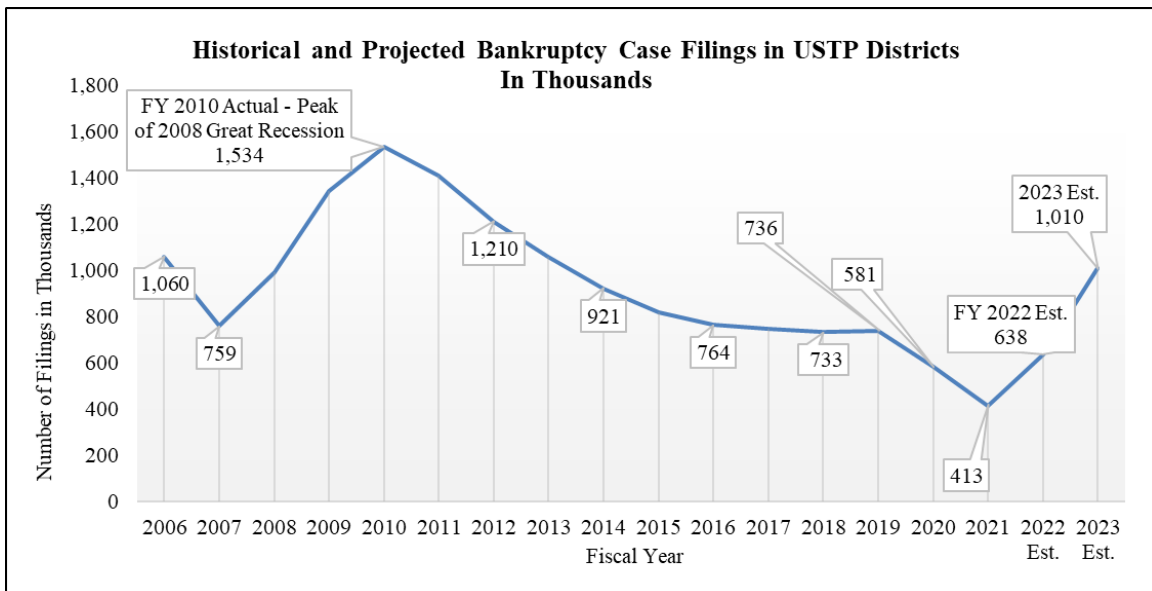
Unpredictable Changes in Bankruptcy Filings

The potential for unforeseeable changes in the number and location of bankruptcy filings creates challenges for the USTP in caseload management. Changes to the Bankruptcy Code and other laws as well as economic factors including employment levels, interest rates, consumer credit and the availability of financing from capital markets potentially impact filings and pose an issue for workload planning. Bankruptcy filings followed a general pattern for a significant time prior to 2007, historically increasing about two-thirds of the time followed by a decrease over the other one-third. Then, during the Great Recession, filings doubled over FY 2007 through FY 2010 before declining steadily over FY 2011 through FY 2016. Filings remained relatively flat through FY 2018 before increasing slightly in FY 2019, then dropping by more than 20 percent overall in FY 2020 due potentially to the impact of economic relief programs such as foreclosure moratoriums on potential filers. Overall bankruptcy filings fell significantly further in FY 2021, reaching just over 410,000 filings and reflecting a nearly 30 percent decrease from the prior year. Filings may fall further during the first half of FY 2022, potentially reflecting the additional impact to filers of low interest rates, bank borrowing incentives, available corporate financing, and wage increases due to labor shortages. For the remainder of FY 2022, there are commentators that predict a filing increase has been delayed but not eliminated given the expiration of relief programs, current inflation levels and supply chain challenges.

Broken down by chapter, filings followed different trajectories over the past two fiscal years. Consumer filings primarily account for the reductions in aggregate filings since FY 2020. Overall chapter 11 filings, however, sharply increased during the early months of the pandemic, then decreased during FY 2021 by 31 percent. The earlier increase reflected the impact of filings by large public companies, including mega-cases, which more than doubled during calendar year 2020 to reach their highest level since the Great Recession. Small business filings also increased significantly early on. Filings rose by 35 percent when measured over the 12-month period

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following the February 2020 subchapter V effective date, with the passage of the SBRA considered a key a reason for the increase. Small business filings then declined over FY 2021 but at a lower level of six percent compared to the reduction in overall chapter 11 cases. Notably, around 75 percent of chapter 11 small business debtors continue to proceed under subchapter V.



The above chart reflects actual and projected bankruptcy filings for the USTP from FY 2006 through FY 2023. While the USTP cannot predict the impact on filings from the COVID-19 pandemic, the economic downturn, or the CARES Act and subsequent stimulus laws, if modeling filings roughly on those seen during the Great Recession, filings could potentially reach one million in FY 2023, after first rebounding to pre-pandemic levels in FY 2022, with the potential rise in cases beginning at some point during the first three quarters of FY 2022. As a point of comparison, during the Great Recession, filings across all bankruptcy chapters increased by over 50 percent between FY 2008 and FY 2010, before returning to pre-recession levels eight years later in FY 2016.

E. Risks

Unpredictable Changes in and Challenges to the Bankruptcy Code

Changes to the Bankruptcy Code can significantly impact the USTP's work, often with uncertainty as to the extent or timing of changes. These changes can occur in response to any number of factors including changes in the economy and other laws. To remain agile and responsive, the USTP must be positioned appropriately from a resource standpoint to pivot and address these types of issues. For example, when the SBRA was enacted in August 2019, the USTP had to immediately refocus its priorities to establish a comprehensive infrastructure for the appointment and oversight of new chapter 11 subchapter V trustees as well as the evaluation and

monitoring of the individual cases. Among other things, this included recruiting and clearing more than 250 candidates (from more than 3,000 applicants) to serve as subchapter V trustees, developing a comprehensive manual and handbook to guide USTP staff and subchapter V trustees in carrying out their new duties, conducting extensive training and outreach, and coordinating closely with the bankruptcy courts on a myriad of administrative issues. These important initial efforts were critical to the successful implementation of the new law and are activities that remain ongoing.

Legal challenges relating to the Bankruptcy Code also present uncertainties for the USTP's workload planning given the lack of predictability in terms of number and scope. The USTP enforces the Code and defends challenges to its provisions, including by litigating issues of first impression. In recent years, the average annual number of appeals to which the USTP has been a party or has provided assistance to the Department's Office of the Solicitor General or Appellate Staff of the Civil Division has increased. For example, from FY 2019 to FY 2020, the growth in appeals was almost 25 percent, and appeal totals remained similarly high through FY 2021. In total, the Program has been involved with nearly 600 appellate matters occurring between FY 2016 to FY 2021. These matters include significant challenges to the USTP's quarterly fee structure, as detailed on page 10.

F. Offsetting Collections and the United States Trustee System Fund

The USTP's appropriations are offset primarily by revenues deposited into the U.S. Trustee System Fund. A portion of filing fees paid by consumer and business debtors as well as quarterly fees that are based on disbursements made by most chapter 11 debtors comprise the majority of revenue. The appropriation is initially derived from the general fund of the Department of Treasury (Treasury),¹⁰ and subsequently offset primarily by the Program's fees during the fiscal year as well as the balance of the U.S. Trustee System Fund, if fees are less than the appropriation. Filing fees are paid at the commencement of each case in chapters 7, 11, 12, and 13,¹¹ and quarterly fees are paid by chapter 11 debtors except those in subchapter V of chapter 11 of the Code. Unlike other bankruptcy fees that are set administratively by the Judicial Conference of the United States, the filing fees and quarterly fees paid to the USTP are set in statute and cannot be adjusted by the USTP. In addition to these, the Program receives a small amount of other statutorily-determined revenue, and it invests and generates interest on deposits to the U.S. Trustee System Fund – all of which are available to offset the Program's annual appropriation.

From 1989 through FY 2016, the USTP's appropriation was offset by fees and the balance in the U.S. Trustee System Fund. This balance, however, was essentially exhausted in FY 2017 due to fee collections declining as a result of the reduction in bankruptcy filings from FY 2011 through FY 2017, and the Program fell short of offsetting the FY 2017 appropriation. The decline in

¹⁰ In FY 2016, Congress approved a change in the USTP's appropriation language such that the Program's full appropriation is initially derived from the General Fund of the Treasury. Prior to FY 2016, the appropriation was derived from amounts available in the U.S. Trustee System Fund.

¹¹ The USTP receives a portion of these filing fees as specified by statute.

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filings continued through FY 2018. To ensure the Program could continue to offset its appropriation, the USTP set forth a proposal to adjust quarterly fees for the largest chapter 11 debtors. A modified version of the USTP's proposal to adjust quarterly fees for the largest chapter 11 debtors was enacted in October 2017 with the passage of the Bankruptcy Judgeship Act of 2017.¹² As a result, the Program's appropriations from FY 2018 through FY 2020 were fully offset by fees in those fiscal years.

In January 2021, Congress enacted the Bankruptcy Administration Improvement Act of 2020 (BAIA), Pub. L. 116-325. The law further amended the calculation of quarterly fees for calendar quarters beginning April 1, 2021 through December 31, 2025, following which the fees revert to the schedule in place before the 2017 amendment. Compared to the previous fee structure, the current structure under the BAIA:

- Reduces quarterly fees paid in almost all chapter 11 cases – it does not increase quarterly fees for any case – and simplifies the fee structure;
- Provides \$5.4 million to offset the cost of extending 25 bankruptcy judgeships;
- Funds the USTP by enabling the offset of its appropriations through FY 2025;
- Uses surplus chapter 11 fees, when available, to pay the Administrative Office of the U.S. Courts' (AOUSC) cost to administer payments under section 330(e) of title 11, United States Code, and for an increase in private trustee compensation for chapter 7 liquidation cases;¹³
- Deposits any remaining excess funds into the U.S. Trustee System Fund.

More information on the United States Trustee Program's quarterly fees and the United States Trustee System Fund can be found at <https://www.justice.gov/ust/chapter-11-quarterly-fees>

USTP staff continue to work with the AOUSC, Treasury, the Department, the Office of Management and Budget, and Congress to analyze the impact of the new law and implement its provisions, which required, among other actions, changes to the Program's systems and processes for billing fees and managing revenue.

¹² The fee increase affected about 10 percent of chapter 11 cases, equivalent to about 700 newly filed cases annually and a total of 1,000 cases pending in any given quarter. Only about 130 cases per quarter were subject to the maximum amended quarterly fee rate and only about 35 cases were billed the maximum amount for each of the first four quarters after the fee increase.

¹³ The increase in compensation covers cases that include those converting from chapter 11 to chapter 7.

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The following table reflects actual and projected deposits to the U.S. Trustee System Fund for FY 2018 through FY 2023.

USTP Bankruptcy Fees & Other Deposits by Source (\$ in Thousands)	FY 2018 Actual	FY 2019 Actual	FY 2020 Actual	FY 2021 Actual	FY 2022 Est. ^{/1}	FY 2023 Est.
Bankruptcy Filing Fees	\$53,613	\$54,016	\$46,278	\$33,351	\$49,107	\$78,065
Chapter 11 Quarterly Fees ^{/2/3}	\$214,533	\$256,621	\$280,827	\$335,551	\$182,046	\$221,498
Interest	\$808	\$2,482	\$1,940	\$187	\$117	\$988
Other	\$211	\$218	\$195	\$59	\$127	\$223
Total Deposits	\$269,165	\$313,336	\$329,238	\$369,148	\$231,397	\$300,774

^{/1} The FY 2022 and FY 2023 projections reflect the estimated filings outlined in section I.D. The FY 2023 estimates, however, also reflect previous, higher assumptions primarily on chapter 11 quarterly fees. The USTP currently projects those fees could total about \$10 million less due to the impact of sustained lower filings through the COVID-19 pandemic.

^{/2} Beginning in FY 2018, amounts exclude the portion of chapter 11 quarterly fees deposited into the general fund of the Treasury to fund additional bankruptcy judgeships as statutorily required. Beginning in FY 2020, subchapter V cases are exempt from quarterly fees. Beginning in FY 2022, as enacted under the BAIA, the USTP will transfer a portion of quarterly fees collected in the prior fiscal year for additional chapter 7 trustee compensation and the costs of administering such payments by the Administrative Office of the United States Courts (AOUSC). The AOUSC estimates the FY 2022 transfer to be about \$14 million which is based on actual chapter 7 filings and chapter 11 quarterly fee collections in FY 2021.

^{/3} Based on current projections, due to sustained lower filings through the pandemic, the USTP projects that it would not be able to fully offset its FY 2022 appropriation with that year's fee collections and interest alone and would not have surplus chapter 11 quarterly fees for the increased chapter 7 private trustee compensation to be transferred in FY 2023 from FY 2022 chapter 11 quarterly fees. Additionally, for fees to be transferred in future years, the USTP and the Department identified the need for and proposed a technical correction to the statutory language that would enable the Program to offset its appropriation with all of the types of fees it collects as well as interest it earns on fee deposits to the USTP Fund, as previously authorized, rather than first requiring chapter 11 quarterly fees to be applied to the offset. As the Department has interpreted the law, no transfers could be made until annual chapter 11 quarterly fee collections exceed the Program's appropriation. Based on current projections, the USTP does not anticipate chapter 11 quarterly fees will exceed the Program's appropriation for the remaining duration of the BAIA transfer period (through FY 2026). The USTP and the Department believe the proposed amendment would align the language with Congress' intent to apply quarterly fees to the support of the bankruptcy system and limit growth of the USTP Fund, thereby mitigating potential litigation issues for the new fee schedule.

In two cases that alleged the 2017 quarterly fee amendment was unconstitutional because it imposed an excessive user fee, the plaintiffs argued on appeal that the BAIA did not fix this problem. They contended that the BAIA violates the Takings Clause for the same reason as the 2017 amendment – because it imposes large user fees on a small fraction of debtors that fund substantially all of the USTP's operations and more, and are not a fair approximation of the cost of benefits supplied to the users that pay them. The court of appeals did not address this issue. It remanded the cases back to the bankruptcy courts for repleading addressed to the BAIA and reconsideration of other issues. The debtors, however, have not yet amended their complaints to address the BAIA.

G. Efforts to Maximize Appropriated Resources

To meet the Administration's focus on employing effective and efficient business processes that ensure the highest level of stewardship of the federal fisc, the USTP continues to employ innovative personnel, financial and workflow strategies as described further below.

Shared Staffing

The USTP makes staffing allocations and assignments based on organization-wide needs. The Program has for several years shared work inter-regionally to ensure critical work is accomplished. In recent years, more than half of the field staff have been assigned some tasks that originate in other offices, including a significant number of managers who are serving double-duty. New initiatives or mandates are typically addressed via the formation of strategic working groups which help address resource issues and ensure consistency in Program approach. For example, by forming an SBRA Working Group, the Program successfully met the statutory 180-day timeline to implement the new chapter 11 subchapter V provisions. The group includes headquarters and field staff who, in coordination with the Office of Oversight and the Office of the General Counsel as well as the regional United States Trustees, continue to guide Program activities with regards to the new law.

Shared Services

To mitigate staffing shortages and benefit from economies of scale, the USTP continues to utilize shared services in partnership with other agencies and divisions within the Department. Shared human resource services are provided by the Justice Management Division and shared litigation support is provided by the Civil Division of the Department. Further, Help Desk operations for Tier 1 support and call management are provided via a contract managed by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Use of this contract has allowed the Program to save over \$100,000 a year in resources.

Use of Technology for Streamlining and Cost Savings

The USTP maximizes its use of technology to reduce costs and to be agile in response to potential changes to its operating environment and responsibilities. The successful pivot to a maximum telework posture through the majority of the COVID-19 pandemic highlighted the impact of technology measures implemented by the Program prior to the switch, including a critical laptop refresh completed in FY 2018 and the procurement of additional units in FY 2019, adequately equipping existing and newly hired staff in the transition to working from home full-time during the pandemic and in a post-pandemic environment with increase telework flexibilities. Moreover, the Program's successful transition of IT operations to a sustainable cloud infrastructure, which resulted in cost reductions and avoidance, also enabled the Program to eliminate the physical interventions associated with previous maintenance and system upgrade processes. An earlier consolidation of reporting lines for field-based IT specialist staff under the Program's Chief Information Officer also ensured a centralized approach towards employee IT assistance requests. Going forward, the Program must further evaluate, and deploy as funding

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permits, potential system and infrastructure upgrades and modernization. These efforts would include the modernization of the USTP critical case management system that is over 30 years old and on which the Program relies for the review and management of case-related information for about one million ongoing cases annually. The underlying platform for the system is not only more vulnerable to security risks than systems on more modern platforms but also cannot capture additional data elements currently required by the Program to execute its duties nor be updated to allow for modern capabilities related to scalability, flexibility, availability and enhanced security.

II. Summary of Program Changes

Item Name	Description	Pos.	Estimated FTE	Dollars (\$000)	Page
Regional Criminal Enforcement Coordinators	The USTP requests funds for additional staffing necessary to coordinate and guide the Program's criminal enforcement activities.	[3]	2	\$392	47

III. Appropriations Language and Analysis of Appropriations Language

United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, \$260,277,000[\$246,593,000] to remain available until expended: *Provided*, That, notwithstanding any other provision of law, deposits to the United States Trustee System Fund and amounts herein appropriated shall be available in such amounts as may be necessary to pay refunds due depositors: *Provided further*, That, notwithstanding any other provision of law, fees deposited into the Fund pursuant to section 589a of title 28, United States Code (with the exception of those fees to be transferred pursuant to section 589a(f)(1)(B) and (C)), shall be retained and used for necessary expenses in this appropriation and shall remain available until expended: *Provided further*, That to the extent that fees deposited into the Fund in fiscal year 2023[2022], net of amounts necessary to pay refunds due depositors, exceed \$260,277,000[\$246,593,000], those excess amounts (with the exception of those fees to be transferred pursuant to section 589a(f)(1)(B) and (C)) shall be available in future fiscal years only to the extent provided in advance in appropriations Acts: *Provided further*, That the sum herein appropriated from the general fund shall be reduced (1) as such fees are received during fiscal year 2023[2022], net of amounts necessary to pay refunds due depositors, and (2) to the extent that any remaining general fund appropriations can be derived from amounts deposited in the Fund in previous fiscal years that are not otherwise appropriated, so as to result in a final fiscal year 2023[2022] appropriation from the general fund estimated at \$0.

Analysis of Appropriation Language

The USTP is not proposing any language changes.

IV. Program Activity Justification

A. Administration of Cases

The USTP budget is contained in one decision unit, the Administration of Cases, which encompasses all operational activities and includes the direct cost of all outputs, indirect costs, and common administrative systems. The USTP’s work encompasses two main activities: (1) enforcement; and (2) case and trustee administration. The FTEs and associated funding are allocated to these Program activities based upon the direct hours of the USTP staff and the resources directly related to performing these activities. Administrative and other overhead costs are allocated based upon the direct hours expended for the two activities.¹⁴

<i>Administration of Cases</i>	Direct Pos.	Direct Estimated FTE	Amount (\$ in thousands)
2021 Enacted ^{/1}	[1,027]	991	\$232,361
2022 Continuing Resolution	[1,027]	1,015	\$232,361
Rebaseline Adjustment	[75]	38	\$14,232
Adjustments to Base and Technical Adjustments	[0]	37	\$13,292
2023 Current Services	[1,102]	1,090	\$259,885
2023 Program Increases	[3]	2	\$392
2023 Request	[1,105]	1,092	\$260,277
Total Change 2022 - 2023	[3]	39	\$13,684

<i>Administration of Cases</i> Information Technology Breakout	Direct Pos.	Direct Estimated FTE	Amount (\$ in thousands)
2021 Enacted ^{/1}	[32]	30	\$29,800
2022 Annualized Continuing Resolution	[31]	29	\$29,135
Rebaseline Adjustment	[0]	-	\$0
Adjustments to Base and Technical Adjustments	[2]	3	(\$1,866)
2023 Current Services	[33]	32	\$27,269
2023 Program Increases	[0]	-	\$0
2023 Request	[33]	32	\$27,269
Total Change 2022 - 2023	[2]	3	(\$1,866)

/1 FTEs are actual.

¹⁴ The Information Technology Breakout excludes resources reflected in the USTP’s Cyber crosscut measure for staff in the USTP’s Office of General Counsel that address data privacy and protection issues for the Program.

1. A Balanced Approach to Civil Enforcement

During FY 2021, the USTP took more than 23,000 civil enforcement actions against debtors and creditors, including court filings and out-of-court actions, with a potential monetary impact of over \$585 million in debts not discharged, fees returned, and other relief. Since 2003, the USTP has taken more than 855,000 actions with a potential monetary impact of over \$23 billion.

Means Testing and Debtor Violations

The Program combats debtor fraud and abuse primarily by seeking case dismissal if a debtor has an ability to repay debts and by seeking denial of discharge for the concealment of assets and other misconduct that harms creditors or the integrity of the bankruptcy process.

Means Testing. Under the means test, which was adopted under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, individual debtors with primarily consumer debt and income above their state median are subject to a statutorily prescribed formula to determine disposable income. The formula is based partially on allowable expense standards issued by the Internal Revenue Service for its use in tax collection. The primary purpose of the means test is to help determine eligibility for chapter 7 bankruptcy relief. In FY 2021, a case with disposable income above \$227.50 per month would be presumed abusive and subject to dismissal.

USTP Indianapolis Office Obtains Dismissal of Chapter 7 Case, Preventing Discharge of \$888,697 in Unsecured Debt

In its motion to dismiss the case for abuse, the U.S. Trustee alleged that the case was abusive based on the debtor's income as an investment broker, in excess of \$20,000 per month, and his ability to pay his debts in full. After the USTP conducted its discovery, the debtor withdrew his objection, and the Bankruptcy Court for the Southern District of Indiana granted the USTP's motion to dismiss the case.

The effectiveness of the means test largely depends on the USTP's identification of cases that are presumed abusive under the statutory formula and filing of actions to dismiss those cases when appropriate. The USTP is required by law to file with the court either a motion to dismiss a presumed abusive case or a statement explaining the reasons for declining to file such a motion – that is, special circumstances defined by statute that justify an adjustment to the current monthly income calculation. Common reasons to decline to seek dismissal of a case that is presumed abusive include recent job loss or continuing medical debt. The percentage of declinations has grown from less than 35 percent in FY 2006 to more than 60 percent in recent years. This suggests that the objective criteria of the means test are now well established and that most debtors' attorneys file presumed abusive cases only if the cases satisfy the statutory exceptions.

Bad Faith or Totality of the Circumstances. Even if a case is not presumed abusive under the means test, the Code permits the USTP to seek dismissal for bad faith or the totality of the circumstances. These enforcement actions are filed in cases where, among other things, the debtor makes extravagant purchases right before filing bankruptcy or fails to provide accurate financial information.

Debtor Agrees to Dismiss Chapter 7 Case Following Investigation and Actions by USTP Woodland Hills Office, Preventing Discharge of \$532,325 in Unsecured Debt

The investigation revealed that most of the unsecured debt held by the debtor was for credit card charges that were allegedly tied to business purposes. In his bankruptcy documents, the debtor indicated that he leased a 2017 Rolls Royce and a 2018 Mercedes-Benz, and was currently unemployed, although he reported gross income of more than \$300,000 in 2018 from operating a business and could not provide the amount of his 2019 income. After failing to appear for his section 341 meeting of creditors and responding to U.S. Trustee requests for documentation, the debtor agreed to a dismissal of his case, given his failure to continue the case in good faith, with a one-year bar to refiling.

Denial of Discharge. In addition to seeking case dismissal, the USTP may file a complaint to deny or revoke a debtor's discharge, which constitutes one of the most serious civil remedies against fraud and abuse by individual debtors in the bankruptcy system. Examples of debtor conduct that could lead to this action include transferring, concealing, or destroying property to hinder or defraud a creditor or the trustee; knowingly and fraudulently making a false oath; refusing to obey a court order; or failing to keep or preserve financial records.

USTP Milwaukee Office Obtains Judgment Denying Discharge of More than \$40 Million in Unsecured Debt

The Bankruptcy Court for the Eastern District of Wisconsin entered a stipulated judgment and final order denying the debtor a chapter 7 discharge of \$40,735,832 in unsecured debt. The debtor, a real estate developer, induced friends, family, and acquaintances to invest in historic renovation projects throughout the Midwest and Florida. The debtor touted his success to investors, even though his projects were, in fact, failing and creditors had begun collection actions against him. An investigation by the U.S. Trustee's Milwaukee office found that the debtor filed false schedules, concealed assets, falsely testified at his section 341 meeting of creditors, and could not explain the loss of nearly \$10 million in assets, which he had reported owning on a sworn personal financial statement signed just two months before the petition date. The U.S. Trustee brought a complaint to deny the debtor's discharge, which the debtor contested. Following trial and before the court's ruling, the debtor stipulated to judgment and denial of his discharge.

Creditor Abuse

Creditor abuse cases often involve multiple victims, including debtors and other creditors whose distributions are diminished by overpayments to the violating creditor, and are an affront to the integrity of the bankruptcy system itself. The USTP continues to monitor compliance by national creditors for fraud and abuse issues. To date, the Program has entered into 14 national settlements with mortgage servicers, including the FY 2021 settlement discussed on page 11.

Consumer Debtor Attorneys, Petition Preparers and Debt Relief Agencies

Addressing misconduct by consumer debtor attorneys remains a top priority for the USTP. The Program is continuing a key initiative, launched several years ago, to investigate and address violations in this area through appropriate civil enforcement actions. This effort follows the Program's long history of addressing violations of the Code and Rules by attorneys and others who fail to perform their duties to consumer clients. Misconduct and substandard practice by debtors' attorneys include failing to meet with clients, causing costly delays by not appearing at section 341 meetings or court proceedings, filing fraudulent credit counseling certificates with the court and engaging in a range of other unprofessional behavior. Debtor clients are not the only victims of these improper, fraudulent, and abusive practices. Courts and creditors are victims as well. For example, courts and creditors are forced to expend resources in proceedings that are unnecessarily lengthy or complex due to the failure of debtors' counsel to do their jobs properly. The USTP's enforcement actions in this area have led to remedies including refunds of attorneys' fees already paid, cancellation of retention contracts, civil penalties, and injunctions. In FY 2021, the Program brought nearly 400 actions in court and took over 2,100 additional out-of-court actions against debtors' attorneys and non-attorney bankruptcy petition preparers including under the petition preparer provisions of section 110, the provisions of section 329 governing disclosure and reasonableness of debtor attorney's fees, and the debt relief agency provisions of section 526 of the Code.¹⁵

The USTP's initiative is both a national and local priority. At a national level, the USTP continues to address the system-wide, multi-jurisdictional issues caused by law firms who advertise to consumer debtors primarily through the Internet, operate in many states and market themselves as "national law firms." The Program has addressed a range of improper practices related to such firms, including their failure to oversee non-attorneys who employ high-pressure sales tactics and engage in the unauthorized practice of law in order to convert potential debtors into clients; their "partnerships" with attorneys who fail to satisfy even minimal professional

Following Complaint Filed by USTP Alexandria Office, Bankruptcy Petition Preparer Permanently Enjoined, Fined \$15,000 in Settlement with USTP

The Bankruptcy Court for the District of Columbia entered a settlement order in six cases permanently enjoining a bankruptcy petition preparer (BPP) known for working in the District of Columbia, Virginia, and Maryland, from acting as a BPP in any jurisdiction in the United States. The settlement order also provides for \$15,000 in fines, which will be waived if the BPP does not violate the order for two years. The U.S. Trustee's Alexandria office alleged in its complaint that the BPP provided legal advice to her clients and on her website.

¹⁵ Section 329 of the Code governs debtors' transactions with their attorneys and provides bankruptcy courts with the ability to review and reduce unreasonable or undisclosed compensation. Section 526 limits the conduct of debt relief agencies including attorneys that assist debtors filing for bankruptcy relief. Debt relief agencies are also governed, where applicable, by Sections 527 and 528 of the Code.

standards for representation of their clients; and their willingness to engage in improper practices to obtain payment of their fees.

National Consumer Bankruptcy Law Firm Agrees to Pay more than \$300,000 in Relief to Consumers and to a Six-Year Practice Ban in Settlement with the USTP

The USTP alleged that the firm engaged in misconduct and misrepresentations impacting hundreds of Montana consumers, which came to light due to investigations by the USTP in two bankruptcy cases. In one case, the firm substantially delayed filing its client's bankruptcy case for almost a year after it misrepresented that it had a local attorney who was licensed in Montana available to file the case. The firm's delay resulted in a creditor garnishing more than \$6,000 of the debtor's wages. In the other case, the firm obtained payment of its attorney's fees by advising the debtors to participate in an improper scheme whereby they surrendered their vehicle to an out-of-state towing company. Another bankruptcy court previously sanctioned the firm for implementing the towing program – which it used in more than 200 cases across the country – describing it as a “scam from the start,” and the towing company's owners were indicted for their role in the scheme. The firm's advice resulted in the debtors being sued by their automobile lender for conversion of its collateral.

In the settlement, the firm does not contest the USTP's allegations that it engaged in misconduct in the course of its dealings with Montana consumers, including misrepresenting that it had a sufficient number of local Montana-licensed attorneys available to provide adequate bankruptcy representation, misrepresenting to clients the scope of legal services to be provided and the cost of those services, failing to timely provide its clients with written retainer agreements that clearly and conspicuously explained the legal services to be provided and the cost of those services, failing to discuss non-bankruptcy alternatives, failing to adequately supervise the firm's non-attorney staff (some of whom engaged in the unauthorized practice of law), providing erroneous legal advice, and failing to adequately supervise its Montana “partner” attorneys. This misconduct contributed to the firm's substantial delay in filing bankruptcy cases for Montana consumers. In addition, the firm filed bankruptcy cases for only 109 of the 473 Montana clients from whom the firm collected at least a partial fee.

To resolve the USTP's allegations of misconduct, the firm has refunded more than \$300,000 in fees paid by Montana consumers for whom the firm never filed a bankruptcy case. The firm also agreed to pay a civil penalty of \$10,309 and to return all fees, totaling \$3,770, to the debtors in the two cases in which the USTP brought its enforcement actions. Additionally, the firm is barred from accepting bankruptcy clients or providing bankruptcy services to consumers in Montana, effective July 2, 2018, through July 2, 2024. While the agreement resolves disputes with the USTP in the two underlying bankruptcy cases, it does not impact the rights of the debtors in those cases or any other parties or government agencies not participating in the settlement, including other Montana consumers, nor does it impact the USTP's rights to litigate enforcement actions against the firm in other jurisdictions or to seek redress in other Montana cases.

The USTP also takes action against consumer debtor attorneys employing deceptive fee arrangements that violate bankruptcy law and harm their clients. In most jurisdictions, attorneys in chapter 7 liquidation cases cannot receive payment for pre-petition work after the bankruptcy case is filed because collection is stayed and the fees are subject to discharge. Therefore, most attorneys require the full payment of fees prior to filing a bankruptcy case. But others have sought to “bifurcate” their services by having clients execute contracts for pre- and post-petition services. Courts disagree as to whether such arrangements are permissible, but the law is clear that all fee arrangements must be disclosed accurately and completely. Moreover, attorney fees

charged to debtors must be reasonable for the services performed. These holdings are generally consistent with the USTP's enforcement approach, which prioritizes taking actions when fee arrangements are harmful and emphasizes the principle that the client's best interests must always take precedence over those of the attorney. Indications of abusive bifurcation arrangements include charging higher fees to debtors who pay over time than to those who pay upfront in full; seeking payment for pre-petition services under the color of the post-petition fee arrangement; or, failing to perform critical case analysis before a filing which may cause an ineligible debtor to file for bankruptcy, or to file under the wrong chapter. Some debtors' attorneys' use of third-party financing to underwrite these fee arrangements raise additional issues, including the inflation of fees to offset the cost of financing, inadequate disclosures to the courts and clients, and non-compliance with state professional responsibility rules. The USTP will continue to investigate and, when appropriate, take enforcement actions related to inappropriate bifurcation and factoring.

In many instances, attorneys who violate the Bankruptcy Code and Rules during their representation of debtors or other parties also violate the rules of professional conduct governing all lawyers. Where appropriate, the USTP refers these matters to state licensing and disciplinary authorities for investigation and action, which may include suspension from practice or disbarment.

2. Chapter 11 Oversight

The USTP carries out significant responsibilities in chapter 11 reorganization cases, at times taking action when impacted parties lack the resources to address an issue. While the USTP does not substitute its business judgment for that of management, the Program's role is critical to protecting the interests of all stakeholders by advocating for strict compliance with the law and promoting management and professional accountability. Among other duties, the USTP is responsible for appointing official committees of creditors after conducting a comprehensive analysis of the types of debt held by unsecured creditors, their financial exposure and other factors that determine whether such entities adequately represent the creditor body as a whole, as required under the Code. In addition, the Program moves to dismiss or convert chapter 11 cases when they are not progressing toward financial rehabilitation. A chapter 11 case may continue for many years and the USTP takes action, when necessary, to ensure a case's timely resolution.

The following sections highlight several of the USTP's other key activities in chapter 11 cases.

Review of Proposed Executive and Other Insider Bonuses

The USTP enforces statutory limitations on insider and executive compensation under section 503(c) of the Code, often as the only party challenging excessive or otherwise inappropriate management bonuses. In the BAPCPA, Congress curtailed the lingering practice of chapter 11 debtors' executives awarding themselves lavish bonuses during the bankruptcy case, which were often styled as "retention programs" that purportedly dissuaded those executives from seeking employment elsewhere. In addition to outright objections when bonus requests do not satisfy the law, the USTP has at times sought changes to plans, such as the removal of top executives from

the list of bonus recipients and the imposition of more challenging performance milestones that must be reached before the bonus is paid. In FY 2021, the USTP filed 30 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 50 percent among objections that were decided during FY 2021. These figures exclude the many cases in which the United States Trustee's formal or informal objections have resulted in substantial voluntary changes to the debtor's proposed executive compensation programs.

Court Sustains USTP Denver Office's Objection to Insider Bonuses

The Bankruptcy Court for the District of Colorado sustained an objection by the USTP's Denver office to a chapter 11 debtor's motion seeking authorization to pay insider bonuses under a Key Employee Incentive Plan (KEIP). The proposed KEIP would have provided bonuses totaling up to \$203,018 for the debtor's chief executive officer and chief financial officer based on the results of a sale of the business. The USTP argued that the debtor failed to establish that the KEIP was sufficiently challenging and that the insiders would receive substantial bonuses even for an unsatisfactory sale result. Following an evidentiary hearing, the court agreed with the USTP that there was no incentive for meaningful future results and that the proposal was instead retentive in nature.

Review of Professional Retention Applications

The USTP rigorously reviews applications to retain professionals to ensure the adequate disclosure of connections and the absence of disqualifying conflicts of interest. Over the past five fiscal years, the Program has, on average annually, filed over 500 objections and taken more than 1,800 out-of-court actions. Although all parties in a bankruptcy case may object to the adequacy of a professional firm's disclosures and to a professional firm's retention because of potential or actual conflicts, the USTP is typically the only party to make inquiries or file objections. The Program executes this role by faithfully reading and applying the Code and Rules and raises the issues it has identified to the courts for their ultimate determination.

Bankruptcy reorganizations and the organizational structure of professional firms seeking to be retained in bankruptcy cases – including law firms and financial advisors – have grown increasingly complex, particularly with the advent of investment arms and affiliate companies. This poses challenges for the Program's review of employment applications and the courts' decision on such applications. The USTP is committed to reviewing the unique facts of each case and application, and interpreting the law in a consistent manner. Pursuant to this, the Program released an internal directive that outlines the general principles that guide USTP staff in their enforcement of the duty of professionals to disclose connections to a bankruptcy case under the Code and the Rules. The document, which is publicly available, provides a common

framework for consistent enforcement of the Bankruptcy Code and Rules related to disclosures and conflicts.¹⁶

Court Sustains USTP Chicago Office’s Objection to Debtor’s Application to Employ Counsel

In the Northern District of Illinois, the court sustained the USTP’s objection to the debtor’s application to employ its proposed counsel because of counsel’s failure to disclose significant connections with one of the debtor’s principals and with one of the debtor’s secured creditors. Although counsel initially asserted that he had no disclosable connections, he later revealed that he represented a client—the debtor’s former managing member and part owner—who had also guaranteed and remained liable on millions of dollars of the debtor’s debt. The professional also later disclosed that he previously represented several entities whose owner now had a significant but unexplained role with a major secured creditor in the case. Counsel only disclosed the connections after the USTP objected and engaged in extensive fact-finding. The court found counsel’s relationships “troubling” and ruled that counsel’s original and supplemental affidavits were inadequate and incomplete and that the failure to disclose was sufficient and independent grounds to deny employment.

The Small Business Reorganization Act (SBRA)

The USTP continues to devote significant resources to addressing the Program duties provided for under the SBRA. While the Program is responsible for appointing and supervising private trustees in such cases, which unlike in most chapter 11 cases are a requirement, staff must also review and monitor cases throughout the bankruptcy process and take action to ensure the effective disposition of cases within the tight timelines established by the law. In the early stages, the Program performs a thorough review of the key business and reorganization facts of each case, and establishes and participates in the initial debtor interview and statutorily required section 341 meeting which can involve a wide range of stakeholders. These critical fact-finding activities help ensure that staff have selected and appointed the most appropriately skilled trustee from a pool of available candidates with diverse skillsets, and they assist the selected trustee in performing their assigned duties. The Program’s comprehensive review and ongoing monitoring of each case also enable staff to ensure that debtors meet the eligibility requirements under the law and that cases meet the statutory voting requirements that determine if plans are consensual or non-consensual. In addition, the Program is responsible for seeking to convert or dismiss cases that do not meet the small business statutory limits and other statutory requirements and, if conversion to a different chapter is necessary, continuing their diligent oversight of such filings based on the applicable chapter provisions and case facts. To ensure the success of subchapter V cases, the activities in this area are resource-intensive for field staff, requiring research of potentially affiliated filings in the same or other jurisdictions; an ongoing comprehensive

¹⁶ The Principles to Guide USTP Enforcement of the Duty of Professionals to Disclose Connections to a Bankruptcy Case Under 11 U.S.C. §§ 327 and 1103 and Fed. R. Bankr. P. 2014 can be found at: <https://www.justice.gov/ust/file/generalprinciplesdisclosureconflicts.pdf/download>. The document is a memorandum and an internal directive to guide USTP personnel in carrying out their duties, but the ultimate determination on the obligations of professionals under section 327 of the Code and Fed. R. Bankr. P. 2014 resides solely with the court. Nothing in the memorandum has any force or effect of law, and nothing stated therein imposes on parties outside the USTP any obligations that go beyond those set forth in the Bankruptcy Code and Rules.

understanding of each individual case; and close collaboration and coordination with multiple stakeholders, including the trustee and staff at the individual court level.

Court Grants Motion Filed by USTP Worcester Office to Direct Subchapter V Trustee to Conduct Investigation

The Bankruptcy Court for the District of Massachusetts granted a motion by the USTP's Worcester office in the chapter 11 bankruptcy case of a small business debtor, directing the subchapter V trustee to investigate the acts, conduct, and financial condition of the business and to file a report with the court. The USTP requested the order after learning that the debtor, a beer importer, may have paid monies to cover certain operating expenses and payroll of related entities. There also were concerns that the debtor had outstanding shareholder loans and failed to cooperate in providing due diligence information to potential investors in the company. Thereafter, the debtor filed a notice of voluntary conversion to a case under chapter 7, which was endorsed and approved by the court.

Streamlining Chapter 11 Debtor Reporting Requirements

In December 2020, the USTP completed its comprehensive process to develop a rule that streamlines financial reports required of non-small business chapter 11 debtors. The rule, which was published in the Federal Register, simplifies the reporting process while providing transparency and improved uniformity across the reports. Effective in June 2021, debtors and reorganized debtors, excluding small business or subchapter V debtors, each now have a standard data-embedded, pdf-fillable form to submit regardless of the location of their filing. Previously, about 150 variations of these reports, some in non-pdf form, were in use. The rule and new forms reflect significant stakeholder feedback the USTP received from two public comment periods and a public hearing, and represent a balance between minimal reporting advocated by some and significantly more detailed disclosures promoted by others. Deployment of the forms required extensive Program resources spanning IT, legal and administrative staff across the Program's EOUST and field offices and required close coordination with the AOUSC and local bankruptcy courts on technical and logistical issues. The Program also provided feedback to third-party bankruptcy software vendors, including on the forms' technical specifications, to enable them to develop software that integrates the forms for easier reporting by debtors.

3. A Criminal Enforcement Mandate

Bankruptcy cases may involve conduct that violates both civil and criminal laws. The USTP pursues available civil enforcement remedies to address fraud and abuse issues and refers alleged wrongdoers, as required by statute, to the United States Attorneys and other law enforcement partners for potential criminal prosecution. As bankruptcies cross all industries and levels of American society, the detection of bankruptcy fraud and other criminal activity can lead to the detection and prosecution of other serious crimes.

Annually, the Program makes more than 2,000 criminal referrals on matters that include allegations of bankruptcy fraud, tax fraud, identity theft or use of false or multiple Social Security numbers, mail and wire fraud, bank fraud, and mortgage fraud.

To execute its mandate, the Program collaborates with federal and state law enforcement partners and is a member of approximately 50 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. Many staff, including attorneys, bankruptcy analysts and paralegals are called upon to assist with investigations, provide expert or fact testimony at criminal trials, and in the case of attorneys, provide guidance on bankruptcy law and related issues. In particular, through their designation as Special Assistant U.S. Attorney, over 20 attorneys assist U.S. Attorneys' offices in the prosecution of bankruptcy and bankruptcy-related crimes. In FY 2021, the Program also responded to more than 200 requests for assistance from the United States Attorneys' Offices (USAOs), the Federal Bureau of Investigation (FBI), and other law enforcement agencies on matters not originating from a USTP referral.

The USTP further contributes to the Department's ability to detect criminal activity through expansive training for federal, state, and local law enforcement personnel; USTP staff; private trustees; and members of the bar and other professional associations. Its training program has reached, on average, nearly 3,000 individuals annually in recent years including agents and other representatives from the USAOs, the FBI, the Internal Revenue Service Criminal Investigation Division, the U.S. Postal Inspection Service, the Department of Housing and Urban Development Office of the Inspector General, and the Secret Service.

Former Hedge Fund Founder Sentenced for Bankruptcy Fraud in Case Referred by USTP

In August 2020, the USTP conducted an investigation and filed a report with the Bankruptcy Court for the Southern District of Texas documenting its findings and preliminary analysis of allegations against the founder and manager of a hedge fund, who was serving as a co-chair of the unsecured creditors' committee in a major chapter 11 bankruptcy case. The allegations included attempted interference with competitive bidding for securities earmarked for certain classes of creditors that the hedge fund sought to acquire. The USTP report concluded that the hedge fund, through the committee co-chair, breached its fiduciary duty to unsecured creditors by coercing an outside third party not to submit a rival bid. The hedge fund stepped down as a member and co-chair of the creditors' committee, and its owner agreed to pay to the estate \$1.4 million in fees and costs and subordinate his interest to those of other creditors. In September 2020, based in part on the U.S. Trustee's investigative report reflecting the efforts of staff from multiple offices at the headquarters and field level, the same hedge fund manager was arrested after being charged in a criminal complaint filed in federal district court by the Acting United States Attorney for the Southern District of New York with extortion and bribery in connection with a bankruptcy, securities fraud, wire fraud, and obstruction of justice. The Acting United States Attorney's press release on the arrest thanked the USTP for its cooperation and assistance in the investigation. The hedge fund manager subsequently pleaded guilty and was sentenced to six months in prison and six months of supervised release on home confinement. He was also ordered to pay a fine of \$55,000.

United States Trustee Program

Combatting elder abuse and financial fraud targeted at seniors is a key priority of the Department. In this area, the USTP continues to evaluate cases for and takes action on signs of potential criminal violations. The Program also works in concert with private trustees to identify instances of bankruptcy cases that involve the abuse of an elderly person's money or property, sometimes by a person with access to the elderly individual such as a caregiver or family member. This can include cases filed for an elderly debtor without their informed consent or cases that involve funds obtained from an elderly person through fraudulent means. The Program also remains vigilant in detecting signs of more sophisticated fraudulent financial schemes, such as those that target groups that may include elderly persons. Beyond financial crimes, the bankruptcy process, which requires transparency and disclosures, also enables the Program to monitor cases for signs of neglect and physical abuse of elderly individuals through bankruptcy filings.

More information on the USTP's annual criminal referrals can be found at <https://www.justice.gov/ust/bankruptcy-data-statistics/reports-studies>

Former Bankruptcy Petition Preparer Sentenced for Wire Fraud and Bankruptcy Fraud Following Referral and Investigation Assistance by the USTP's Madison Office

The District Court for the Western District of Wisconsin sentenced a former bankruptcy petition preparer to 12 years in prison after he pleaded guilty to one count of wire fraud and one count of bankruptcy fraud in connection with a mortgage-rescue scheme that defrauded more than 70 homeowners out of approximately \$390,000. The defendant targeted homeowners facing the possibility of foreclosure, representing to them that he could help them stay in their homes by obtaining loan refinancing or modification. Under the guise of negotiating with their mortgage lenders, the defendant convinced his victims to make their mortgage payments to businesses he controlled and then spent the money on his own travel and living expenses. Some of the victims made payments to the defendant for years, up to or even after they lost their homes to foreclosure. As part of his scheme, the defendant advised many of his victims to file for bankruptcy and sometimes prepared their bankruptcy petitions himself, stalling foreclosures and extending the time in which he could collect monthly mortgage payments. The U.S. Trustee's Madison office identified the defendant as an undisclosed bankruptcy petition preparer, referred the potential criminal conduct, and assisted with the investigation.

4. Appellate Practice and Challenges to the Bankruptcy Code

The USTP is the only participant in the bankruptcy system with a national perspective and a responsibility to promote the coherent and consistent application and development of bankruptcy law throughout the country. The Program identifies issues and presents the law and facts so that courts can adjudicate matters with the benefit of a fully developed record of facts and arguments. In support of this effort, the Program handles a large number of appeals annually, many of which have a profound and long-standing effect on the bankruptcy system.

In FY 2021, the Program participated in 100 new appellate matters beyond the bankruptcy court, including 24 matters at the United States court of appeals level and six before the Supreme Court.

Below are notable recent case examples from the USTP’s appellate practice:

- Addressing the finality of bankruptcy court orders, the Supreme Court unanimously agreed with the position of the United States, participating as *amicus curiae*¹⁷, that an order denying a motion to modify the automatic stay is a final, appealable order “when the bankruptcy court unreservedly grants or denies relief.” Guided by its opinion in *Bullard v. Blue Hills Bank*, 575 U.S. 496 (2015), the Court reasoned that adjudication of a stay-relief motion “forms a discrete procedural unit” within the bankruptcy case that “yields a final, appealable order when the bankruptcy court unreservedly grants or denies relief.” The decision is important for two reasons. First, it underscores that a bankruptcy case may yield more than one final order that is immediately appealable by right. Second, it confirms that orders that merely deny relief – here a refusal to lift the automatic stay – may be final, so final orders are not restricted to ones that grant affirmative relief. The clarity provided in this decision will greatly assist the Program in appealing adverse rulings involving significant and novel issues that might not have been subject to review previously. As in *Bullard*, the Program helped the Solicitor General’s office in the briefing and arguing of this case by sharing its substantive expertise and participating in meetings with the parties and at the moot courts the Solicitor General’s office conducted in preparing for oral argument.

Ritzen Group, Inc. v. Jackson Masonry, LLC, 589 U.S. ___, 140 S. Ct. 582 (2020)

- The United States District Court for the Southern District of New York agreed with the position of the United States Trustee and reversed the bankruptcy court’s order approving retention bonuses to six employees of the debtor, a Delaware corporation. The court agreed with the United States Trustee that the employees were insiders and therefore prohibited from receiving such bonuses under the Bankruptcy Code. The Code defines an “insider” as

¹⁷ When the USTP acts as *amicus curiae*, it is not a party to the case. Instead, it files a brief as a neutral party that shares its views about the legal issues presented by the appeal and its proposed solutions. As a neutral party, courts often give weight to the USTP’s views.

including an “officer” but does not define “officers.” Although the six employees each had an officer’s title, were appointed as such by the board of directors, and further, would be deemed officers under Delaware law, the bankruptcy court held that they were not “officers” under the Code based on a functional test. The district court’s ruling held that the bankruptcy court erred by inquiring beyond the fact that the employees were appointed by the board and failing to give due weight to the resulting officer status under Delaware law. The district court also rejected the debtor’s argument that the appeal was equitably moot because the bonuses had already been paid.

Harrington v. LSC Comms, Inc. (In re LSC Comms, Inc.), No. 20-cv-5006, 2021 WL 2887708 (S.D.N.Y. July 9, 2021)

- The United States District Court for the Northern District of Illinois agreed with the position of the USTP and affirmed the bankruptcy court’s order appointing a chapter 11 trustee. The district court agreed with the USTP on the applicable standard of proof and held that a movant under 11 U.S.C. § 1104 must show the need for a trustee by a preponderance of the evidence – and not by clear and convincing evidence as the debtor contended. The court held that, in any event, both burdens of proof had been met, and that the bankruptcy court did not abuse its discretion when it determined that cause existed to appoint a trustee and that appointment of a trustee was in the interests of creditors, where the debtor had engaged in gross mismanagement by: diverting payroll taxes into its operating account; paying a board member \$35,000 in violation of a cash collateral order; failing to collect rent from a property management company owned by the debtor’s former CEO; and failing to pay insurance premiums.

In re Woodlawn Cmty. Dev. Corp., 613 B.R. 671 (N.D. Ill. 2020)

- The United States District Court for the Central District of California agreed with the position of the United States Trustee and affirmed the bankruptcy court’s order converting the debtor’s chapter 11 case to chapter 7 and determining him ineligible for subchapter V. The debtor amended his chapter 11 bankruptcy petition to elect subchapter V on the eve of a hearing on a secured creditor’s motion to appoint a chapter 11 trustee or convert his case. The district court agreed with the bankruptcy court’s conclusion that the debtor was ineligible for subchapter V because he exceeded the debt limits.

Saber v. JPMorgan Chase Bank, N.A., 20-cv-05729, 2021 WL 1102440 (C.D. Cal. Mar. 23, 2021)

5. Private Trustee Oversight

The USTP recruits, appoints and supervises private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12, and 13. The trustees handled approximately one million ongoing cases during FY 2021 and distribute billions in assets on average annually. The Program also appoints and supervises trustees for small business cases proceeding under subchapter V of chapter 11 of the Code. Trustee duties and their required skillsets vary according to the applicable laws. Chapter 7 trustees collect the debtor's assets that are not exempt from creditors, liquidate the assets, and distribute the proceeds to creditors. Chapter 12 and chapter 13 trustees evaluate the financial affairs of the debtor, make recommendations to the court regarding confirmation of the debtor's repayment plan, and administer the court-approved plan by collecting payments from the debtor and disbursing the funds to creditors in accordance with the priorities of the Code. Subchapter V trustees are primarily responsible for assessing the viability of a debtor's business and facilitating a consensual plan of reorganization plan within short timelines.

The USTP's oversight duties for the different trustees also vary according to the applicable laws. These duties include interpreting the statutes and issuing appropriate guidance to trustees regarding their administration of cases and their duties to debtors, creditors, other parties in interest, and the United States Trustee. When new laws are enacted, such as the SBRA, this activity can require more resources in the implementation stage of the new provisions. Ongoing resources are still required, however, as experience is gained under the new laws, to execute necessary updates to guidance and conduct enhanced training for trustees as well as their employees. The USTP must also evaluate the performance and effectiveness of trustees according to the Code. In the case of the SBRA, the Program continues to expend base budget resources towards the enhancement of oversight policies and mechanisms. These activities include ongoing investments in the Program's IT systems as well as the development of data-enabled electronic forms for consistent and efficient reporting of case data by trustees to the Program. For trustees in chapters 7, 12 and 13, the USTP must also closely monitor the trustees' accounting, financial management, and administration of debtor funds and property of the bankruptcy estate for the payment to creditors and ensure the funds are appropriately safeguarded. In appropriate cases, the USTP also takes action when improper activity is suspected or alleged. Further, the Program is responsible for overseeing trustee compensation to ensure payments, including those based on reasonable and necessary expenditures in trustee budgets or as approved by the bankruptcy court, conform to the Code. To accomplish these duties as well as other responsibilities, the Program's oversight activities include reviewing around 65,000 reports on chapter 7 cases on average annually as well as 300 operating budgets of chapter 12 and 13 trustees; and annually conducting more than 400 audits and other reviews of trustee operations.

6. Credit Counseling and Debtor Education

To ensure that debtors are aware of alternatives to bankruptcy, and to provide tools to avoid future financial problems when they exit bankruptcy, the Code requires individual debtors to

United States Trustee Program

receive credit counseling, including a discussion of options outside of bankruptcy before filing, and to complete a personal financial management education course before receiving a discharge of debts. The USTP is charged with the responsibility to approve agencies and providers who must meet statutory qualifications to offer these services to debtors. The Program also monitors their operations through in-depth, quality-of-service reviews and investigates customer complaints submitted to the USTP. Agencies and providers can be denied approval or have their approval revoked for failing to meet statutory duties and USTP requirements and approved entities must re-apply annually to maintain their standing. At the end of FY 2021, 84 credit counseling agencies and 135 debtor education providers were approved to offer these services. Around 8 percent of credit counseling certificates and debtor education certificates have been issued at no or reduced cost. Of those paying the full fee, the average combined cost of pre-bankruptcy credit counseling and post-discharge debtor education is under \$40, making these services accessible at a relatively modest cost.

B. Performance Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Administration of Cases												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2021		FY 2021		FY 2022		Current Services Adjustments & FY 2023 Program Changes		FY 2023 Request	
Total Costs and FTEs (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			992	232,361 [249]	992	232,361 [282]	1,054	246,593 [256]	39	13,684 [11]	1,093	260,277 [267]
Type	Strategic Objective	Performance	FY 2021		FY 2021		FY 2022		Current Services Adjustments & FY 2023 Program Change		FY 2023 Request	
Program Activity 1: Case and Trustee Administration			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			519	121,525 [30]	519	121,525 [147]	552	128,968 [134]	20	7,157 [6]	572	136,125 [140]
Performance Measure	1.1 Protect our Democratic Institutions and 4.1 Reinvigorate Antitrust Enforcement and Protect Consumers ^{/1}	No. of 707(b) inquiries per successful outcome	7.0		6.4		7.0		0.0		7.0	
		Percent of Trustee Final Reports reviewed within 60 days	95%		99.8%		95%		0%		95%	
Program Activity 2: Civil and Criminal Enforcement and Appellate Matters			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			473	110,836 [219]	473	110,836 [135]	502	117,625 [122]	19	6,527 [5]	521	124,152 [127]
Performance Measure	1.1 Protect our Democratic Institutions and 4.1 Reinvigorate Antitrust Enforcement and Protect Consumers ^{/1}	Number of successful actions related to consumer protection	N/A		1,563		N/A		N/A		N/A	
		Number of successful discharge actions	N/A		342		N/A		N/A		N/A	
		Potential additional returns to creditors through civil enforcement and related efforts	N/A		\$585.8M		N/A		N/A		N/A	
		Litigation success rate	95%		95.6%		95%		0%		95%	
Data definitions are outlined in the narrative that follows.												

^{/1} The USTP’s performance measures also quantify the Program’s progress towards achieving objectives 2.6, Protect Vulnerable Populations and 3.4, Expand Equal Access to Justice.

Data Definitions:

Chapter 7: A liquidation case. A trustee is appointed to sell the debtor's non-exempt assets and distribute the proceeds to creditors in accordance with the priorities of the Code. Generally, absent fraud or abuse, the remaining debts of individual debtors are discharged. Chapter 7 cases include individuals and businesses.

Chapter 11: A reorganization case. The debtor usually remains in possession of its assets, continues to operate its business, and repays and/or readjusts debts through a plan that must be approved by creditors and the bankruptcy court. Chapter 11 cases are generally business cases although individuals are also eligible to file.

Chapter 12: A debt adjustment case by a family farmer or family fisherman. The debtor usually remains in possession of its assets, continues to operate its business, and repays creditors, in part or in whole, through a court-approved chapter 12 plan over a period not to exceed five years.

Chapter 13: A debt adjustment case by an individual with regular income. The debtor retains property, but repays creditors, in whole or in part, through a court-approved chapter 13 plan over a period not to exceed five years.

Number of Section 707(b) inquiries per successful outcome: Inquiries made under 11 U.S.C. § 707(b)(2) and (b)(3) help the Program assess an individual debtor's eligibility for chapter 7 relief. If the debtor's income is above the applicable state median and calculations show disposable income above a specified amount, there is a presumption of abuse. In many cases this requires the debtor to either agree to convert the case to chapter 13 or dismiss (cancel) the chapter 7 bankruptcy petition, voluntarily or through contested litigation. This efficiency measure is calculated by dividing the sum of all section 707(b)(2) and (b)(3) inquiries made by the Program to debtors or their attorneys in a fiscal year by the number of successful outcomes relating to 707(b)(2) and (b)(3). A successful outcome is defined as a conversion to a more appropriate bankruptcy chapter, a dismissal of the bankruptcy case or an abuse motion granted. A lower ratio suggests the Program is doing a better job of focusing staff effort (inquiries) on bankruptcy petitions requiring Program action.

Percent of Trustee Final Reports reviewed within 60 days (new measure in FY 2017): This measure is the efficiency rate for Trustee Final Reports (TFRs). Under the Memorandum of Understanding with the Administrative Office of the U.S. Courts, TFRs must be reviewed and approved by the USTP, and filed with the bankruptcy court, within 60 days of receipt. Case trustees distribute chapter 7 estate funds to creditors in accordance with USTP-approved TFRs.

Number of successful actions related to consumer protection: This measure consists of formal motions and complaints granted in a bankruptcy court and successful inquiries made by the United States Trustee to prevent fraud, abuse and error resulting from the inappropriate actions of creditors, petition preparers, attorneys, mortgage servicing agencies and mortgage rescue scam operators. The measure includes actions under 11 U.S.C. §§ 110, 526 and 329, False/Inaccurate/Improper Claims, Discharge/Stay Violations under 11 U.S.C. § 524, Abuse of

Reaffirmation Procedures, Improper Solicitation, Objection to Relief from Stay Motions, and Other Actions for Attorney Misconduct.

Number of successful discharge complaints (discontinued in FY 2018): This measure consists of successful formal discharge complaints filed by the USTP in a bankruptcy court to prevent fraud and abuse by individual debtors. These complaints result in waiver, denial or revocation of a discharge of debt. It is one of the most serious civil remedies against fraud and abuse by individual debtors in the bankruptcy system and is taken to resolve issues such as hidden assets and unreported income. (This measure does not include successful discharge complaints against debtors who are ineligible due to a prior discharge or who failed to complete a debtor education course.)

Number of successful discharge actions (new measure in FY 2018): The Program added this new measure in FY 2018 to replace the number of successful discharge complaints measure, which was discontinued in FY 2018. This measure consists of successful formal and informal discharge actions that result in waiver, denial or revocation of discharge of debt. These actions are taken to resolve issues such as hidden assets and unreported income and represent one of the most serious civil remedies against fraud and abuse by individual debtors in the bankruptcy system. (This measure does not include successful discharge actions against debtors who are ineligible due to a prior discharge or who failed to complete a debtor education course.)

Potential additional returns to creditors through civil enforcement and related efforts: The Program's actions have a significant financial impact, and this measure tracks the amounts involved as the result of the Program's formal and informal actions. The majority of this total is attributable to debts not discharged in chapter 7 and potentially available to creditors. Other amounts included are fee requests and claims reduced or withdrawn, fees returned, and sanctions and fines against professionals.

Litigation success rate (new measure in FY 2017): This measures the Program's aim for excellence in litigation, including exercising sound judgment, diligence and discretion to bring the strongest actions given limited Program resources. The success rate is calculated as the number of actions favorably resolved (granted or sustained) divided by the total number of actions decided (granted, sustained, overruled or denied) in any given year.

Strategic Objective	PERFORMANCE MEASURE TABLE				
	Decision Unit: Administration of Cases				
	Performance Measures		FY 2021	FY 2022	FY 2023
Actual			Target	Target	
1.1 Protect our Democratic Institutions and 4.1 Reinvalidate Antitrust Enforcement and Protect Consumers ^{1/}	Performance Measure	No. of 707(b) inquiries per successful outcome	6.4	7.0	7.0
	Performance Measure	Percent of Trustee Final Reports reviewed within 60 days	99.8%	95%	95%
	Performance Measure	Number of successful actions related to consumer protection	1,563	N/A	N/A
	Performance Measure	Number of successful discharge actions	342	N/A	N/A
	Performance Measure	Potential additional returns to creditors through civil enforcement and related efforts	\$585.8M	N/A	N/A
	Performance Measure	Litigation success rate	95.6%	95%	95%

[N/A = Not Applicable]

1/ The USTP’s performance measures also quantify the Program’s progress towards achieving objectives 2.6, Protect Vulnerable Populations and 3.4, Expand Equal Access to Justice.

C. Performance and Strategies

1. Performance Plan and Report for Outcomes

The USTP’s dedicated professionals have continued to fulfill mission priorities despite staffing levels declining by a quarter in the last decade. In FY 2021, this included making more than 2,240 criminal referrals to United States Attorneys and law enforcement, including referrals of fraud in obtaining funds under the CARES Act; participating in 100 appellate matters beyond the bankruptcy court, including 24 matters at the United States court of appeals level and six before the Supreme Court; reviewing about 65,000 trustee reports; overseeing more than 400 audits as well as conducting field reviews for chapter 7 and 13 trustee operations; and filing 30 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 50 percent among objections that were decided during FY 2021. Overall, the USTP took more than 23,000 formal and informal civil enforcement actions, with a potential monetary impact of over \$585 million in debts not discharged, fines, penalties, and other relief.

The USTP’s Annual Reports of Significant Accomplishments can be found at <https://www.justice.gov/ust/annual-reports-significant-accomplishments>

2. Strategies to Accomplish Outcomes

The USTP employs the following strategies as well as collaborates extensively with bankruptcy judges, trustees, clerks of court, and other participants in the bankruptcy process on system-wide and discrete issues alike. These strategies enable the Program to meet the Department's objectives of protecting the interests of all stakeholders in the bankruptcy process including consumers; pursuing equity in access to economic justice systems, including in bankruptcy; and ensuring effective Program oversight of approximately 1,100 private bankruptcy trustees overseeing cases under chapters 7, 12, and 13 as well as trustees that are appointed to subchapter V cases.¹⁸ In addition, the Program is continuing a number of efforts that align operations with best practices to promote good government as well as initiatives to enhance the security of the Program's IT systems and information.

a. Enforce strict, equitable compliance with federal bankruptcy laws and take responsible civil actions against parties who abuse the law or seek to defraud the bankruptcy system

The USTP's anti-fraud and anti-abuse enforcement efforts focus on wrongdoing by debtors, creditors, professionals and other third parties.

Debtor Abuse. The USTP combats fraud and abuse by debtors who, among other things, attempt to conceal assets; evade the repayment of debts when they have disposable income available to pay them; or commit other violations of the Code primarily by seeking case dismissal or by seeking denial of discharge. Civil enforcement actions include taking steps to dismiss abusive filings, deny discharges to ineligible or dishonest debtors, and limit improper refilings.

Consumer Debtor Attorneys. The USTP continues to address fraudulent conduct and other violations by consumer debtors' attorneys. Lawyers who are incompetent or dishonest or who fail to satisfy minimal professional obligations impede the debtor's "fresh start" and add costs to creditors and the entire system. Nationally, the Program is uniquely positioned to identify trends in attorney misconduct and to address issues raised by law firms that operate in multiple jurisdictions. At the local level, the Program identifies and takes action to redress misconduct by consumer debtor counsel, including those who employ deceptive fee arrangements that violate the Bankruptcy Code.

Creditor Abuse. The USTP continues to monitor compliance by national creditors for fraud and abuse issues. The USTP has entered into 14 national settlements related to creditor violations of the Bankruptcy Code and Rules, including a settlement in FY 2021 with Nationstar Mortgage, LLC, U.S. Bank National Association and PNC Bank, NA addressing noncompliance with the Bankruptcy Code and Rules that impacted more than 60,000 accounts of borrowers in bankruptcy dating back to 2011.

¹⁸ Currently, the USTP has available approximately 250 private individuals who are eligible for appointment as a trustee in small business cases in which the debtor has elected treatment under subchapter V.

b. Pursue violations of federal criminal laws pertaining to bankruptcy by identifying, evaluating, referring and providing investigative and prosecutorial support of cases

The integrity of the bankruptcy system depends upon the honesty and truthfulness of all participants and deterrence against those who would abuse the system to defraud others. The USTP has a statutory duty to refer matters to the United States Attorneys' offices (USAOs) for investigation and prosecution that "relate to the occurrence of any action which may constitute a crime" and to assist the United States Attorney in "carrying out prosecutions based on such action." 28 U.S.C. § 586(a)(3)(F). Program staff also dedicate significant time to assisting its law enforcement partners in the investigation and prosecution of bankruptcy fraud and related crimes. Referrals from the USTP cover a broad spectrum of criminal activity including bankruptcy fraud, tax fraud, identity theft or use of false or multiple Social Security numbers, mail and wire fraud, bank fraud, mortgage fraud and real estate fraud.

c. Promote the effectiveness of the bankruptcy system by appointing and supervising private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors

Pursuant to the Code, the United States Trustee appoints and supervises private trustees who administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12 and 13. The Program also appoints and supervises trustees in cases filed under subchapter V of chapter 11 who are primarily responsible for assessing the viability of a debtor's business and facilitating the development of a consensual plan of reorganization within short timelines. Trustees have a fiduciary responsibility to the bankruptcy estate and it is a fundamental duty of the United States Trustee to oversee the activities of these private trustees to ensure, where applicable, the effective distribution of funds and compliance with standards put in place to safeguard those funds as well as the disposition of cases within the timelines established by the law. The USTP is responsible for recruiting, selecting, clearing and training all trustees, and must evaluate their overall performance and financial operations to ensure that cases are handled efficiently, effectively and in accordance with applicable law and Program policy.

d. Ensure management and professional accountability, compliance with the Bankruptcy Code and prompt disposition of chapter 11 bankruptcy cases

The USTP carries out significant responsibilities in chapter 11 reorganization cases. The following highlights some of the Program's current activities in this area:

Illegal Third-Party Releases. The USTP devotes significant resources to addressing non-consensual, non-debtor third-party releases in reorganization plans for bankruptcy cases. Non-debtor releases prevent all creditors, including those who did not consent to the releases, from suing the released parties. The USTP has also taken the position that such releases violate due process and has taken a narrow view of the authority of the bankruptcy courts to approve them.

Evaluating the Retention and Compensation of Professionals. The USTP rigorously reviews applications to retain professionals to ensure the adequate disclosure of connections and the absence of disqualifying conflicts of interest. In addition, the USTP reviews and objects to professional compensation applications to ensure that fees do not exceed market rates and comply with other statutory requirements.

Review of Proposed Executive and Other Insider Bonuses. The USTP enforces statutory limitations on insider and executive compensation under section 503(c) of the Code, often as the only party challenging excessive or otherwise inappropriate management bonuses. In addition to outright objections when bonus requests do not satisfy the law, the USTP has at times sought changes to plans, such as the removal of top executives from the list of bonus recipients and the imposition of more challenging performance milestones that must be reached before the bonus is paid.¹⁹

e. Administer virtual section 341 meetings and provide access to language interpreters

The USTP is committed to promoting access to the bankruptcy system. Following the COVID-19 pandemic, the Program moved to a permanent policy allowing statutory section 341 bankruptcy proceedings to proceed in whole or in part through virtual formats and supporting the related costs. The meetings are mandatory administrative proceedings in the bankruptcy process in which each debtor must appear and testify under oath. They are generally the only formal bankruptcy proceeding most debtors ever participate in. Based on the USTP's experience through the pandemic, the flexibilities provided by virtual meetings place fewer burdens on debtors who do not, among other things, have to take critical time off from work to participate and result in greater creditor participation. In addition, to help ensure that individuals with limited English proficiency can fully participate in the statutory section 341 meetings of creditors where debtors testify under oath, the Program offers free telephonic interpreter services at these meetings as needed. In FY 2021, more than 13,000 calls were made for interpreter services in nearly 70 languages.

f. Achieve management excellence by promoting standards of professional conduct across Program staff, fostering a talented and high-performing workforce representative of the public we serve, and implementing data and technology modernization initiatives.

The USTP is committed to ensuring the highest ethical conduct and performance of its diverse workforce. Integrity and ethical values in decision-making are expected at all levels of the organization, and standards are communicated by management as well as through a comprehensive ethics and financial disclosure program. Program operations are assessed via a robust management review system for regional performance and a peer evaluation protocol that

¹⁹ In September 2021, the GAO issued a report on the incidence and magnitude of the award of executive bonuses by companies before a chapter 11 bankruptcy filing. The USTP provided significant assistance to the GAO for the report, which incorporated many of the USTP's technical comments but did not recommend any changes to the Program's practices or procedures. The GAO suggested that Congress consider amending the Code to clearly subject such bonuses to bankruptcy court oversight and to specify the factors that courts should consider in approving such bonuses. For more information, please see <https://www.gao.gov/products/gao-21-104617>.

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ensures field offices comply with Program priorities, objectives and policy. Further, continuous training opportunities are provided via formal training plans as well as through mentoring programs that allow long-serving staff to share knowledge with newer employees.

A USTP-wide working group comprised of headquarters and field staff from almost every level of the organization and representing nearly all occupations continues to strive to enhance diversity among Program staff to bolster employee satisfaction and foster workforce performance. The group's responsibilities include making recommendations on changes to Program operations and policies to ensure the USTP's workforce fully embraces diversity, seeks all opportunities to foster and promote a diverse workforce and complies with Department diversity mandates. These initiatives and other workplace policies contributed to the USTP's top 20 percent ranking among federal agency subcomponents and top third ranking among 18 components within the Department based on the 2020 Best Places to Work survey issued by the Partnership for Public Services. As for the private bankruptcy trustees that the Program recruits and oversees, to promote the Program and publicize available positions, the USTP has expanded its outreach to target an increased number of professional and academic affinity organizations, based in part on its successful recruitment campaign for SBRA trustees; increased its use of digital and social media including the launch of a new Program website advertising trustee vacancies; and deployed enhanced trustee training to sensitize them to the special impacts that case administration may have on disadvantaged communities.

In the area of technology, the USTP is continuing a critical, multi-year modernization project of the system that enables staff to review and manage case-related information for about one million ongoing bankruptcy cases annually. The modernization effort is anticipated to result in increased functionality and annual cost savings and, importantly, eliminate the security risks associated with the use of a system that operates on an old platform.

V. Program Increases by Item

Item Name: Regional Criminal Enforcement Coordinators

Budget Decision Unit(s): Administration of Cases

Program Increase for FY 2023: Positions 3 Atty 3 FTE 2 Dollars \$392,000

Description of Item

The USTP is requesting \$392,000 for three positions (three attorneys) and two FTEs to adequately staff the Program's Office of Criminal Enforcement (OCE) and provide centralized guidance and coordination of the Program's criminal enforcement activities. The USTP pursues available civil enforcement remedies to address fraud and abuse issues in bankruptcy cases but also has a statutory duty to refer matters to the United States Attorneys' offices (USAOs) for investigation and prosecution that "relate to the occurrence of any action which may constitute a crime" and to assist the United States Attorney in "carrying out prosecutions based on such action" in accordance with section 586(a)(3)(F) of title 28, United States Code.

The requested positions will be filled by senior-level attorneys who will serve as Regional Criminal Enforcement Coordinators. Reporting to the Assistant Director for the Office, each coordinator will be responsible for overseeing the duties of one-third of the Program's 21 regional offices as well as a portion of the Program's 90 field offices that fall within those USTP Regions.

Justification

Centralized management of the USTP's criminal enforcement activities is key to ensuring the Program successfully fulfills its statutory duties. Staff in OCE have the necessary and specialized depth of experience in criminal enforcement to provide strategic guidance to field staff on the Program's criminal enforcement activities. This structure maximizes the use of Program resources by enabling field staff to appropriately address all of the Program's statutory duties including this critical area of responsibilities, the activities for which can occur in parallel as bankruptcy cases may involve conduct that violates both civil and criminal laws. As an example, USTP field staff routinely consult the Program's OCE for subject matter expertise on drafting referral documentation on which the U.S. Attorneys base their decision to open an investigation and which may form the basis for a criminal prosecution. With extensive prosecutorial experience, OCE staff also provide guidance to field personnel on the post-referral process, which depending on the case can be resource intensive. Activities during this phase can include assisting law enforcement partners with criminal investigations, the drafting of charging documents or participating in criminal trials by providing expert or fact testimony. In some cases, OCE provides direct assistance to those partners.

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The requested positions would also enhance the USTP's multi-layered approach to the Program's criminal enforcement duties, one that increases the likelihood that a referral by the Program will lead to the opening of an investigation and criminal prosecution, if warranted by the facts of the case. The OCE provides guidance and support to more than 20 field attorneys that assist USAOs in the prosecution of bankruptcy and bankruptcy-related crimes through their designations as Special Assistant U.S. Attorneys. The unit also coordinates with the Program's Office of the General Counsel (OGC) who provides further support on multi-jurisdictional litigation and takes on direct litigation responsibilities in key enforcement cases. Coordination of activities is further augmented by the use of a USTP-wide staff working group that is led by OCE and its staff.

Impact on Performance

The USTP's criminal enforcement activities serve a critical role in ensuring the effective functioning of the overall bankruptcy system and carrying out the Department's overall strategy to reduce crime, including white-collar crime and criminal initiatives targeting vulnerable and disadvantaged populations. Annually, the Program makes, on average, more than 2,000 criminal referrals on matters that include allegations such as: bankruptcy fraud; tax fraud; identity theft or use of false, or multiple social security numbers; mail and wire fraud; bank fraud; mortgage fraud and real estate fraud. With the requested three new positions, the Program's ability to execute its duties would be appropriately enhanced and could potentially result in a greater number of prosecutions by the U.S. Attorneys from the USTP's referrals. The Program would also be able to continue and potentially expand its participation in local bankruptcy fraud working groups, mortgage fraud working groups and other specialized task forces throughout the country. The USTP is currently a member of approximately 50 groups, and its participation is critical to ensuring the likelihood of prosecutions from Program referrals. In addition, the requested positions would enable the Program to increase its expansive training program that has in recent years reached, on average, nearly 3,000 individuals annually including law enforcement personnel, members of the bar and USTP staff.

Annually, the Program issues a report to Congress detailing: (1) the number and types of criminal referrals made by the USTP; (2) the outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the USTP's efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor's failure to disclose all assets.²⁰ In FY 2021, the USTP made 2,244 bankruptcy and bankruptcy-related criminal referrals. The Program also responded to more than 200 requests for assistance from USAOs, the Federal Bureau of Investigation and other law enforcement agencies on matters not originating from a USTP referral.

Funding

The table that follows reflects the funding for dedicated, full-time OCE staff members, which specifically include one Assistant Director and a paralegal. Amounts exclude time devoted by

²⁰ The report can be found at <https://www.justice.gov/ust/bankruptcy-data-statistics/reports-studies>.

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other USTP staff, including field office and OGC staff, to the Program’s criminal enforcement activities.

Base Funding

<i>FY 2021 Enacted</i>				<i>FY 2022 President’s Budget</i>				<i>FY 2023 Current Services</i>			
Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)	Pos	Agt/Atty	FTE	\$(000)
<u>2</u>	<u>1</u>	<u>2</u>	<u>\$376</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>\$381</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>\$397</u>

Personnel Increase Cost Summary

Personnel costs assume a 50 percent FTE lapse.

Type of Position/Series	Positions Requested	Annual Costs per Position (\$000)			FY 2023 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Attorneys (0905)	3	\$131	\$108	\$244	\$392	\$323	\$18
Total Personnel	3	\$131	\$108	\$244	\$392	\$323	\$18

Non-Personnel Increase/Reduction Cost Summary

This request does not include any other increases or reductions related to non-personnel costs.

Justification for Non-Personnel Annualizations

This request does not include any other increases or reductions related to non-personnel costs.

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	2	1	2	\$397	\$0	\$397	\$0	\$0
Increases	3	3	2	\$392	\$0	\$392	\$323	\$18
Grand Total	5	4	4	\$789	\$0	\$789	\$323	\$18

Affected Crosscuts

The requested enhancement would impact the USTP's Access to Justice crosscut measure.

VII. Exhibits