

U.S. Department of Justice

United States Trustee Program



FY 2021 Performance Budget
Congressional Submission

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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 public. Established by the Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.) as a pilot effort encompassing 18 judicial districts, the Program was expanded to 21 regions nationwide through the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, covering all federal judicial districts except those in Alabama and North Carolina.

Congress established the USTP to address growing public concern about the lack of an impartial and neutral overseer to prevent fraud, dishonesty and improper conduct in the bankruptcy system. The Program does not represent the government as a creditor and acts to ensure all participants in the bankruptcy process comply with the Bankruptcy Code (Code) and the Bankruptcy Rules (Rules).¹ It has standing to participate in every individual and business bankruptcy case filed in the judicial districts within its jurisdiction, and its activities encompass a wide range of administrative, regulatory and enforcement functions to ensure the effective and efficient operation of the bankruptcy system. This includes oversight of approximately 1,500 private trustees. The Program addresses complex issues ranging from conflicts of interest by professionals employed in chapter 11 business cases to misconduct by national law firms, which harms both debtors and creditors, to consumer debtor fraud – oftentimes, as the only party with the necessary resources to take action.

The USTP is funded through an appropriation that is offset primarily by revenues deposited into the United States Trustee System Fund (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 Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, adjusted quarterly fees for the largest chapter 11 debtors, enabling the Program to fully offset appropriations through fees in Fiscal Year (FY) 2018 and FY 2019. The Program anticipates fully offsetting appropriations and budget requests through FY 2021.²

For FY 2021, the USTP requests \$234,464,000, which supports 1,039 direct and reimbursable positions (375 attorneys) and 1,026 direct and reimbursable full-time equivalent employees (FTEs). The request includes funding to cover the additional statutory Program responsibilities provided under the Small Business Reorganization Act (SBRA), Pub. L. No. 116-54, enacted in August 2019, for which the Program estimates requiring an additional \$2.1 million. The funding would support 11 positions (4 attorneys) and 10 FTEs in FY 2021, and excludes \$4.6 million of start-up costs associated with the SBRA's implementation.

¹ The federal Bankruptcy Code appears in title 11 of the United States Code. The Federal Rules of Bankruptcy Procedure govern procedures for bankruptcy proceedings.

² Please see section I.D. on Offsetting Collections and the United States Trustee System Fund for more information.

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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.

The table below outlines the breakout of the USTP's FY 2021 budget request by DOJ Strategic Goal and Objective.

Strategic Goal and Strategic Objective		FY 2021 Total	
		Direct & Reimb FTE	Direct Amount
Goal 4 Promote Rule of Law, Integrity, and Good Government			
4.1	Uphold the rule of law and integrity in the proper administration of justice	1,010	224,619
4.4	Achieve management excellence ^{/1}	16	9,845
Subtotal, Goal 4		1,026	234,464
TOTAL		1,026	234,464

/1 The USTP devotes resources to pursuing cost savings in technology, but is not providing specific resource amounts expended due to the complexity of isolating the time devoted by staff to these tasks. Examples of the Program's cost-saving initiatives in IT include the transition of systems to the cloud, including the Program's migration of its servers for electronic file and printing capabilities, which was completed in FY 2019. Also in FY 2019, the Program initiated a multi-year modernization project of its critical information technology systems which is anticipated to result in increased functionality, annual cost savings and operational efficiencies by eliminating obsolete systems, automating functions, and improving user interfaces as well as data analytic capabilities. Amounts reported for this strategy also exclude overhead for the USTP's senior management as well as the Program's supervisory Information Technology and Administrative Officer staff who deliver training to the Program.

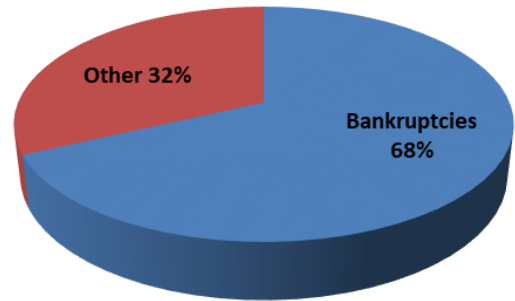
Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet at <https://www.justice.gov/doj/budget-and-performance>

For more information on Program activities, see the written statement prepared by the USTP's Director for his testimony before the House Judiciary Committee's Subcommittee on Regulatory Reform, Commercial and Antitrust Law on June 8, 2017 at <https://www.justice.gov/ust/file/testimony06082017.pdf/download>

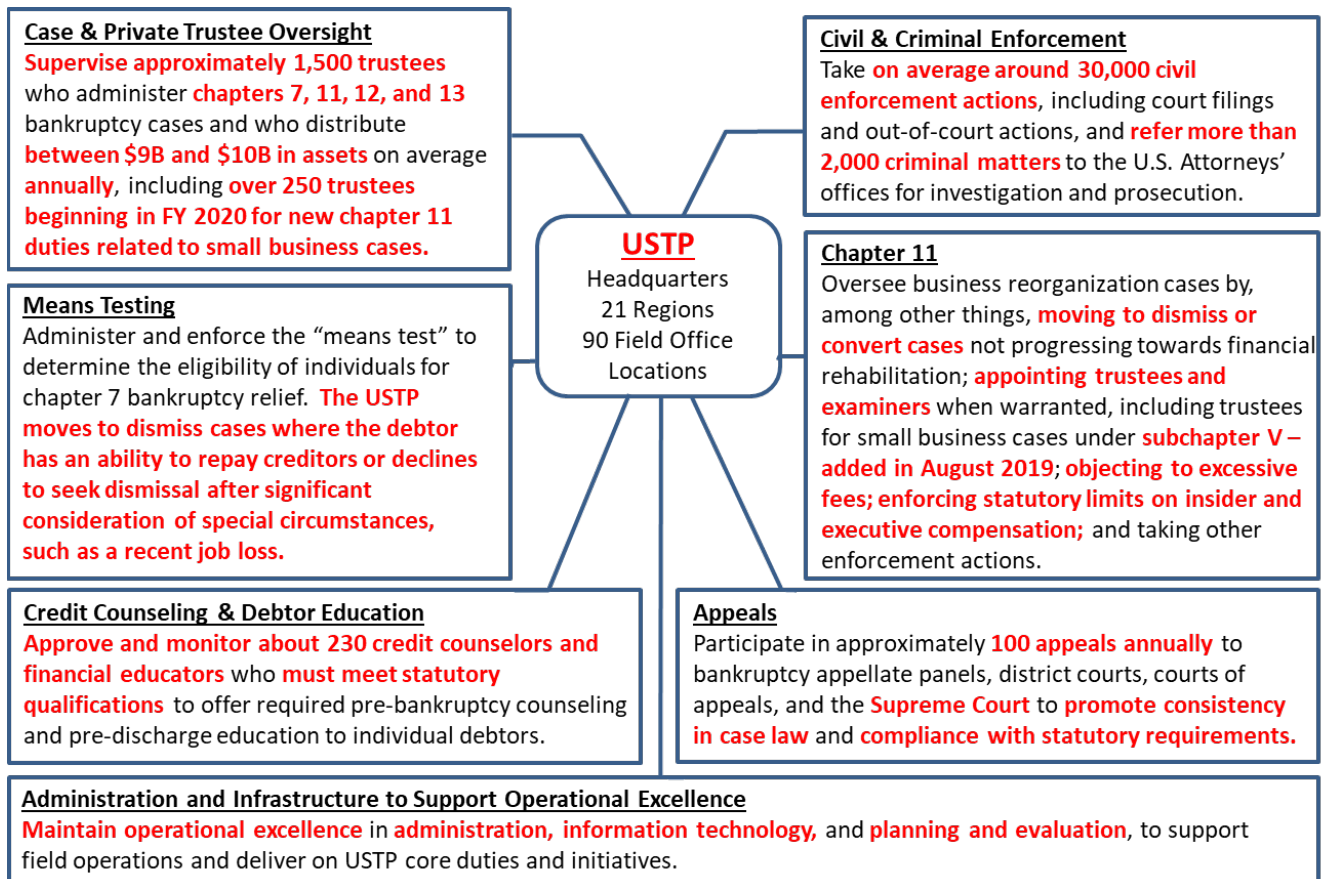
B. Core Duties and Recent Activities

The Program oversees the administration of about 1.5 million ongoing bankruptcy cases in 88 judicial districts. As illustrated in the adjacent chart, over the most recent three fiscal years, more than two-thirds of the cases in the federal judicial system at the end of the fiscal year were bankruptcy cases.³ As further discussed below, Program activities are extensive, covering statutory requirements as well as initiatives in support of the USTP mission.

**Pending Cases:
All Bankruptcies as % of Total Cases
Average FY 2017 to FY 2019**



1. Core Duties



³ Data per the Administrative Office of the U.S. Courts, available at <http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables>. For bankruptcy caseload data see Table F. U.S. Bankruptcy Courts – Bankruptcy Cases Commenced, Terminated and Pending During the 12-Month Periods – Ending September 30, 2017 through September 30, 2019. For data on cases pending in district courts and number of appeals pending in the courts of appeals, see United States District Courts – National Judicial Caseload Profile; and U.S. Court of Appeals – Judicial Caseload Profile.

2. Recent Activities

The USTP conducts extensive case administration and oversight duties, and 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. Below are some of the Program's current focus areas.

- a. The Small Business Reorganization Act.** The SBRA allows small business debtors (other than single-asset real estate debtors) with less than \$2.7 million of debt the option to elect to proceed under a new subchapter – subchapter V – of chapter 11 of the Code. The provisions of subchapter V, effective as of February 19, 2020, provide more streamlined processes, readjust the balance of debtor and creditor rights, and install a chapter 11 subchapter V trustee whose main function will be to assess the viability of a debtor's business and facilitate a consensual plan of reorganization. The Program is responsible for appointing a trustee to each case and estimates it will need to recruit and clear over 250 new private trustees. As cases are filed, USTP staff must assess the individual facts of each case, including business and key reorganization issues, in order to select a trustee from the pool of case-by-case subchapter V trustees to ensure an appropriate skillset match. Once appointed, the Program will carry out oversight responsibilities, to include ensuring the case is progressing within the tight deadlines established under the law; case and financial reporting is provided; and, in cases where a trustee must operate the business, that all requirements of the law are met. While the Program has been conducting a comprehensive recruitment effort in FY 2020, the Program will need to continue to recruit and appoint replacement trustees through at least FY 2021, due to anticipated trustee attrition. In addition, the Program anticipates enhanced training needs both for staff and the private subchapter V trustees, adjustments to oversight activities, and ongoing outreach efforts to bankruptcy stakeholders, including members of the bench, bar, and other professionals. The Program did not receive any base budget resources in FY 2020 to implement these changes and consequently, there are no current services for this initiative. Annually recurring costs are estimated at \$2.1 million and cover 11 positions (4 attorneys) and 10 FTEs. For more information, please see section V, on page 40.
- b. Violations by Consumer Debtor Attorneys and Debt Relief Agencies.** Debtors, creditors, and the bankruptcy system alike are harmed when consumer debtor attorneys and debt relief agencies fail to comply with applicable bankruptcy law. At a local level, the Program takes action against consumer debtor attorneys employing deceptive fee arrangements that violate bankruptcy law and harm those attorneys' clients. On a national level, building upon traditional enforcement activities, the Program is addressing the special problems created by national consumer bankruptcy law firms whose system-wide violations create widespread, multi-jurisdictional issues. Two recent and significant successes in the USTP's litigation in this area, resulting from a multi-year, coordinated strategy executed by headquarters and field resources, exemplify the Program's ability to target such systemic conduct. In the first example, the District Court for the Western

District of Virginia affirmed the findings made and significant relief granted by the Bankruptcy Court for the Western District of Virginia regarding misconduct by a national consumer bankruptcy law firm. The misconduct included the unauthorized practice of law by the firm's non-attorney salespeople and participation in an illicit scheme to deprive secured lenders of their collateral as a means to obtain payment of the firm's fees. Of particular significance, the district court held that the bankruptcy court has the inherent power to discipline those who practice before it, including attorneys and firms who are not themselves members of the bar of that court, but whose non-lawyer employees consistently engage in the unauthorized practice of law affecting the bankruptcy court. In addition, the district court found that the bankruptcy court had the power to impose monetary sanctions, even in excess of what the U.S. Trustee requested, against the firm and its two principal attorneys, and that their misconduct justified the sanctions imposed. In the second example, potentially substantial monetary remedies imposed on the same firm by the Bankruptcy Court for the Northern District of Illinois addressed misconduct that included the firm's repeated failure to fully and accurately disclose some of its debtor clients' pre-petition Fair Debt Collection Practices Act claims and settlements (where the firm represented the client in both the pre-petition litigation and bankruptcy) as well as vexatious litigation tactics. More information on both of these cases can be found on page 21.

- c. Conflicts of Interest in Chapter 11 Business Reorganization Cases.** In February 2019, the USTP entered into a \$15 million, multi-district settlement agreement with global consulting firm McKinsey & Company, Inc. The settlement is 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. Beyond this significant achievement, the Program is continuing its review of chapter 11 cases to assess the impact of potential or actual conflicts posed by a professional firm's retention in a case and the adequacy of disclosures made by such firms. In support of this effort, the Program made publicly-available a major 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.⁴
- d. Post-Bankruptcy Asbestos Trusts.** According to the Government Accountability Office, asbestos bankruptcy trusts paid \$17.5 billion in claims from 1988 through 2011, and more recent studies estimate higher amounts. In recent years, there has been growing public concern that these trusts may be paying fraudulent claims and mismanaging funds, to the detriment of future claimants and the integrity of the bankruptcy system. Although the USTP and courts have limited authority to oversee asbestos trusts created through chapter 11 plans of reorganization, the USTP recently has made major strides in obtaining rulings prior to court approval of such plans that: (1) change the standard for appointing a Future Claimants Representative (FCR) such that the court no longer defers to the tort lawyers' selection; and (2) impose new anti-fraud and auditing requirements.

⁴ Please see: <https://www.justice.gov/ust/file/generalprinciplesdisclosureconflicts.pdf/download>.

Recently, a district court affirmed the bankruptcy court's selection of an FCR, but agreed with the USTP that the court should not apply a deferential standard to the debtor's candidate.

- e. **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 2019, the USTP took more than 12,000 formal and informal actions to address fraud and abuse by consumer debtors seeking chapter 7 relief, with a total financial impact of over \$682 million. Additionally, the Program filed nearly 1,900 motions to convert or dismiss chapter 11 business cases because they were not progressing toward financial rehabilitation.
- f. **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. In FY 2019, the Program entered into a memorandum of understanding with mortgage servicer Ditech Financial LLC (Ditech), memorializing approximately \$35 million in remediation to more than 20,000 homeowners for violations of the Bankruptcy Code and Rules. This was the latest of 11 USTP national settlements, including three settlements entered into or completed in FY 2018 that provided more than \$153 million in remediation to bankruptcy debtors.
- g. **Appellate Advocacy.** 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 USTP applies the law as written and does not favor one group of stakeholders above others. Perhaps as a reflection of that, appellate courts will invite the USTP to file briefs setting forth its legal conclusions even though it is not a party. For example, in *21st Mortg. Co. v. Glenn (In re Glenn)*, 900 F.3d 187 (5th Cir. 2018), the U.S. Court of Appeals for the Fifth Circuit asked the USTP to file a brief in the appeal. The court's ruling agreed with the position of the USTP and affirmed a district court judgment that, in turn, affirmed a bankruptcy court's ruling that delivery and set-up costs should not be included in the valuation of a property that the debtor retains in a chapter 13 case.

C. Program Structure

The USTP is a national program with a field-based structure that enables it to oversee the administration of about 1.5 million ongoing bankruptcy cases in 88 judicial districts and effectively address systemic issues in the bankruptcy system at a local and national or multi-

jurisdictional level. The Program's headquarters, the Executive Office for the United States Trustees (EOUST), is 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 931 direct and reimbursable FTEs in FY 2019, consists of attorneys, financial analysts, paralegals and professional support staff.⁵

1. Executive Office for United States Trustees

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. Six other major units comprise the EOUST: the Office of the General Counsel, which oversees the Program's litigation activities, coordinates appeals, and provides in-house legal counsel, including ethics advice; the Office of Criminal Enforcement, which oversees the Program's criminal referral activities; the Office of Oversight, which oversees private trustee supervision and the approval of credit counseling agencies and debtor education providers; the Office of Planning and Evaluation, which conducts internal evaluations, collects and analyzes operational and bankruptcy system data, and develops and delivers training; the Office of Information Technology, which develops and supports the Program's information technology (IT) systems; and the Office of Administration, which provides human resource, budget, and other administrative support services.

2. USTP Field Offices

Currently, more than 90 percent of staff are located in field offices across 44 states, resulting in a structure that provides an effective service model on which the courts and users of the bankruptcy system have relied since the Program's nationwide expansion over three decades ago. As outlined in the map that follows, 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, this structure uniquely positions the Program to execute its role as the statutory watchdog of the bankruptcy system.⁶ 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

⁵ The USTP has had one reimbursable FTE since FY 2019.

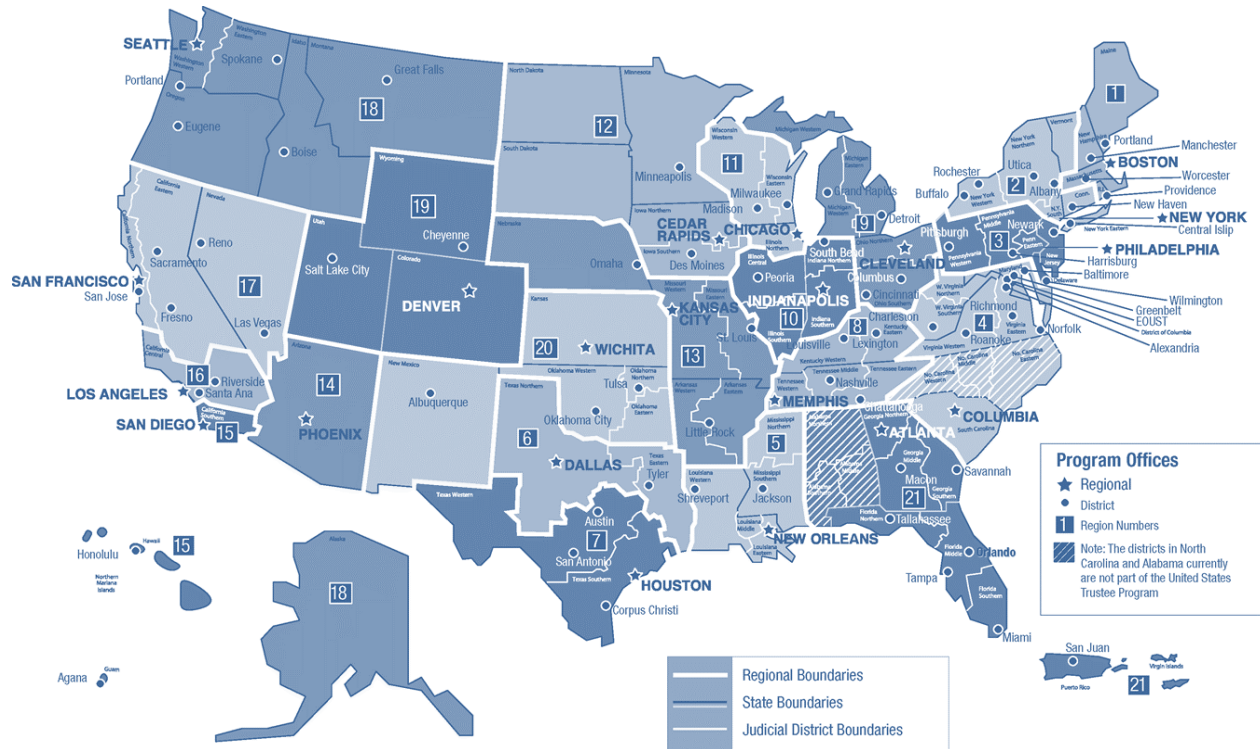
⁶ See 28 U.S.C. § 586 (a) (3); see also H.R. Rep. No. 95-595, at 99 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6049 U.S. Trustees "serve as bankruptcy watchdogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena".

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successful efforts to combat misconduct by national consumer law firms and address deficiencies in the servicing of mortgages for borrowers in bankruptcy.

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**.



D. 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 Treasury,⁷ and subsequently offset 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.

⁷ 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.

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Filing fees are paid at the commencement of each case in chapters 7, 11, 12, and 13,⁸ 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 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 fully 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 filings continued through FY 2018. To ensure the Program could continue to fully 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 2017.⁹ As a result, the Program’s FY 2018 and FY 2019 appropriations were fully offset by fees in those fiscal years. The Program anticipates fully offsetting appropriation and budget requests through FY 2021 as well. The fee structure will sunset after five years. Consequently, the USTP is currently re-evaluating the fee structure in advance of this sunset.

The amended quarterly fee structure has enabled the Program to offset its annual appropriation. The quarterly fee increase, however, is the subject of court challenges, including a putative class action, with litigants arguing, among other things, that the 2017 law is unconstitutional because it has a retroactive effect and violated the constitutional uniformity requirements of the tax and bankruptcy clauses in Article I, Section 8, Clauses 1 and 4, because increased fees were collected in North Carolina and Alabama – the districts not in the USTP jurisdiction – only as of October 2018, in cases filed on or after that date, which was nine months after the USTP began collecting the increased fee in all open cases in its districts. The Department and the USTP are defending against these challenges. The USTP, however, has prevailed in a case decided by the U.S. Court of Appeals for the Seventh Circuit on the definition of “disbursement,” by which quarterly fees are calculated under the relevant statute. The Seventh Circuit in *Cranberry Growers Coop. v. Layng*, 930 F.3d 844 (7th Cir. 2019) agreed that “disbursement” should be interpreted broadly to include all payments made by or on behalf of the debtor.

⁸ The USTP receives a portion of these filing fees as specified by statute.

⁹ The fee increase affects 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 have been 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.

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The following table reflects actual and projected deposits to the U.S. Trustee System Fund for FY 2016 through FY 2021.

USTP Bankruptcy Fees & Other Deposits by Source (\$ in Thousands)	FY 2016 Actual	FY 2017 Actual	FY 2018 Actual	FY 2019 Actual	FY 2020 Est.	FY 2021 Est. With Fee Increase ^{/2}
Bankruptcy Filing Fees	\$56,380	\$54,675	\$53,613	\$54,016	\$55,300	\$56,700
Chapter 11 Quarterly Fees ^{/1}	\$91,125	\$96,690	\$214,533	\$256,621	\$251,860	\$253,820
Interest	\$523	\$210	\$808	\$2,482	\$1,700	\$1,900
Other	\$301	\$163	\$211	\$218	\$255	\$255
Total Deposits	\$148,329	\$151,738	\$269,165	\$313,336	\$309,115	\$312,675

^{/1} FY 2018 and beyond excludes two percent of chapter 11 quarterly fees deposited into the General Fund of the Treasury as required by section 1004(b) of the Bankruptcy Judgeship Act of 2017, to fund additional bankruptcy judgeships. Bankruptcy cases under subchapter V of chapter 11 of the Code are exempt from quarterly fees due to the USTP. This change impacts estimates for FY 2020 and beyond.

^{/2} The amended fee structure was effective January 1, 2018, and applies for each fiscal year through FY 2022. The fee schedule, however, will revert to the prior schedule for any fiscal year in which the balance of the U.S. Trustee System Fund equals or exceeds a threshold amount as of the end of the prior fiscal year. For FY 2020 and FY 2021, the threshold is \$300 million (as amended by the Consolidated Appropriations Act, 2020, Pub. L. No. 116-93). The USTP anticipates ending FY 2020 with a fund balance below \$300 million and therefore projects the higher quarterly fee structure will be in effect through FY 2021.

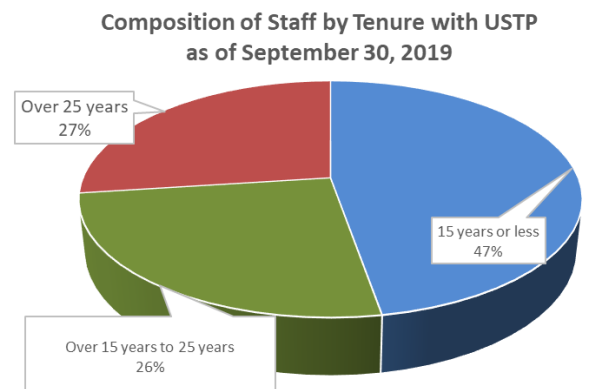
More information on the United States Trustee Program's quarterly fees and the United States Trustee System Fund can be found at <https://www.justice.gov/ust/chapter-11-quarterly-fees>

E. Challenges

The USTP, like other federal organizations, faces several internal and external challenges.

Maintaining Staffing to Support Operations

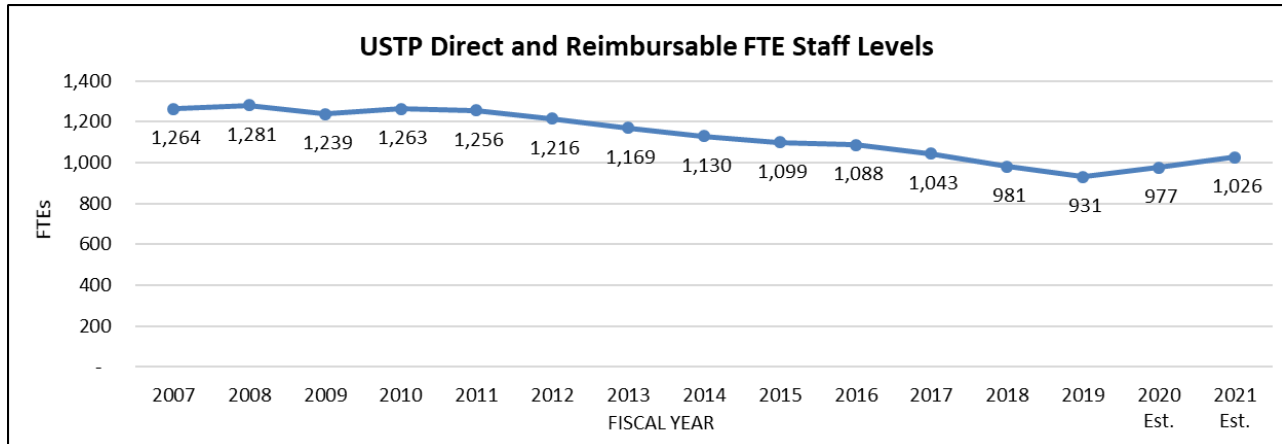
The largest immediate challenge facing the USTP is its ability to maintain the staffing level necessary to execute its mission. In the past decade, the Program's workforce has declined by about a quarter, yet over the same period the Program has taken on substantial additional duties conferred by statute and expanded its capacity to combat fraud and abuse committed by debtors, creditors, professionals, and other third parties. This has been achieved even as the Program's appropriation has essentially remained level over the past five years.



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The decline in the USTP's workforce has required staff to handle an increasing workload. Though overall filings are at similar levels compared to FY 2007, annual case filings per staff member have increased by one-third – and case filings may be rebounding over the next few years. The USTP's adoption of innovative personnel, financial and workflow strategies has somewhat mitigated this workload pressure. Strategies such as the consolidation of functions; the re-deployment of staff throughout the country to address local workload and national initiatives; and the use of shared services in partnership with other agencies and other divisions within the Department have enabled the USTP to carry out its mission despite reduced staffing levels. Staffing shortages, however, exist across the organization, including single points of failure in critical areas, and the Program has limited capacity to address these as approximately 30 percent of senior positions have been filled by staff doing double duty. Moreover, staff attrition due to retirements has accelerated in recent years, which is exacerbating the impact of the shortage. The problem is expected to worsen as currently over a quarter of the Program's employees are eligible to retire compared to an average of 14 percent across the federal government.¹⁰ In response, the USTP has accelerated efforts to fill positions in mission critical as well as administrative areas that support staff recruitment. To preserve and transfer institutional knowledge from departing staff, the Program has instituted mentoring and developmental opportunities for existing staff as well as expanded the use of phased retirement.

The following chart reflects actual and projected FTE levels for FY 2007 through FY 2021.



During the past year, the USTP achieved mission, advanced Department priorities, and began implementing the provisions of the SBRA. Its accomplishments have included significant litigation success in its redress of misconduct by consumer debtor counsel; a significant settlement to redress failure to disclose possible conflicts of interest by one of the world's largest management consulting firms; and breakthroughs in case law to combat fraud and abuse in asbestos trusts. The Program succeeded during a period of diminished resources due to the deployment of innovative management practices. The FY 2021 budget request, however, will

¹⁰ See <https://www.govexec.com/pay-benefits/2018/06/federal-agencies-where-most-employees-are-eligible-retire/149091/>

provide funding critical to sustaining the Program's workforce, at the level necessary to continue its mission and importantly, address the duties added under the SBRA.

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, present challenges for USTP staff to move cases through the system efficiently. In addition to carrying out statutory duties, including means testing and trustee oversight, as the watchdog of the bankruptcy system, the Program must remain involved with new and complex issues associated with debtor fraud, misconduct by creditors and professionals, and complex chapter 11 bankruptcy filings. The Program's ability to ensure the fair and efficient processing of chapter 7 cases is further dependent on the availability of private trustees to administer the bankruptcy estates and distribute payments to creditors. In most cases, chapter 7 trustees are the only representative of the bankruptcy system with whom debtors and creditors have contact. The number of chapter 7 trustees, however, has decreased by about 20 percent over the past decade and based on limited recruitment data, the number of applicants for trustee vacancies has decreased significantly, from an average of 58 candidates in 2010 to 20 candidates in 2017. A trend that may threaten the financial viability of some trustee operations and impede the recruitment of the best qualified candidates is trustee compensation. The fee paid by a debtor upon the filing of a bankruptcy petition, sometimes referred to as the "no-asset" fee, has remained at \$60 per case for over 25 years, and the statutory formula for calculating the percentage fee to trustees on distributions in cases with assets has not changed since 1994.

F. Risks

Unpredictable Legal Challenges and Changes in Bankruptcy law

Legal challenges relating to the Bankruptcy Code are unpredictable in scope and number. The USTP enforces the Bankruptcy Code and defends challenges to its provisions, including by litigating issues of first impression. Changes to the Code or its interpretation may not be foreseeable, but can significantly impact the Program's responsibilities and increase litigation as well as oversight activities. For example, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, fundamentally changed the Code by adding or amending more than 130 sections, which substantially increased the Program's administrative, regulatory and enforcement duties. The Program played a key role in interpreting, implementing, and enforcing the provisions of the BAPCPA, through its efforts in defending the consumer protection provisions, litigating disputes over the interpretation of the means test, and undertaking enforcement actions to protect consumer debtors against misconduct by attorneys and others. More recently, the Program devoted considerable headquarters and field resources to implementing the provisions of the SBRA, including for an extensive recruitment, evaluation and clearing process in order to add over 250 new private trustees. The Program also expended resources to train staff as well as the new trustees on the new law and developed comprehensive policies and guidance to ensure effective oversight mechanisms are in place.

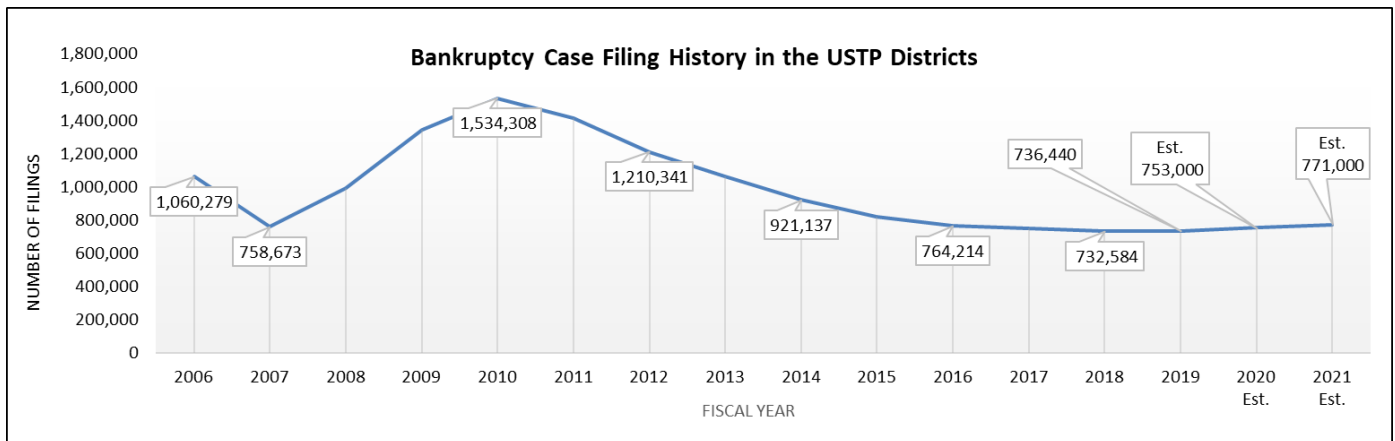
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More information on the impact of the new law on the Program's activities can be found on page 40.

Potential for Volatility in Bankruptcy Filings

The potential for volatility in the number and location of bankruptcy filings creates challenges in case management. Historically, filings have generally increased about two-thirds of the time and decreased the other one-third. Following a doubling in the number of bankruptcy filings from FY 2007 to FY 2010, however, filing rates declined from FY 2011 through FY 2018, with some experts attributing the drop to changes in the law, low interest rates, declining consumer credit, and the availability of distressed debt funding in the capital markets. Changes in these and other external factors could impact filings and pose an issue for workload planning.

Following small declines in FY 2017 and FY 2018, filings in FY 2019 were up slightly compared to filings in FY 2018, suggesting that filing totals may be rebounding over the next few years. The following chart reflects actual and projected filings for FY 2006 through FY 2021.



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.

Consolidation of Functions

In recent years, the Program implemented nationwide a number of work process changes by consolidating at the regional level functions that were previously conducted in each field office. This freed valuable time for field office personnel to pursue other enforcement priorities and provides greater consistency in case administration. This consolidation included certain administrative areas of trustee oversight, chapter 11 quarterly fee review, and bankruptcy case data extraction and download. For example, the USTP approves and files Trustee Final Reports

(TFRs) that provide for the distribution of chapter 7 estate funds to creditors in accordance with statutorily prescribed priorities. TFRs must be reviewed and approved by the USTP, and filed with the Bankruptcy Court, within 60 days of receipt. Consolidation has resulted in more efficient and consistent review of TFRs, now conducted by only a few specially trained staff members in each region. The USTP is currently streamlining processes for additional critical functions, including debtor audits and the means test review.

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. Currently, more than half of the field staff are assigned some tasks that originate in other offices including a significant number of managers who are serving double duty.

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, shared litigation support is provided by the Civil Division of the Department, and shared services provided by the Department of the Interior address issues related to background investigations for the Program. 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.

Reduction of Physical Footprint

- The USTP has taken significant steps to reduce its overall space requirements, realizing space reductions as offices relocate and maximizing the utility of existing office space. Further, in an effort to reduce file room sizes, in FY 2019, the Program initiated a significant file reduction effort to archive, eliminate or scan records in accordance with official retention schedules.

Use of Technology for Streamlining and Cost Savings

The Program is always examining ways to maximize its use of technology to improve operations while reducing costs.

- In FY 2019, the USTP initiated a multi-year modernization project of its system portfolio for case and matter management on which the Program relies to oversee the administration of 1.5 million ongoing bankruptcy cases, enforce civil and criminal matters in such cases, and oversee private trustees who administer cases in chapters 7, 11, 12 and 13. The project is a significant undertaking, with the goal of retiring twelve legacy applications and consolidating them into one integrated system that receives and processes case information from 88

separate court entities. Many of these systems are over a decade old and were developed internally, in response to the USTP's evolving statutory and administrative duties, which have altered work processes over time. The systems rely on outdated and inefficient technology that is costly to operate and too costly to update, thus necessitating the establishment of a new system from the ground-up. The anticipated result is increased functionality, annual cost savings and operational efficiencies, achieved by eliminating obsolete systems, automating functions, and improving user interfaces as well as data analytic capabilities.

- The USTP has been recognized as a leader in the Department's efforts to transform IT operations by shifting to a sustainable cloud infrastructure. In FY 2019, the Program completed a migration of its servers required for electronic file storage and printing capabilities. The process consolidated over 95 physical servers, distributed across the Program's field offices, down to two virtual servers. This resulted in an estimated cost avoidance of almost \$500,000 per life-cycle, and reduced maintenance and facilities cost by over \$380,000 per year. In addition, the transition improved the Program's plan for the continuity of operations by eliminating the reliance on back-up copies of critical data. This initiative followed an earlier successful migration of the Program's two data centers that enabled the Program to save over \$700,000 in annual maintenance costs.
- The USTP continues to expand its use of video teleconferencing equipment in its field offices nationwide to reduce travel costs to attend court hearings and for meetings and training programs.

H. Program Efforts Toward Integrating Environmental Accountability

The USTP integrates environmental accountability into its operations in the following ways.

- The USTP's Facilities Management Division works with the General Services Administration to ensure the use of environmentally preferable building products and materials for the design, construction, and operation of commercially owned office space occupied by the Program.
- The Program makes every effort to purchase electronic products that are Electronic Product Environmental Assessment Tool registered or EnergyStar Compliant products. Such products include computers, computer monitors, printers, and copiers.
- The Program purchases supplies that are environmentally preferable products made from recycled content, such as copier paper, file folders, pens, and remanufactured toner cartridges.
- Recycling of paper products, cans, bottles, and plastics is encouraged throughout the Program – an effort highlighted through the use of signage, posters, and the continual availability of appropriate recycling receptacles.

II. Summary of Program Changes

Item Name	Description				Page
		Pos.	Estimated FTE	Dollars (\$000)	
USTP Statutory Duties under Subchapter V of Chapter 11	The USTP requests \$2,103,000 to fund the additional staffing and related non-personnel costs necessary for the ongoing execution of new statutory duties provided under subchapter V of chapter 11 of the Code.	[11]	10	\$2,103	40

III. Appropriations Language and Analysis of Appropriations Language

United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, \$234,464,000 [\$227,229,000] 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(b) of title 28, United States Code (as limited by section 1004(b) of the Bankruptcy Judgeship Act of 2017 (division B, Public Law 115–72)), 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 2021 [2020], net of amounts necessary to pay refunds due depositors, exceed \$234,464,000 [\$227,229,000], those excess amounts 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 2021 [2020], net of amounts necessary to pay refunds due depositors, (estimated at \$312,675,000 [\$395,000,000]) 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 2021 [2020] appropriation from the general fund estimated at \$0.

Analysis of Appropriation Language

No substantive changes proposed.

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.

<i>Administration of Cases</i>	Direct Pos.	Estimated FTE	Amount (\$ in thousands)
2019 Enacted ^{/1}	[1,028]	930	\$226,000
2020 Enacted ^{/1}	[1,028]	976	\$227,229
2020 Reimbursable FTE - Base	[0]	1	\$0
2020 Enacted with Reimbursable FTE ^{/1}	[1,028]	977	\$227,229
Adjustments to Base and Technical Adjustments	-[1]	39	\$5,132
2021 Current Services	[1,027]	1,016	\$232,361
2019 Program Increases	[11]	10	\$2,103
2021 Request with Reimbursable FTE	[1,038]	1,026	\$234,464
Total Change 2020 - 2021	[10]	49	\$7,235

<i>Administration of Cases</i> Information Technology Breakout	Direct Pos.	Estimated FTE	Amount (\$ in thousands)
2019 Enacted ^{/1}	[27]	28	\$32,738
2020 Enacted ^{/1}	[29]	27	\$27,098
Adjustments to Base and Technical Adjustments ^{/2}	[1]	3	(\$3,876)
2021 Current Services	[30]	30	\$23,222
2021 Request with Reimbursable FTE	[30]	30	\$23,222
Total Change 2020 - 2021	[1]	3	(\$3,876)

^{/1} FTEs are actual. Overall USTP positions include one reimbursable position.

^{/2} The negative adjustment-to-base reflects the anticipated impact of the USTP's multi-year, IT modernization effort as well as the projected reduction in contract costs as the Program's FTE base increases.

1. A Balanced Approach to Civil Enforcement

During FY 2019, the USTP took more than 26,000 civil enforcement actions against debtors and creditors, including court filings and out of court actions, with a potential monetary impact of \$757 million in debts not discharged, fees disgorged, and other relief. Since 2003, the USTP has taken more than 807,000 actions with a monetary impact of nearly \$22 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 BAPCPA, 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 2019, a case with disposable income above \$227.50 per month would be presumed abusive and subject to dismissal.

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.

USTP Harrisburg Office Obtains Dismissal of Chapter 7 Case, Preventing Discharge of \$344,784 in Unsecured Debt.

The Bankruptcy Court for the Middle District of Pennsylvania granted the U.S. Trustee's motion to dismiss the case. An investigation by the USTP revealed that the **debtors overstated their mortgage and tax expenses on their means test form by more than \$1,000 per month.** After using the correct figures, the debtors had sufficient monthly disposable income to trigger the presumption of abuse and the U.S. Trustee filed a motion to dismiss the case. The U.S. Trustee's motion also argued that the case was abusive under the totality of the circumstances standard because the debtors lacked the need for a discharge based on their actual financial circumstances.

United States Trustee Program

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.

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.

Creditor Abuse

The USTP continues to monitor compliance by national creditors for fraud and abuse issues. The Program has entered into 11 national settlements, including three settlements entered into or completed in FY 2018 which provided more than \$153 million in remediation to bankruptcy debtors, and one settlement completed in FY 2019 with Ditech, that provided approximately \$35 million in remediation to more than 20,000 homeowners.

USTP Enters into Memorandum of Understanding (MOU) with Ditech Financial LLC Memorializing Approximately \$35 Million in Remediation to More Than 20,000 Homeowners.

The remediation addresses: (1) unnoticed loan modifications for borrowers in bankruptcy resulting in overpayments and improperly capitalized unnoticed fees and costs, (2) failure to run annual escrow analyses for borrowers in bankruptcy, and (3) failure to waive unnoticed tax and insurance advances following a borrower's discharge.

USTP Baltimore Office Obtains Dismissal of Chapter 7 Case, Preventing Discharge of \$227,032 in Unsecured Debt.

The Bankruptcy Court for the District of Maryland agreed with the U.S. Trustee and **found the case abusive under the totality of the circumstances provision of the Code** after an investigation revealed that debtor's debts were primarily consumer in nature, despite the debtor's characterization of his mortgage as a business debt. The debtor's schedules indicated he had more than \$4,300 in monthly disposable income to repay creditors under a chapter 13 plan. Rather than defend the U.S. Trustee's motion, the debtor consented to case dismissal.

USTP Columbus Office Obtains Denial of Discharge of \$909,086 in Unsecured Debt in Chapter 7 Case.

Ruling for the U.S. Trustee, the Bankruptcy Court for the Southern District of Ohio denied the discharge after the USTP's investigation revealed that the debtor, a disbarred attorney, attempted to conceal his interest in multiple businesses with a combined income of more than half a million dollars in the years before he filed bankruptcy. The court found that the debtor intentionally acted to conceal his assets and falsely certified that he disclosed all his assets and sources of income.

Consumer Debtor Attorneys 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, injunctions, and other sanctions. In FY 2019, the Program brought nearly 500 actions in court and took nearly 1,500 additional out-of-court actions against debtors' attorneys including under the disgorgement provisions of section 329 and the debt relief agency provisions of section 526 of the Code.¹¹

USTP Chicago Office Obtains Permanent Suspension from Practice for Attorney Misconduct Related to Credit Counseling and Debtor Education Certificates

The Bankruptcy Court for the Northern District of Illinois ordered the indefinite suspension of the bankruptcy attorney from practice as the result of an investigation conducted by the Program's Chicago Office. The investigation found that the attorney fabricated and filed at least 59 false credit counseling or debtor education certificates. The attorney may not seek reinstatement for at least five years, and must notify his former clients in writing of his suspension and their right to seek new counsel or proceed *pro se* (without the assistance of an attorney).

The USTP's initiative is both a national and local priority. On 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." As highlighted in the case examples that follow, 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 standards for representation of their clients; and their entry into improper schemes with towing companies that take custody of debtors' automobiles in a way that harms both debtors and creditors, who are deprived of their collateral.

¹¹ 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 in chapter 7 cases. Section 526 limits the conduct of debt relief agencies including attorneys that assist debtors filing for bankruptcy relief. Chapter 7 debtor attorneys' transactions with their clients are also governed, where applicable, by Sections 527 and 528 of the Code.

District Court Affirms Sanctions Against National Consumer Bankruptcy Law Firm, Including Five-Year Practice Ban, Resulting from Enforcement Actions Brought by USTP's Roanoke Office.

The District Court for the Western District of Virginia affirmed key findings made, and largely affirmed the significant relief granted, by the Bankruptcy Court for the Western District of Virginia regarding misconduct by a national consumer bankruptcy law firm. Ruling in favor of the U.S. Trustee, the bankruptcy court found that the firm, its principals, and the local bankruptcy attorneys the firm associated itself with had engaged in misconduct including participation in an illicit scheme to convert collateral subject to secured interests held by legitimate creditors and the unauthorized practice of law. The bankruptcy court imposed a five-year practice ban in the district against the firm and its two principal attorneys, along with shorter bans for the local attorneys. The bankruptcy court also collectively sanctioned the firm, the two principal attorneys, and the firm's non-attorney CEO, \$250,000, and also sanctioned one of the principal attorneys an additional \$50,000 and each local partner \$5,000. The district court affirmed the five-year practice ban, holding that **the bankruptcy court has the inherent power to discipline those who practice before it, including attorneys and firms who are not themselves members of the bar of that court** (in this case, the two principal attorneys and the firm) but whose non-lawyer employees are "consistently engaged in the unauthorized practice of law affecting the bankruptcy court." The district court vacated the monetary sanctions against the CEO based on his limited role in the firm's misconduct, but found that **the bankruptcy court had the power to impose monetary sanctions, even in excess of what the U.S. Trustee requested**, against the firm and the two principal attorneys, and that their misconduct justified the sanctions imposed. The district court remanded the case to permit the firm and the two principal attorneys to submit evidence about their ability to pay.

Bankruptcy Court for the Northern District of Illinois Imposes Potentially Substantial Monetary Relief on National Consumer Bankruptcy Law Firm Following Enforcement Actions Brought by USTP's Chicago Office.

The bankruptcy court addressed the firm's repeated failure to fully and accurately disclose some of its debtor clients' pre-petition Fair Debt Collection Practices Act (FDCPA) claims and settlements (where the firm represented the client in both the pre-petition litigation and bankruptcy). The firm conceded that the fees and settlements were not disclosed in the bankruptcy cases, but argued that it should not be sanctioned because it had already refunded some attorney fees and had purportedly implemented procedures to prevent recurrence. The court nevertheless imposed a \$10,000 civil penalty against the firm under section 526(c)(5)(B) of the Code, finding ample evidence of a pattern of inaccurate or incomplete disclosures in scores of cases and the firm's admissions to be disingenuous in light of the firm's simultaneous position that its disclosures were adequate. **The court also concluded that the firm abused the judicial process by engaging in multiple discovery abuses and pushing unreasonable litigation positions.** As a result, the court held the firm's two former principals jointly and severally liable for all of the United States Trustee's attorney's fees and expenses; these fees and expenses, when tabulated, are likely to be substantial.

At a local level, the USTP also takes action against consumer debtor attorneys employing deceptive fee arrangements that violate bankruptcy law and harm those attorney's 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, which may raise concerns. For instance, because payments owed for post-petition work are not discharged, bifurcation may result in the attorney improperly seeking payment for pre-petition services under the color of the post-petition fee agreement. Or, the attorney may not perform critical case analysis before filing, which may cause an ineligible debtor to file bankruptcy, or to file under the wrong chapter.

Bifurcation arrangements may also include the additional feature of “factoring,” where a debtor’s post-petition fee agreement is assigned by the attorney to a third-party finance company in exchange for a lump sum discounted payment. To offset the discount, attorneys may inflate their fees beyond what is permissible under the Code. Factoring presents additional issues, such as those related to inadequate disclosures to the client and to the court. The USTP is currently litigating enforcement actions related to bifurcation and factoring in several bankruptcy courts and will continue to investigate and take action as appropriate when debtors’ attorneys engage in this sort of conduct in a way that violates the Code and Rules.

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.

The Program’s responsibilities in chapter 11 cases include the following matters.

- Appointing trustees and examiners when warranted, such as when there is suspected financial wrongdoing.
- Objecting when appropriate to the retention and compensation of professionals, such as when there are suspected conflicts of interest or when compensation requests are unreasonable.
- Reviewing and objecting to excessive insider compensation plans.
- Monitoring proposed reorganization plans and disclosure statements, and taking

Bankruptcy Court for Central District of California Enters Stipulated Judgment between the United States Trustee and a Bankruptcy Attorney Permanently Barring Attorney from Bankruptcy Court and Ordering Monetary and Other Relief

The attorney and her firm engaged in an abusive “no money down” business model for chapter 7 cases, under which they collected hundreds of thousands of dollars in fees across hundreds of cases. The defendants’ conduct was improper because, among other things, the firm inflated its customary rates to offset the cost of financing obtained from a third party; failed to accurately disclose its compensation arrangements; and knowingly filed documents containing false information. Rather than proceed to trial, the defendants agreed to pay \$13,000 in penalties, sanctions, and disgorgement, and to a permanent bankruptcy practice ban in the Central District of California for the firm’s primary bankruptcy attorney, along with other relief.

USTP Minneapolis Office Objects to Investment Banker Fees Resulting in \$750,000 Fee Reduction, Equivalent to 35 Percent Decrease.

The debtor employed the banker to market and sell its iron ore plants. The banker sold the assets at one plant, excluding the underlying real estate, for approximately \$15 million. The banker’s fee application sought \$2,149,057 in fees and expenses, which included a minimum guaranteed fee of \$2 million. The USTP objected to the fees because the banker previously estimated that the sale of the assets would bring approximately \$50 million for the estate. In response, the banker reduced its fees by \$750,000, or 35 percent, following which the Bankruptcy Court for the District of Minnesota approved its fee application.

action, for example, when impacted parties are provided unreasonable timelines or inadequate information to evaluate a proposal.

- Moving 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.
- Enforcing the new statutory duties provided under the SBRA, as discussed further in section V, on page 40.

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

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, filing over 500 objections on average annually over the past five fiscal years. In FY 2019, the Program entered into a settlement agreement with the global consulting firm McKinsey & Company, Inc. resolving disputes over the adequacy of the firm's disclosures of connections in chapter 11 bankruptcy cases. The settlement is one of the highest repayments made by a bankruptcy professional for alleged non-compliance with disclosure rules.

USTP Enters Into \$15 Million, Multi-District Settlement Agreement with Global Consulting Firm McKinsey & Company, Inc. (McKinsey), Resolving Disputes over Adequacy of Firm's Disclosures of Connections in Three Chapter 11 Bankruptcy Cases.

The USTP alleged in court filings that McKinsey failed to identify clients who were connected with the debtors it represented and lacked candor regarding its investments in entities that could create a conflict of interest.

The USTP has agreed not to bring additional actions in these and other cases based on McKinsey's past disclosures. If facts later show that those disclosures contained material misrepresentations or omissions that would have rendered McKinsey not disinterested or otherwise disqualified from retention, then the USTP is free to seek disqualification from employment, disgorgement of fees, and other remedies in the settled cases.

While the agreement resolves disputes with the USTP, it does not impact the rights of any parties or government agencies not participating in the settlement. The cases are captioned Alpha Natural Resources, Case No. 15-33896 (Bankr. E.D. Va.), Westmoreland Coal, Case No. 18-35672 (Bankr. S.D. Tex.), and SunEdison, Case No. 16-10992 (Bankr. S.D.N.Y.).

In recent years, in recognition of changes in the industry, the USTP began a process to develop additional guidelines concerning the retention of Chief Restructuring Officers (CROs) in chapter 11 cases. Through its outreach, the Program received valuable input from some stakeholders, but does not currently expect to make major shifts in its legal position and continues to follow the existing protocol on CRO retention that has been in place for the past 18 years. Any future changes will be addressed through a public process involving additional outreach to the industry,

publication of draft guidelines for comment, and a public meeting in which stakeholders participate. Final guidelines will be issued in coordination with the Department.

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. The profile of professional firms seeking to be retained in bankruptcy cases – including law firms and financial advisors – has, however, grown increasingly complex. 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 publicly-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 is publicly available and can be found in the link provided below.¹²

Review of Proposed Executive and Other Insider Bonuses

The Program 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 many cases,

Up to \$16 Million in Executive Bonuses Denied by the Bankruptcy Court for the Northern District of California for a Large Chapter 11 Bankruptcy Case. The USTP San Francisco Office Filed an Objection in the Case.

The court denied a motion by the joint chapter 11 debtors to award up to \$16 million in bonuses to its executives. Among other things, the U.S. Trustee argued in its objection that the debtors' Key Employee Incentive Plan (KEIP) did not provide enough information to determine whether it was a true incentive plan with sufficiently difficult performance targets, as required by 11 U.S.C. § 503(c), instead of being primarily retentive in nature. The court found that the KEIP was not justified by the facts of the case and denied the debtors' motion.

¹² 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.

the United States Trustee's formal or informal objections have resulted in substantial voluntary changes to the debtor's proposed executive compensation programs. Other cases have required formal court action.

3. Combatting Abuse in Post-Bankruptcy Asbestos Trusts

In recent years, there has been increasing public concern, including from the courts and researchers, that asbestos trusts may be paying fraudulent claims and mismanaging funds, which may deplete funds available for legitimate claimants.

Asbestos trusts operate and pay claims for years or even decades after an asbestos company emerges from bankruptcy. Since 1994, more than 60 such trusts have been established. According to the Government Accountability Office, asbestos bankruptcy trusts paid \$17.5 billion from 1988 through 2011, and more recent studies estimate higher amounts.

Asbestos trusts pay the personal injury claims of former employees and customers of debtor companies that were involved in the production of asbestos or products containing the mineral. These trusts are established under a debtor company's confirmed plan of reorganization and are governed under section 524(g) of the Code, a provision added in 1994 that established a mechanism to address the unique issues associated with asbestos liabilities. The trusts allow debtor companies to set aside money for claims while continuing to operate. Prior to the provision's enactment, the magnitude of litigation brought on by victims exposed to asbestos prompted a number of asbestos companies to file for bankruptcy relief. The symptoms of asbestos-related diseases, however, can take decades to manifest. Once created following confirmation the trusts assume responsibility for both the defense and payment of existing and future claims, but operate under limited oversight by the bankruptcy courts and the USTP. Consequently, the standards and mechanisms of accountability and transparency applicable in chapter 11 cases do not apply to asbestos trusts. Although the USTP and courts have limited authority to oversee asbestos trusts created through chapter 11 plans of reorganization, the USTP recently has made major strides in obtaining rulings prior to court approval of such plans that: (1) change the standard for appointing an FCR such that the court no longer defers to the tort lawyers' selection; and (2) impose new anti-fraud and auditing requirements. Recently, a district court affirmed the bankruptcy court's selection of an FCR, but agreed with the USTP that the court should not apply a deferential standard to the debtor's candidate.

4. 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

United States Trustee Program

American society, the detection of bankruptcy fraud and other criminal activity can lead to the detection and prosecution of other serious crimes.

To execute its mandate, the Program collaborates with federal and state law enforcement partners and is a member of approximately 70 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, approximately 25 attorneys assist U.S. Attorneys' offices in the prosecution of bankruptcy and bankruptcy-related 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.

Mortgage Fraudster Sentenced to 20 Years in Prison for Scheme that Targeted Vulnerable Homeowners. The USTP's Los Angeles Office Initially Referred the Matter for Investigation and Provided Substantial Assistance to Law Enforcement.

For his role in a \$17 million mortgage fraud scheme, the career con man and mastermind behind the scheme, received the prison sentence which will be followed by five years of supervised release. The real estate fraud scheme had two parts: one involving property theft and litigation extortion, and the other involving illegal foreclosure and eviction delay. The defendant targeted elderly and non-English speaking homeowners, promising them real estate "expertise" in managing their income producing properties or helping them with loan modifications and foreclosure delays. The defendant tricked the homeowners into signing fraudulent deeds on their properties with false promises that the deeds would help homeowners protect properties from creditors or enable them to get equity out of the properties. Unbeknownst to his victims, the deeds described fake loans that the homeowners were supposedly guaranteeing for third parties, and in signing the deeds, they were pledging their houses as collateral for these fake loans. The defendant used the fraudulent deeds to steal homes and money from the victims. With his co-conspirators, the defendant also used fraudulent filings to charge homeowners fees to delay foreclosure and eviction actions and used fake deeds and fraudulent bankruptcy petitions to stop foreclosure sales. **The defendant and the others had homeowners sign fraudulent deeds that transferred interests to debtors in bankruptcy cases, but the bankruptcies were fraudulent and used solely as part of the fraudulent scheme, not as part of any genuine effort to restructure or eliminate debts. Many of the fraudulent bankruptcies were filed in the names of fictional people and entities, and some involved stolen identities.**

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 reaches, on average, nearly 3,000 individuals each year including agents and other representatives from the United States Attorneys' Offices, Federal Bureau of Investigation (FBI), Internal Revenue Service Criminal Investigation Division, U.S. Postal Inspection Service, Department of Housing and Urban Development Office of the Inspector General, and Secret

Service. Notable among these programs were two multi-day presentations in FY 2019, requested by the FBI Economic Crimes Unit, for an estimated aggregate of 600 attendees.

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.

Debtor Sentenced to More Than 12 Years in Prison After Pleading Guilty in Five Counts of Bankruptcy Fraud, Nine Counts of False Declarations in Bankruptcy, Twelve Counts of Wire Fraud and Two Counts of Aggravated Identity Theft. The USTP's Harrisburg Office Assisted the U.S. Attorney, the Internal Revenue Service Criminal Investigation Division, and the Federal Bureau of Investigation with the Investigation.

The debtor defrauded his creditors, the Bankruptcy Court, and his wife by filing seven chapter 13 and chapter 11 bankruptcy petitions, five under his own name and two under his wife's name without her knowledge or consent. The petitions contained false information regarding his income, assets, and employment, and were filed in order to postpone multiple foreclosure sales of his residence. In addition to the prison time, the defendant was sentenced to three years of supervised release and ordered to pay \$1,567,275 in restitution.

More information on the USTP's annual criminal referrals can be found at http://www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm

5. 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 2019, the Program participated in 81 appellate matters beyond the bankruptcy court, including 14 matters at the United States court of appeals level and nine before the Supreme Court.

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In a significant decision impacting chapter 11 cases, in 2017, the Supreme Court handed down *Czyzewski v. Jevic Holding Corp.*, 580 U.S. ___, 137 S. Ct. 973 (2017), where the court agreed with the position of the United States and held that the Code precludes a bankruptcy court from authorizing a final distribution of proceeds from an estate claim settlement through a structured dismissal that violates the Code's statutory priority scheme.

The USTP has successfully litigated several cases upholding the decision in *Jevic*. For example, in *In re Constellation Enterprises, LLC*, No. 16-11213 (Bankr. D. Del. May 16, 2017), the USTP successfully objected to a settlement between the chapter 11 unsecured creditors' committee and a purchaser of the debtor's assets that would have "skipped" a distribution to higher priority creditors in favor of lower priority creditors. The court sustained the USTP's objection based on *Jevic*, and the USTP sought and obtained dismissal of the committee's appeal on other grounds. The chapter 11 creditors' committee then appealed the bankruptcy court's ruling, which the USTP preserved by convincing the district court that the committee lacked standing to appeal, as the case had converted to chapter 7. *Official Committee of Unsecured Creditors v. Constellation Enterprises, LLC (In re Constellation Enterprises, LLC)*, 587 B.R. 275 (D. Del. 2018). The USTP not only defeated the argument that chapter 11 committees continue to exist after cases convert to chapter 7, but also that such committees may transfer their claims to successors in interest. The Program's success ensures that chapter 11 committees' statutory roles are not extended beyond what the Code authorizes.

The Jevic and Constellation cases stand on their merits as a good example of the role the USTP can play in reorganization cases. As the only neutral party and one without a pecuniary interest, the Program is able to ensure that the provisions of the Bankruptcy Code are followed by all parties to the case. Sometimes, the USTP sides with employees, and other times it sides with major lenders. But at all times, the Program advocates for the most faithful construction of the Code.

The USTP also defends the statutory powers that Congress has given it from constitutional attacks. For example, the Program successfully addressed challenges to section 526(a)(4) of the Code, a key provision on which the Program relies to police the conduct of debtors' attorneys and take action against incompetent or overreaching bankruptcy practitioners. Under this provision, debtors' attorneys are prohibited from advising their clients to incur debt to pay for their legal work. The Program successfully encouraged the government to intervene before the U.S. Court of Appeals for the Eleventh Circuit to defend the provision against a First Amendment challenge. USTP staff assisted with the drafting of the *amicus curiae* brief filed by the government in the case.¹³ The Eleventh Circuit agreed with the government's interpretation of the statute and upheld the constitutionality of the provision. *Cadwell v. Kaufman, Englett &*

¹³ 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.

Lynd, PLLC, 886 F.3d 1153 (11th Cir. 2018). This is the second time the Program has assisted with the successful defense of section 526(a)(4) against a constitutional challenge.¹⁴

Below are other notable case examples from the USTP's appellate practice:

- The Supreme Court unanimously agreed with the position of the United States as *amicus* regarding the legal standard to be employed when determining whether a violation of the Bankruptcy Code's discharge injunction warrants civil contempt remedies. The Court rejected the positions of both the United States Court of Appeals for the Ninth Circuit, which applied an entirely subjective good faith standard, and the bankruptcy court, which applied a standard that required only awareness of the discharge and an intentional act that violated it. Adopting the government's position instead, the Court held that "a court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful." The Court noted, however, that subjective intent is not irrelevant. Bad faith may warrant civil contempt and good faith, even though it does not bar the imposition of civil contempt remedies, may help to determine an appropriate sanction.

Taggart v. Lorenzen, 587 U.S. ___, 139 S. Ct. 1542 (2019)

- The USTP assisted the Solicitor General in successfully arguing that a bankruptcy court's determination under section 1129(a)(10) of the Code of insider status with respect to a particular claimholder is reviewed for clear error.

U.S. Bank Nat'l Ass'n ex rel. CWC Capital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC, 583 U.S. ___, 138 S. Ct. 960 (2018)

- The Supreme Court agreed with the position of the United States, participating as *amicus*, that a "statement about a single asset can be a 'statement respecting the debtor's financial condition'" under section 523(a)(2) of the Code. Lower courts disagreed about this, and the government's participation assisted the Court in understanding the bankruptcy implications of the issue presented and helped settle this statutory interpretation question. Although the Program does not litigate cases under section 523(a)(2), the USTP actively assisted the Solicitor General in this case because the Court's construction of the phrase "financial condition" in that section could have affected the construction of the same term in a statute the Program does enforce – section 727(a)(3) – which denies the debtor's discharge for misconduct, including destruction and failure, regarding records pertaining to the debtor's financial condition.

Lamar, Archer & Cofrin, LLP v. Appling, 584 U.S. ___, 138 S. Ct. 1752 (2018)

¹⁴ For further details, please see *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 247 (2010) (which rejects the argument that section 526(a)(4) is impermissibly vague).

- The Code establishes eligibility requirements that debtors must satisfy in order to obtain chapter 13 relief. Disregarding the law, a bankruptcy court allowed an ineligible debtor to pursue chapter 13 relief under an expansive theory, which received public attention and would have allowed other ineligible debtors to do the same. The USTP appealed, and the appellate court reversed that ruling. It did so because the USTP correctly argued that the Code unambiguously barred the debtor from pursuing chapter 13.

Stearns v. Pratola (In re Pratola), Case No. 18-cv-213, 2018 WL 4181498 (N.D. Ill. Aug. 31, 2018)

6. Private Trustee Oversight

The USTP 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. Private trustees are responsible for approximately 1.5 million ongoing cases, and they distribute between \$9 and \$10 billion in assets on average annually. 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.

The Program instructs trustees concerning their duties to debtors, creditors, other parties in interest, and the United States Trustee; trains trustees and evaluates their performance; reviews their financial operations; and intervenes to investigate and recover the loss of estate assets when improper activity is suspected or alleged. The Program's oversight activities include reviewing around 70,000 reports on chapter 7 cases on average annually as well as 200 operating budgets of chapter 12 and 13 trustees; and annually conducting over 450 audits and other reviews of trustee operations. These reviews ensure the effective administration of estate assets and work as safeguards against embezzlement, mismanagement, or other improper activity.

Under the recently enacted SBRA, the USTP estimates it may have to identify, appoint and supervise over 250 new private trustees, which is discussed further in section V, on page 40.

7. 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 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, on-site 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 approved entities must re-apply annually to maintain their standing. Currently, approximately 85 credit counseling agencies and 145 debtor education providers are approved to offer these services. Historically, around 20 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 \$50, making these services accessible at a relatively modest cost.

B. Performance Tables

1. PERFORMANCE AND RESOURCES TABLE											
Appropriation:		United States Trustee Program									
Decision Unit:		Administration of Cases									
Strategic Goal:		4. Promote Rule of Law, Integrity and Good Government									
Strategic Objectives:		4.1 Uphold the rule of law and integrity in the proper administration of justice 4.4 Achieve management excellence									
		Target		Actual		Projected		Changes		Requested (Total)	
WORKLOAD/ RESOURCES		FY 2019		FY 2019		FY 2020		Current Services Adjustments & FY 2021 Program Changes		FY 2021 Request	
Total Costs and FTEs (Direct and Reimbursable)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
TYPE / Strategic Objective	Performance /Resources	1,016	\$226,000	931	\$226,000	977	\$227,229	49	\$7,235	1,026	\$234,464
Activity	1. Civil and Criminal Enforcement and Appellate Matters	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		524	\$116,616	480	\$116,616	504	\$117,250	25	\$3,733	529	\$120,983
Efficiency Measure	No. of 707(b) inquiries per successful outcome	7.0		5.3		7.0		0.0		7.0	
	Percent of Trustee Final Reports reviewed within 60 days	95%		98%		95%		0%		95%	
Activity	2. Case and Trustee Administration	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		492	\$109,384	451	\$109,384	473	\$109,979	24	\$3,502	497	\$113,481
Outputs	Number of successful actions related to consumer protection ^{1/}	N/A		1,605		N/A		N/A		N/A	
	Number of successful discharge actions ^{1/}	N/A		345		N/A		N/A		N/A	
	Potential Additional Returns to Creditors through Civil Enforcement and Related Efforts ^{1/}	N/A		\$757.4M		N/A		N/A		N/A	
	Litigation success rate	95%		97%		95%		0%		95%	

1/ Beginning in FY 2018, the USTP excluded targets for numerical performance measures due to the uncertain effects of anticipated staffing reductions.

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,

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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, 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 disgorged, 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.

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PERFORMANCE MEASURE TABLE								
Appropriation:		United States Trustee Program						
Decision Unit:		Administration of Cases						
Strategic Goal:		4. Promote Integrity, Good Government, and the Rule of Law						
Strategic Objectives:		4.1 Uphold the rule of law and integrity in the proper administration of justice 4.4 Achieve management excellence						
Performance Report and Performance Plan Targets		FY 2016	FY 2017	FY 2018	FY 2019	FY 2019	FY 2020	FY 2021
		Actual	Actual	Actual	Target	Actual	Target	Target
Efficiency Measure	No. of 707(b) inquiries per successful outcome	5.2	5.1	5.4	7.0	5.3	7.0	7.0
	Percent of Trustee Final Reports reviewed within 60 days ¹	New Measure FY 2017	100%	100%	95%	98%	95%	95%
Outputs	Number of successful actions related to consumer protection ²	2,503	2,483	2,723	N/A	1,605	N/A	N/A
	Number of successful discharge complaints ³	462	424	424	Discontinued FY18	Discontinued FY18	Discontinued FY18	Discontinued FY18
	Number of successful discharge actions ^{2/3}	New Measure FY 2018	New Measure FY 2018	472	N/A	345	N/A	N/A
	Potential additional returns to creditors through civil enforcement and related efforts ^{2/4}	\$965M	\$884M	\$2,839M	N/A	\$757M	N/A	N/A
	Litigation success rate ¹	New Measure FY 2017	98%	97%	95%	97%	95%	95%

1/ The Program added two new measures in FY 2017: the percent of Trustee Final Reports reviewed within 60 days and the Program's overall litigation success rate.

2/ Beginning in FY 2018, the USTP excluded targets for numerical performance measures due to the uncertain effects of anticipated staffing reductions. The Program, however, plans to re-establish targets following the conclusion of FY 2020, when data for a full fiscal year is available for the Program to determine baseline levels for its measures.

3/ The number of successful discharge complaints measure was discontinued in FY 2018 and replaced by the number of successful discharge actions.

4/ The FY 2018 actual figure for potential additional returns to creditors through civil enforcement and related efforts is due to a case with \$2.2 billion in debts not discharged.

C. Performance and Strategies

1. Performance Plan and Report for Outcomes

The Program's dedicated professionals have continued to fulfill mission priorities despite staffing levels declining by almost a quarter in the last decade. In FY 2019, this included making more than 2,200 criminal referrals to United States Attorneys and law enforcement; participating in 81 appellate matters beyond the bankruptcy court, including 14 matters at the United States court of appeals level and nine before the Supreme Court; reviewing over 61,000 Trustee Final Reports; conducting over 450 on-site audits and field reviews for chapter 7, 12 and 13 trustee operations; and filing nearly 1,900 motions to convert or dismiss chapter 11 cases. Overall, the USTP took more than 26,000 formal and informal civil enforcement actions.

Beginning in FY 2018, the USTP excluded targets for numerical performance measures due to the uncertain effects of anticipated staffing reductions. The Program, however, plans to re-establish targets following the conclusion of FY 2020, when data for a full fiscal year is available for the Program to determine baseline levels for its measures.

2. Strategies to Accomplish Outcomes

The USTP's work to protect the integrity and ensure the effective operation of the nation's bankruptcy system supports the Department's Strategic Plan Goal of Promoting Integrity, Good Government, and the Rule of Law. Program activities further align under the following Strategic Objectives.

- 4.1 – Uphold the rule of law and integrity in the proper administration of justice.
- 4.4 – Achieve management excellence.

To fulfill these objectives, the USTP employs the following strategies.

a. Enforce 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 11 national settlements related to creditor violations of the Bankruptcy Code and Rules, including a settlement in FY 2019 with Ditech providing approximately \$35 million in remediation to homeowners and three settlements entered into or completed in FY 2018 providing more than \$153 million in remediation to bankruptcy debtors.

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. Integral to protecting the system is the USTP’s statutory responsibility to refer suspected criminal activity to the United States Attorneys and to provide assistance to law enforcement when appropriate, including serving as Special Assistant United States Attorneys. Program staff 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, 11, 12, and 13. These include new private trustees mandated by the SBRA, enacted in FY 2019. Trustees have a fiduciary responsibility to the bankruptcy estate. It is a fundamental duty of the United States Trustee to oversee the activities of these private trustees to ensure the effective distribution of funds and compliance with standards put in place to safeguard those funds. The USTP selects and trains trustees and evaluates 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 financial 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:

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. In FY 2019, the USTP entered into a \$15 million multi-district settlement agreement with global consulting firm McKinsey & Company, Inc., resolving disputes over the adequacy of disclosures made by the firm in chapter 11 bankruptcy cases. The settlement is one of the highest repayments made by a bankruptcy professional for alleged non-compliance with disclosure rules.

Fraud and Abuse Relating to Asbestos Trusts Created in Bankruptcy. Although the USTP and courts have limited authority to oversee asbestos trusts created through chapter 11 plans of reorganization, the USTP recently has made major strides in obtaining rulings prior to court approval of such plans that: (1) change the standard for appointing an FCR such that the court no longer defers to the tort lawyers' selection; and (2) impose new anti-fraud and auditing requirements.

e. Achieve management excellence by promoting ethical conduct across Program staff, fostering workforce performance, and pursuing cost savings in technology.

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 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.

In the area of technology, the USTP continuously reviews its operations for cost-saving opportunities. In addition to continuing the use of shared services for its Help Desk and litigation support, the Program achieved the following in FY 2019:

Modernization of the USTP's Critical Case Management Systems. The Program initiated a multi-year modernization project of its critical IT systems for case and matter management, including one system through which the Program manages 1.5 million ongoing cases that has been in existence for decades. The modernization effort is anticipated to result in increased

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functionality and annual cost savings by eliminating obsolete systems, automating functions, and improving user interfaces as well as data analytic capabilities.

Cloud Migration. In FY 2019, the Program completed a migration of its servers required for electronic file storage and printing capabilities. The process consolidated over 95 physical servers, distributed across the Program's field offices, down to two virtual servers, which enabled the Program to avoid almost \$500,000 in projected costs per life-cycle, and reduced maintenance and facilities costs by over \$380,000 per year. The transition also improved the Program's plan for the continuity of operations by eliminating the reliance on back-up copies of critical data. This initiative followed an earlier successful migration of the Program's two data centers that enabled the Program to save over \$700,000 in annual maintenance costs.

V. Program Increases by Item

Item Name:	USTP Statutory Duties under Subchapter V of Chapter 11
Strategic Goal:	4. Promote Rule of Law, Integrity and Good Government
Strategic Objective:	4.1 Uphold the rule of law and integrity in the proper administration of justice
Budget Decision Unit(s):	Administration of Cases
Program Increase for FY 2021:	Positions <u>11</u> Agt/Atty <u>4</u> FTE <u>10</u> Dollars <u>\$2,103,000</u>

Description of Item

The Small Business Reorganization Act (SBRA), Pub. L. No. 116-54, enacted in August 2019, allows small business debtors (other than single-asset real estate debtors) with less than \$2.7 million of debt the option to elect to proceed under a new subchapter – subchapter V – of chapter 11 of the Bankruptcy Code (Code). The provisions of subchapter V, effective as of February 19, 2020, provide more streamlined processes, readjust the balance of debtor and creditor rights, and install a chapter 11 subchapter V trustee whose main function will be to assess the viability of a debtor’s business and facilitate a consensual plan of reorganization. The Program is responsible for appointing a trustee to each case and estimates it will need to recruit and clear over 250 new private trustees. As cases are filed, USTP staff must assess the individual facts of each case, including business and key reorganization issues, in order to select a trustee from the pool of case-by-case subchapter V trustees to ensure an appropriate skillset match. Once appointed, the Program will carry out oversight responsibilities, to include ensuring the case is progressing within the tight deadlines established under the law; case and financial reporting is provided; and, in cases where a trustee must operate the business, that all requirements of the law are met. While the Program has been conducting a comprehensive recruitment effort in FY 2020, the Program will need to continue to recruit and appoint replacement trustees through at least FY 2021, due to anticipated trustee attrition. In addition, the Program anticipates enhanced training needs both for staff and the private subchapter V trustees, adjustments to oversight activities, and ongoing outreach efforts to bankruptcy stakeholders, including members of the bench, bar, and other professionals. The Program did not receive any base budget resources in FY 2020 to implement these changes and consequently, there are no current services for this initiative. Annually recurring costs are estimated at \$2.1 million and cover 11 positions (4 attorneys) and 10 FTEs. Bankruptcy cases under subchapter V are exempt from quarterly fees due to the USTP.

United States Trustee Program

Justification

- The USTP’s request is based on the estimated internal labor costs associated with the new statutory administrative duties that would be provided to the USTP under the SBRA. The request reflects the costs to the USTP following the first year of implementation in FY 2020. The USTP has not received base budget resources for the start-up costs associated with the SBRA.
- The estimated costs reflect the number of labor hours that the Program anticipates will be necessary to recruit and train trustees, and evaluate their overall performance and financial operations to ensure that cases are handled efficiently, effectively, and in accordance with applicable law and Program policy.
- The table below outlines the Program’s cost assumptions by type of activity.

Category	FY 2021		
	FTEs	Per FTE Cost (\$000)	Total Cost (\$000)
Trustee On-Boarding and Training	0.9	\$204	\$183
Appointments of Trustees to Individual Cases	1.9	\$204	\$391
Annual Trustee Monitoring	7.5	\$204	\$1,529
Total	10.3	\$203	\$2,103

- The assumptions reflect:
 - A potential requirement of over 250 private trustees based on:
 - Chapter 11 filing rates remaining equal to the average over FY 2014 through FY 2018, increased by 20 percent to account for potential new filers under subchapter V. The Program anticipates this level to be 2,000 cases per year.
 - Every small business debtor elects to proceed under the new subchapter; a lower opt-in rate would reduce costs for the Program.
 - Each of the Program’s 88 judicial districts would require one trustee per 10 expected subchapter V cases, but with a minimum of two trustees per district to account for potential conflicts.
 - An annual trustee attrition rate of five percent, resulting in an estimated 14 new trustees per year beginning in FY 2021.
 - The Program would expend 132 labor hours per new trustee for one-time onboarding costs related to time spent reviewing resumes, interviewing, processing selections, and training.

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- Trustees will not be appointed based on a blind court rotation. Therefore, the USTP will have to expend time to review the facts of each case, including business and key reorganization issues, to determine and appoint a trustee with the appropriate skillset. The Program anticipates expending two labor hours per case for this activity.
- Trustee monitoring activities would require around 55 labor hours per trustee, based on the Program’s activities in monitoring chapter 7 trustees, with a slight adjustment for potentially more complicated chapter 11 cases.

Impact on Performance

- This request supports the Department’s Strategic Plan via the following goal and objective.
 - Strategic Goal 4. Promote Rule of Law, Integrity and Good Government.
 - Objective 4.1. Uphold the rule of law and integrity in the proper administration of justice.
- This request supports the following Program strategy to achieve strategic objective 4.1.
 - Promote the effectiveness of the bankruptcy system by appointing and supervising private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors.

Base Funding

The USTP has not received base funding for the new statutory duties proposed under the SBRA.

<i>FY 2019 Enacted</i>				<i>FY 2020 Enacted</i>				<i>FY 2021 Current Services</i>			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

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Total Request for this Item - Personnel Increase Cost Summary

The request reflects the costs to the USTP following the first year of implementation of the proposed new law.

Type of Position/Series	Full-year Modular Cost per FTE (\$000)	1 st Year Adjustments	Number of FTEs	FY 2021 Request (\$000)	2 nd Year Annual-ization	FY 2022 Net Annuali-zation (change from 2021) (\$000)	FY 2023 Net Annuali-zation (change from 2022) (\$000)
Attorneys (0905)	\$231	\$0	3.8	\$884	\$0	\$884	\$910
Auditors/Bankruptcy Analysts	\$205	\$0	5.0	\$1,015	-\$8	\$1,007	\$1,035
Paralegals / Other Law (0900-0999)	\$132	\$0	1.6	\$204	-\$7	\$197	\$202
Total Personnel	\$204	\$0	10.3	\$2,103	-\$15	\$2,088	\$2,147

VI. Program Offsets by Item

The FY 2021 budget does not request program offsets.

VII. Exhibits