

# *United States Trustee Program*

## *FY 2010 Budget Request*



**May 2009**

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## I. Overview of the United States Trustee Program

- The U.S. Trustee Program's ("USTP" or "Program") FY 2010 budget request totals 1,323 permanent positions (318 attorneys), 1,314 workyears, and \$224,488,000. The request includes a total program change of \$2,228,000 for 18 additional positions (15 attorneys) for Swat Teams to address areas of emerging complex litigation, including mortgage-related bankruptcy schemes, foreclosure rescue scams and other complex cases.
- The USTP anticipates its budget request will be fully offset by bankruptcy fees collected during FY 2010.

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 using the Internet address: <http://www.usdoj.gov/jmd/2010justification/>.

**USTP Mission Statement:** *The United States Trustee Program acts in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy, and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases to promote and defend the integrity of the federal bankruptcy system.*

### A. Background

The nation's bankruptcy laws are premised on the notion that honest, but unfortunate debtors should be able to receive a fresh start and return to becoming economically productive members of society. The USTP's mission, as set forth in Strategic Objective 2.8 of the Department's Strategic Plan for Fiscal Years 2007-2012, reinforces these laws by ensuring that they are fairly enforced.

The USTP is a national program with broad administrative, regulatory, and litigation authorities. Its duties are set out primarily in titles 11 and 28 of the United States Code and range from consumer bankruptcy cases to large corporate reorganizations. In addition to specific statutory duties and responsibilities, United States Trustees may raise and may appear and be heard on any issue in any case or proceeding under title 11, the Bankruptcy Code.

The Program litigates to protect the integrity of the bankruptcy system and to help ensure that the Bankruptcy Code is interpreted nationally in a consistent and fair manner. The USTP is the only participant in the bankruptcy system with a national perspective and a responsibility to develop coherent case law in all jurisdictions.

With the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 (P.L. 109-8), the USTP was provided new enforcement responsibilities and important statutory tools to assist it in identifying and civilly prosecuting those who abuse the bankruptcy system. The enforcement actions taken by the Program reflect a balanced approach to address wrongdoing both by debtors and by those who exploit debtors, including creditors, attorneys, and bankruptcy petition preparers who prey on vulnerable debtors using fraud and deceptive practices. The combined results of these efforts deter abuse, maximize the returns to creditors, and strengthen the laws to ensure that relief is appropriately granted.

The Program's mission is reflected in Goal II, Strategic Objective 2.8 of the Department's Strategic Plan: Protect the Integrity and Ensure the Effective Operation of the Nation's Bankruptcy System. The USTP's strategic objectives are listed below:

- ▶ *Enforce compliance with federal bankruptcy laws and take civil actions against parties who abuse the law or seek to defraud the bankruptcy system.*
- ▶ *Pursue violations of federal criminal laws pertaining to bankruptcy by identifying, evaluating, referring, and providing investigative and prosecutorial support of cases.*
- ▶ *Promote the effectiveness of the bankruptcy system by appointing and regulating private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors.*
- ▶ *Ensure financial accountability, compliance with the Bankruptcy Code, and prompt disposition of chapter 11 bankruptcy cases.*

The USTP Strategic Plan includes three goals for the USTP that flow from the DOJ Strategic Plan: 1) Protect the integrity of the nation's bankruptcy system, 2) Promote effectiveness and efficiency within the nation's bankruptcy system, and 3) Maintain operational excellence that achieves desired results through continuous improvements in administration and services. The Program's goals are linked to objectives and measures, which are contained in the performance tables of the budget.

In addition, the USTP invests in the development of information and decision support systems that enhance the USTP's e-government capacities and make operations more effective and efficient. The USTP's efforts in information technology are guided by its Information Technology Strategic Plan, incorporating the Information Technology Investment Management (ITIM) process and an Executive Resources Board to support informed decision-making.

In January 2006, the Office of Management and Budget (OMB) completed its joint program assessment review of the USTP's operations. The OMB rating reflected the USTP's efforts to adopt performance-based management systems, including better measurements of results achieved and tying programmatic success to budget formulation.

## **B. Full Program Costs**

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. There are two main Program activities: 1) enforcement and 2) case and trustee administration. The workyears and associated funding are allocated to these Program activities based upon the direct labor hours of the USTP staff performing enforcement and case and administration activities, as well as resources directly related to the performance of these activities. Administrative and other overhead costs are allocated based upon the direct labor hours for the two Program activities.

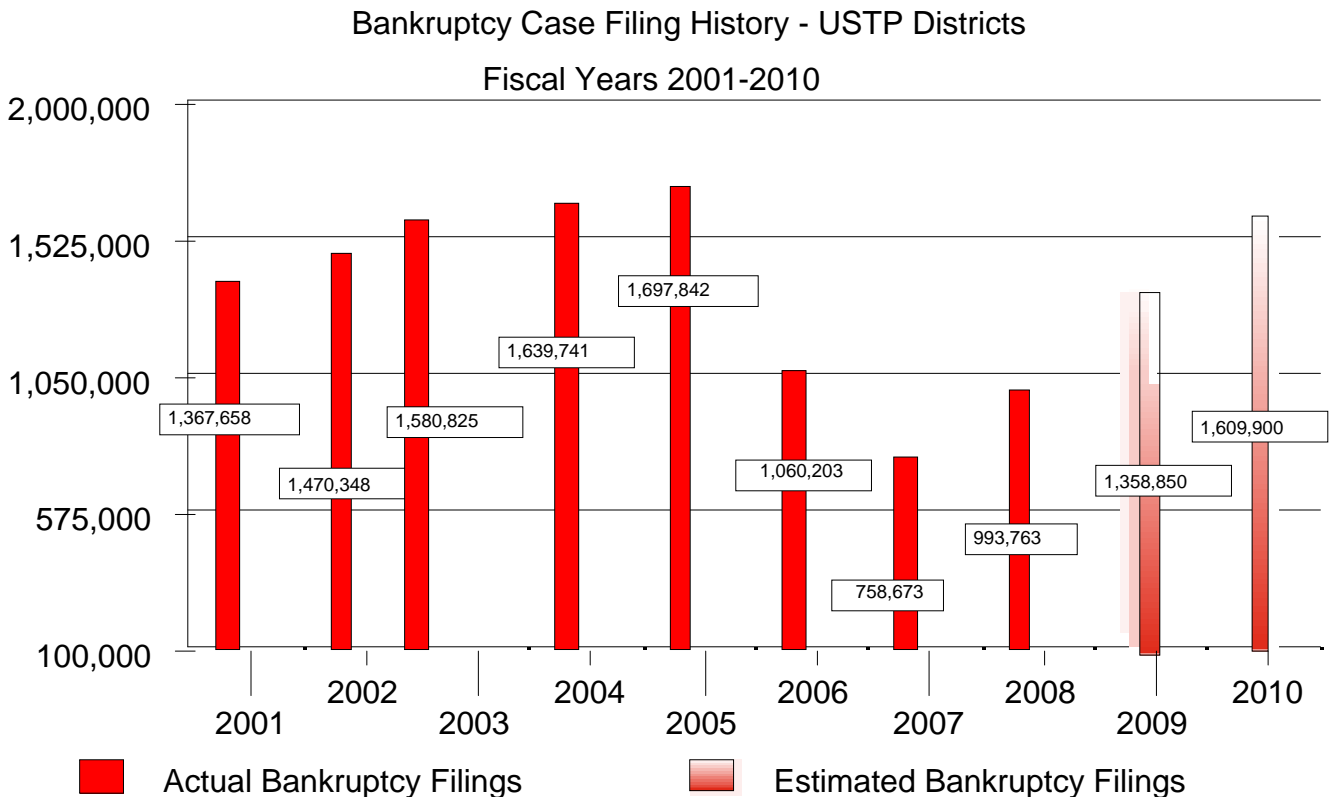
### C. Performance Challenges

**External Challenges.** The USTP faces a number of external challenges, one of which is working cooperatively with the federal Judiciary to implement and administer bankruptcy law. For example, the USTP worked with the courts to enhance the information it receives electronically from the courts to streamline its ability to review bankruptcy petitions and schedules. It also worked cooperatively with the courts to implement new uniform trustee final reports required by law to be filed by panel and standing trustees. The USTP enforces and defends challenges to provisions of the Bankruptcy Code, including by litigating issues of first impression and carrying out numerous administrative and other duties arising under the bankruptcy law. The USTP also faces challenges in detecting evolving and innovative schemes of fraud and abuse, including creditor abuse, that affect the bankruptcy system.

The USTP’s funding is entirely fee based, and as a result is impacted by fluctuations in bankruptcy filings. The Program has no control over the number of filings or the chapter under which a bankruptcy petition is filed. In the two weeks leading up to the October 17, 2005, BAPCPA effective date, 600,000 cases were filed. Following the implementation of the BAPCPA, bankruptcy filings fell immediately and dramatically and the USTP experienced a concomitant decrease in the level of revenue that was collected to support its operations.

The number of bankruptcy case filings reached its lowest post-BAPCPA point in FY 2007 with less than 760,000 filings. In FY 2008, filings increased by more than 30 percent over FY 2007. The USTP projects that filings will continue to increase in FY 2009 and FY 2010. The following chart reflects actual and projected filings for fiscal years 2001 through 2010.

#### 1. Bankruptcy Filings



**Internal Challenges** The USTP also faces internal challenges resulting from the BAPCPA implementation, its efforts to address emerging issues such as the increase in mortgage foreclosures, and its fluctuating workload and available resources. In FY 2006, the USTP received a program enhancement specifically to address its added responsibilities under the BAPCPA. At the same time, filings and revenues dropped, and draw-downs from the System Fund were necessary in FY 2006, FY 2007 and FY 2008 to fund the USTP's operations. The decreased revenue stream created a significant burden on the USTP in terms of meeting its core mission and increased responsibilities under the BAPCPA. The USTP successfully responded to this reduction by streamlining operations, imposing a hiring freeze, temporarily suspending debtor audit activities and later reinstating the audits at a reduced level; and by reducing or eliminating automation and information technology support, planned studies and evaluations, training, equipment replacements, and other items.

## **2. U.S. Trustee System Fund**

The self-funding characteristics of the USTP were a feature of the legislation establishing the Program, Public Law 99-554, enacted on October 27, 1986. Two categories of fees generate most of the revenue for the U.S. Trustee System Fund. The first category is the filing fee paid at the inception of each case for chapters 7, 11, 12 and 13, and the second category is the quarterly fee paid by chapter 11 debtors. The chapter 11 quarterly fees are determined by the cash disbursement levels of the debtor. All fees are deposited in the Fund as offsetting collections and are available to the USTP as specified in Appropriations Acts. Debt collection receipts, payment of excess percentage fees collected by chapter 12 or 13 trustees, and interest on invested funds also generate relatively small amounts of revenue for the Fund. Revenue in the Fund that is not needed for current expenses is invested in Treasury securities, and the income so earned accrues to the Fund.

Prior to FY 1997, the USTP's operations were funded through a combination of direct appropriations and offsetting collections. Beginning in FY 1997, the USTP's operations were funded solely from offsetting collections deposited into the U.S. Trustee System Fund. The annual revenue collected during the period FY 1997 through FY 2005, combined with continued operational efficiencies provided sufficient resources to support the USTP's operations, making the need to supplement those revenues with direct appropriations unnecessary. As bankruptcy filings continued to increase during the period, approaching almost 1.7 million in FY 2005, the System Fund balance increased as well.

In FY 2006, bankruptcy filings fell dramatically following the effective date of the BAPCPA. Collections during the fiscal year were insufficient to support the USTP's operations, requiring a draw-down of about \$44 million from the U.S. Trustee System Fund. Bankruptcy filings and revenue hit their lowest post-BAPCPA point in FY 2007, with annual filings totaling less than 760,000 and total revenue of about \$131 million. In order to support operations during FY 2007, a draw down of \$92 million from the System Fund was needed. Although filings steadily increased in FY 2008, annual filing levels remained below pre-BAPCPA levels and a draw down of \$26 million was needed to support USTP operations in FY 2008. The Program's December 2008 filing and revenue projections indicate that the fees collected in FY 2009 and FY 2010 will be sufficient to fully fund the budget requests.

**D. Revenue Estimates**

The following chart displays the actual revenue collected from FY 2006 through FY 2008, and the current revenue projections for FY 2009 and FY 2010.

**Revenue Collected in FY 2006:**

	<u>Amount</u>
Bankruptcy Fees:	
Filing Fees.....	\$57,862,173
Chapter 11 Quarterly Fees .....	100,458,286
Other .....	143,370
Interest earnings on investments .....	<u>9,085,026</u>
<b>TOTAL DEPOSITS .....</b>	<b>167,548,855</b>

**Revenue Collected in FY 2007:**

	<u>Amount</u>
Bankruptcy Fees:	
Filing Fees.....	\$51,643,037
Chapter 11 Quarterly Fees .....	69,069,915
Other .....	194,186
Interest earnings on investments .....	<u>10,256,949</u>
<b>TOTAL DEPOSITS .....</b>	<b>131,164,087</b>

**Revenue Collected in FY 2008:**

	<u>Amount</u>
Bankruptcy Fees:	
Filing Fees.....	\$79,239,888
Chapter 11 Quarterly Fees .....	78,334,677
Other .....	70,078
Interest earnings on investments .....	<u>5,860,839</u>
<b>TOTAL DEPOSITS .....</b>	<b>163,505,482</b>

**Revenue Projections for FY 2009:**

	<u>Amount</u>
Bankruptcy Fees:	
Filing Fees.....	\$109,088,750
Chapter 11 Quarterly Fees .....	110,708,968
Other .....	150,000
Interest earnings on investments .....	<u>1,000,000</u>
<b>TOTAL DEPOSITS .....</b>	<b>220,947,718</b>

**Revenue Projections for FY 2010:**

	<u>Amount</u>
Bankruptcy Fees:	
Filing Fees.....	\$130,315,170
Chapter 11 Quarterly Fees .....	135,593,645
Other .....	150,000
Interest earnings on investments .....	<u>1,000,000</u>
<b>TOTAL DEPOSITS .....</b>	<b>267,058,815</b>

## II. Summary of Program Changes

Item Name	Description				Page
	Pos.	FTE	Dollars (000's)		
Mortgage and other Consequential Fraud and Abuse SWAT Teams	Resources for litigation swat teams with a focus on areas of emerging complex litigation, including mortgage-related bankruptcy schemes, foreclosure rescue scams, and other complex cases.	18	9	\$ 2,228	25

### III. Appropriations Language and Analysis of Appropriations Language

The FY 2010 budget request includes proposed changes in the appropriations language set forth and explained below. New language is *italicized and underlined*, and language proposed for deletion is bracketed.

#### United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, [\$217,416,000] \$224,488,000, to remain available until expended and to be derived from the United States Trustee System Fund: Provided, That notwithstanding any other provision of law, deposits to the Fund shall be available in such amounts as may be necessary to pay refunds due depositors: Provided further, That, notwithstanding any other provision of law, [\$160,000,000] \$224,488,000 of offsetting collections pursuant to 28 U.S.C. 589a(b) shall be retained and used for necessary expenses in this appropriation and shall remain available until expended: Provided further, That the sum herein appropriated from the Fund shall be reduced as such offsetting collections are received during fiscal year [2009] 2010, so as to result in a final fiscal year [2009] 2010 appropriation from the Fund estimated at [\$49,686,000] \$0.

#### Analysis of Appropriation Language

No other substantive changes are proposed.

## IV. Decision Unit Justification

### Decision Unit: Administration of Cases

<b>Decision Unit Administration of Cases</b>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount</b>
2008 Enacted with Rescissions	1,374	1,281	\$189,763
2009 Enacted	1,305	1,305	217,416
Adjustments to Base	...	...	4,844
2010 Current Services	1,305	1,305	222,260
2010 Program Increases	18	9	2,228
2010 Request	1,323	1,314	224,488
<b>Total Change 2009-2010</b>	...	...	<b>7,072</b>

<b>Decision Unit: Administration of Cases- Information Technology Breakout</b>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount</b>
2008 Enacted with Rescissions	38	37	\$21,425
2009 Enacted	38	37	23,140
Adjustments to Base (net)	...	...	(4,420)
2010 Current Services	38	37	18,720
2010 Program Increases	...	...	500
2010 Request	<b>38</b>	<b>37</b>	19,220
<b>Total Change 2009-2010</b>	...	...	<b>(3,920)</b>

Note: The IT breakout includes personnel salaries and benefits.

### 1. Program Description

The USTP operates in 88 judicial districts through a system of 21 regions defined pursuant to 28 U.S.C. Section 581(a). Each region is headed by a U.S. Trustee whose basic authority is conferred under 28 U.S.C. Section 586. U.S. Trustees are appointed by the Attorney General to five-year terms and oversee bankruptcy case administration in each of the Program's 21 regions by appointing private trustees, litigating civil enforcement actions, and carrying out other duties. Each U.S. Trustee maintains a small regional staff that typically consists of an administrative officer, information technology specialist, and clerical assistant. The U.S. Trustees supervise a cadre of Assistant U.S. Trustees (AUST) who manage 95 field offices located in 46 states.<sup>1</sup>

The USTP's Executive Office, headed by the Office of the Director, provides comprehensive policy and management direction to the U.S. Trustees and their staff, and directly supervises the operations of the Executive Office for U.S. Trustees (EOUST). The Office of the Director also has the primary responsibility for liaison with the Department, Congress, the bankruptcy courts, private trustee organizations, and other stakeholders in the bankruptcy system (e.g., professional associations and debtor and creditor bar representatives). EOUST also includes the Office of General Counsel, the Office of Review and Oversight, the Office of Research and Planning, and the Office of Administration.

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<sup>1</sup> The USTP has jurisdiction in all federal judicial districts except those in Alabama and North Carolina. The Program has no office in North Dakota and Vermont; offices in South Dakota and New York cover those jurisdictions.

### National Mortgage Servicing Firms

Addressing violations of the Bankruptcy Code by creditors, including national mortgage servicers, has emerged as a top Program priority. The USTP investigates and takes enforcement action in cases involving allegations that mortgage servicers file inaccurate papers claiming that debtors owe more money than they actually owe, that a default has occurred when there has been no default, or that the mortgage servicers have been adding additional and undisclosed charges that are not permitted under the terms of the loan contract.

In FY 2008, the USTP initiated 68 actions against mortgage servicers, with at least 25 of those actions involving large mortgage servicers. In addition, the Program is investigating a significant number of allegations involving systemic abuse by national mortgage servicers and other creditors.

For example, the Program's New York Office recently obtained an agreement by J.P. Morgan Chase Bank, NA to implement procedures related to the accuracy of motions for relief from the automatic stay filed in the Bankruptcy Court for the Southern District of New York. The agreement resulted in significant modifications to a mortgage servicer's practices and procedures, without the necessity of protracted litigation.

The USTP has enhanced its long-standing creditor abuse enforcement training program by delivering a one-day course at the EOUST for senior field staff, presenting at least annually a new training program at the USTP's National Bankruptcy Training Institute of the National Advocacy Center, and filming a creditor abuse video for the video on demand library which is available to all employees.

The USTP also established a creditor abuse working group, consisting of AUSTs and attorneys from field offices across the country who have been leaders in this effort. The creditor abuse working group provides timely and effective legal advice to USTP personnel, assists with information sharing, and provides coordination and guidance to field offices in investigating or litigating creditor abuse.

The USTP has also developed new guidance for chapter 13 trustees to ensure appropriate review of proofs of claim, including those filed by mortgage servicers. The Program has been praised by the courts and the Congress for its intervention in the mortgage servicing area.

### Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005

The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005 (P.L. 109-8) was signed into law on April 20, 2005. The Act provided the USTP with new tools to enhance the integrity and efficiency of the bankruptcy system for the benefit of all parties. Despite the difficulties presented by the unprecedented surge in filings in the two weeks leading up to the implementation of the BAPCA, the USTP successfully implemented and enforces the new law's important provisions. The BAPCPA assigned substantial new responsibilities to the USTP primarily, but not exclusively, in five major areas: means testing; credit counseling and debtor education; small business chapter 11s; debtor audits; and studies and data collection.

### Means Testing

The means testing provisions of the BAPCPA provide an objective approach for assessing a debtor's eligibility for chapter 7 relief. Under the means test, debtors with income above their State median income are presumed abusive if they have a certain level of disposable income after the deduction of expenses allowed under a statutory formula. The United States Trustees are the primary enforcers of

the law. Among other things, United States Trustees must file a statement within ten days after the section 341 meeting of creditors if the case is presumed abusive. Thereafter, within thirty days, the UST must file a motion to dismiss the case or provide an explanation as to why such a motion is not warranted.

The USTP was extensively involved in the Judicial Conference's Advisory Committee on Bankruptcy Rules' the development of necessary official forms and accompanying rules to perform the means test. In addition, the USTP worked with the courts to enhance the information it receives electronically from the courts to permit it to streamline its review of bankruptcy petitions and schedules under the statutory means testing formula. Moreover, the USTP made a major investment in training field personnel to perform the means test, including exercising appropriate discretion in deciding whether to file a motion to dismiss a case under the "presumed abuse" standard and the "special circumstances" exception.

#### Credit Counseling and Debtor Education

The credit counseling and debtor education provisions of the reform law provide protections for consumer debtors by helping ensure that debtors enter bankruptcy with full knowledge of their options and exit with information to help them avoid future financial calamity. The USTP is responsible for approving eligible providers of credit counseling and debtor education services. The BAPCPA requires individual debtors to seek credit counseling from approved providers as a condition of filing for bankruptcy. It also requires debtors to receive debtor education from an approved provider to receive a discharge of debts. Although enforcement practices differ according to local rules, the USTP's offices often are the primary agency ensuring debtor compliance.

There are currently 156 credit counseling agencies covering 88 judicial districts for pre-bankruptcy counseling. In addition to offering Internet and telephonic access, the companies have over 818 walk-in locations for credit counseling. For post-bankruptcy debtor education, there are currently 271 approved debtor education providers covering 88 judicial districts. In addition to debtor education providers offering internet and telephonic access, there were over 1,097 walk-in locations.

Quality Service Reviews (QSRs) allow the Program to corroborate information submitted in applications, observe credit counseling and debtor education sessions, and obtain information about the operations of the credit counseling agency or debtor education provider. The USTP completed 11 QSRs in FY 2008 and anticipates conducting 12 QSRs in FY 2009.

Among many other cases, the U.S. Trustee appointed independent examiners to investigate the financial affairs of Lehman Brothers; New Century Mortgage Company; and Dreier LLP, an attorney accused of misappropriating hedge fund and bankruptcy estate funds.

#### Chapter 11 Cases

The small business provisions of the BAPCPA establish new deadlines and greater uniformity in financial reporting to ensure that cases expeditiously move through the chapter 11 process before assets are dissipated. They also provide important new enforcement tools to the United States Trustees. To implement the BAPCPA's new oversight provisions, and in conjunction with the Judicial Conference of the United States, the USTP developed a new Monthly Operating Report (MOR) form for small business chapter 11 cases to make financial reporting simpler and more uniform.

In the 2005 bankruptcy reform law, Congress placed clear, new restraints on the compensation of executives in companies that are in chapter 11 bankruptcy. The USTP believes that Congress intended to provide enhanced oversight of chapter 11 companies in reorganization and increase management accountability. In demonstrating that intent, Congress has fundamentally changed the rules for granting retention bonuses and severance packages. Section 503(c) of the Bankruptcy Code prohibits

most retention bonuses, generally requiring that bonuses to senior officials be based upon achievement of bona fide performance goals. Prior to this change, Key Employee Retention Plans (KERPs) allowed the very officers who managed the debtor into bankruptcy to receive millions of dollars in post filing compensation while the remainder of the debtor's workforce suffered disproportionate financial loss. The United States Trustee is often the only party objecting to executive bonuses that do not comply with the new law.

Other examples of provisions demonstrating Congress' intent are the appointment of trustees when there is suspicion of criminal conduct by officers of a debtor, and deadlines for filing a disclosure statement and plan. In part, these provisions help to redress an imbalance that evolved over the past quarter century and favored incumbent management at the expense of creditors and the public interest.

#### Debtor Audits

Under the BAPCPA, the USTP must contract for random and non-random audits to verify the financial information provided by debtors. This provision helps the USTP identify fraud, abuse, and errors, deter the filing of false financial information, and potentially provide a baseline for measuring fraud, abuse, and errors in the bankruptcy system. The debtor audits mandated by the BAPCPA commenced on October 20, 2006. Debtor audits were temporarily suspended in FY 2008 when appropriations were not provided. The USTP obtained approval to utilize an alternative funding source and was able to reinstate the audits at a reduced level in May 2008. In FY 2008, 1,385 audits were completed.

The USTP continues to review the results of debtor audits to determine if there should be adjustments to the audit standards, as well as if appropriate action is being taken by field offices in response to audit results. In an effort to ensure that the audit process and results are better understood by debtors, creditors, and other stakeholders in the bankruptcy system, the Program, in conjunction with the Bankruptcy Judges Advisory Group of the Administrative Office of the U.S. Courts, recently revised the language used in the audit report, the resulting docket entry, and notice to creditors.

#### Studies and Data Collection

The BAPCPA required the EOUST to undertake several studies, including (1) consulting with experts in the field of debtor education to develop, test, and evaluate a financial management training curriculum and materials; (2) evaluating the impact of the use of the IRS standards for determining the current monthly expenses under 11 U.S.C. § 707(b) on debtors and bankruptcy courts; and (3) evaluating the impact of the definition of "household goods" in section 313 of the BAPCPA. All three studies have been completed and submitted to the Congress.

## 2. Performance Tables

Performance Resources Table											
Decision Unit: Administration of Cases											
DOJ Strategic Goal/Objective: 2.8 Protect the integrity and ensure the effective operation of the nation's bankruptcy system.											
WORKLOAD/RESOURCES		Final Target		Actual		Projected		Changes		Requested (Total)	
		FY 2008		FY 2008		FY 2009 Requirements		Current Services Adjustments and FY 2010 Program Changes		FY 2010 Request	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
TYPE	Performance /Resources	1,344	209,763	1,281	213,511	1,305	217,416	9	7,072	1,314	224,488
Program Activity	<b>1. Civil Enforcement</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		622	96,911	589	91,769	603	93,950	9	4,560	612	98,510
Performance Measures	# of motions & complaints & inquiries	40,000		50,752		40,000		...		40,000	
	% of successful motions & complaints	90%		97.6%		90%		...		90%	
	Success rate of civil adversary complaints filed	96%		99.2%		96%		...		96%	
	Success in litigating means testing	90%		98%		90%		...		90%	
Program Activity	<b>2. Case and Trustee Administration</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		722	112,852	692	121,742	702	123,466	...	2,512	702	126,178
Workload	<u>Chapter 7</u> # of case filings	585,000		659,568		1,000,000		236,000		1,236,000	
	<u>Chapter 11</u> # of case filings	5,500		8,457		13,000		...		13,000	
	<u>Chapter 13</u> # of case filings	359,000		325,426		345,500		15,000		360,500	
Efficiency Measures	# of motions & inquiries to convert or dismiss Chapter 11 cases	3,750		3,911		3,200		200		3,400	
	% of unconfirmed Chapter 11 cases over 3 years old	<13.0%		7.2%		N/A <sup>1/</sup>		...		N/A	
	% of Chapter 7 cases over 3 years old	<3.2%		3.4%		N/A <sup>1/</sup>		...		N/A	

<sup>1/</sup> During the FY 2008 Fall Update, OMB and the Department agreed to delete these items as efficiency measures and introduce a new measure, annotated as 2/, above.

	No. of 707(b) inquiries per successful outcome 2/	8.5	7.5	8.0	(.5)	7.5
Outcomes:	<b>Payments to Creditors/% of total disbursements 2/</b>	<b>Final Target FY 2008</b>	<b>Actual FY 2008</b>	<b>FY 2009 Requirements</b>	<b>Current Services Adjustments</b>	<b>FY 2010 Request</b>
	<b>Chapter 7</b>	\$907,810,080 58%	\$ %	\$907,810,080 58%	...	\$1,000,000,000 58%
	<b>Chapter 12</b>	\$25,866,523 75%	\$ %	\$24,000,000 75%	\$1,000,000 7%	\$25,000,000 82%
	<b>Chapter 13</b>	\$4,178,582,446 86%	\$ %	\$4,178,582,446 86%	\$421,417,554 1%	\$4,600,000,000 87%
	Potential Additional Returns to Creditors through Civil Enforcement and Related Efforts	<b>Final Target FY 2008</b> \$500,000,000	<b>Actual FY 2008</b> \$905,003,121	<b>FY 2009 Requirements</b> \$500,000,000	<b>Adjustments</b> \$200,000,000	<b>FY 2010 Request</b> \$700,000,000
# of Civil Enforcement Adversary Actions Filed	1,478	1,810	1,478	122	1,600	

Note: Due to fluctuations in bankruptcy filings, the USTP is continuing to refine its performance targets.

2/ Actual data reflecting payments to creditors for the previous fiscal year are not available to the USTP until the subsequent fiscal year (late-March for chapter 7 cases and late April for chapters 12 and 13 cases).

**PERFORMANCE MEASURE TABLE**

**Appropriation: United States Trustee Program**

**Decision Unit: Administration of Cases**

		FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008		FY 2009	FY 2010	
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
		Performance Measure	Number of Motions, Complaints & Inquiries	13,305	27,457	41,940	40,518	39,207	48,011	62,501	40,000	50,752	40,000
	Percent of Successful Motions & Complaints	90.00%	92.10%	94.50%	94.90%	97.40%	97.50%	96.4%	90.00%	97.60%	90.00%	92.00%	
	Success Rate of Civil Adversary Complaints Filed	N/A	N/A	N/A	N/A	99.30%	99.10%	98.8%	96.00%	99.20%	96.00%	96.00%	
	Success in litigating means testing	N/A	N/A	N/A	N/A	N/A	N/A	97.00%	90.00%	98.00%	90.00%	94.00%	
Efficiency Measure	Number of Motions & Inquiries to Convert or Dismiss Chapter 11 Cases	6,172	8,198	6,741	4,081	3,595	3,306	3,456	3,750	3,911	3,200	3,400	
	Percent of Unconfirmed Chapter 11 Cases over 3 years old 1/	4.50%	2.70%	3.80%	3.20%	9.50%	14.10%	10.3%	< 13.0%	7.20%	< 19.0%	<13%	
	Percent of Chapter 7 cases over 3 years old 1/	2.20%	2.10%	2.20%	2.30%	1.40%	3.70%	4.0%	< 3.2%	3.40%	< 9.5%	<9.5%	
	Number of 707(b) inquiries per successful outcome 2/	N/A	N/A	N/A	N/A	N/A	13.8	9.5	8.5	7.5	8.0	7.5	

Outcome	Payments to Creditors and Percent of assets paid to creditors in Chapter 7 Cases	\$886.2M 59%	\$724.6M 57%	\$907.81M 58%	\$1.02B 58%	\$1.02B 59%	\$1.80B 63%	\$1.7 B 61%	\$907.8M 58%	Not Yet Available	\$907.8M 58%	\$1.0 B 58%
	Payments to Creditors and Percent of assets paid to creditors in Chapter 12 Cases	\$31.3M 89%	\$27.07M 87%	\$40.01M 84% **	**	\$27.9M 85%	\$24.05M 85%	\$23.67 M 85.7%	\$25.87M 75%	Not Yet Available	\$24.0M 75%	\$25.0 M 82%
	Payments to Creditors and Percent of assets paid to creditors in Chapter 13 Cases	\$3.15B 87%	\$3.31B 86%	\$3.58B 85%	\$4.02B% 86%	\$4.39B 86%	\$4.6B 87%	\$5.15B 86%	\$4.18B 86%	Not Yet Available	\$4.18B 86%	\$4.6 B 87%
	Potential Add'l. Returns to Creditors	N/A	\$159.01 M	\$644.62M	\$522.37M	\$593.9M	\$878.7M	\$866M	\$500M	\$900 M	\$500M	\$700 M
	# of Civil Enforcement adversary actions Filed	N/A	N/A	N/A	N/A	1,301	1,704	1,639	1,478	1,696	1,478	1,600

1/ OMB performed a quality review of the USTP's performance measures in the latter part of FY 2008. As a result of this review, OMB determined that two efficiency measures annotated as "1/", above be deleted, and recommended that the Program develop a new efficiency measure in its place. The USTP received Department and OMB approval to include the new measure, annotated as "2/" above, in its performance data.

## **Data Definition, Validation, Verification, and Limitations:**

### **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. Generally, absent fraud or abuse, the remaining debts are discharged.

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.

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 5 years.

### **Civil Enforcement:**

Number of motions and complaints & inquiries: The number of motions and complaints filed with the court by U.S. Trustees pursuant to Sections 707, 727, and 110 of Title 11, United States Code (the Bankruptcy Code). Section 707(a) of the Bankruptcy Code permits a chapter 7 liquidation case to be dismissed for cause, while Section 707(b) provides that a case may be dismissed for presumed abuse, bad faith or the totality of the circumstances. Under Section 727, a complaint may be filed objecting to the entry of the chapter 7 debtor's discharge. Section 110 places stringent requirements on all non-lawyers who prepare bankruptcy petitions for compensation and establishes penalties for those individuals who negligently or fraudulently prepare bankruptcy petitions. In addition to formal actions filed with the court, this performance measure also includes the number of inquiries made by U.S. Trustees under the same Bankruptcy Code sections. An inquiry is a written or documented verbal communication by the U.S. Trustee to a debtor about possible violations of any of these sections, either directly or through a third party such as the case trustee, which requires a response. It does not rise to the level of a formal pleading.

Percent of successful motions & complaints: The number of motions and complaints filed by the U.S. Trustees pursuant to Sections 707, 727 and 110 in which the court granted the relief sought, or the debtor/respondent agreed to the relief sought by the U.S. Trustees, divided by the total number of motions/complaints that were filed and resolved.

Success rate of civil adversary complaints filed: The number of complaints filed by the U.S. Trustees pursuant to Section 727 in which the court granted the relief sought, or the debtor agreed to the relief sought by the U.S. Trustees, divided by the total number of complaints that were filed and resolved.

Success in litigating means testing: The percentage of 707(b)(2) and 707(b)(3) abuse motions decided after a court hearing that resulted in the dismissal of the case by the court, voluntary dismissal or voluntary conversion.

### **Case and Trustee Administration:**

Number of cases monitored: The number of new bankruptcy cases filed. This data is provided by the Administrative Office of the U.S. Courts on a quarterly basis.

Number of motions and inquiries to dismiss or convert chapter 11 cases: The number of motions filed by U.S. Trustees pursuant to Section 1112 (b) of the Bankruptcy Code. In chapter 11 case administration, the U.S. Trustees act promptly to file a motion either to dismiss or convert a chapter 11 case to one under chapter 7 if the debtor is not complying with the provisions of the Bankruptcy Code or Rules, or is unable to confirm a plan of reorganization. In addition to the formal motions filed with the court, this performance measure also includes the number of inquiries made by U.S. Trustees. An inquiry is a written or documented verbal communication by the U.S. Trustee to the debtor about issues that would be grounds for conversion or dismissal that required a response from the debtor. It does not rise to the level of a formal pleading.

Percent of unconfirmed chapter 11 cases over 3 years old: The percentage of chapter 11 cases pending that do not have a confirmed plan and are more than 3 years old.

### **Outcomes:**

Payments to Creditors: Total dollar amount of disbursements made to creditors in chapters 7, 12, and 13 cases. For chapter 7 cases, the USTP receives trustee distributions reports as part of the Final Account on each chapter 7 case closed during the year. The chapter 7 data are aggregated on a nationwide basis and reported twice a year in January and July. Chapter 12 data come from annual reports submitted by trustees at the end of their operating year in June. Chapter 13 data are gathered from the standing chapter 13 trustees' annual reports on a fiscal year basis.

Percentage of Total Payments: The percentage of total payments to creditors is calculated by dividing the payments to creditors by either the total receipts of the bankruptcy estate (in chapter 7 cases) or the trust fund (in chapter 12 and 13 cases). Funds that are not distributed to creditors may include private trustee compensation, professional fees, and other administrative costs.

Potential Additional Returns to Creditors through Civil Enforcement Efforts: The amount of scheduled general unsecured debt in a chapter 7 case that was not immediately discharged in chapter 7 because of dismissal or conversion of the case, or because of the denial or voluntary waiver of the debtor's discharge, plus all professional fee reductions, professional fee disgorgements, and all fines imposed as a result of civil enforcement actions.

Number of Civil Enforcement Adversary Actions Filed: The number of complaints filed by the U.S. Trustees pursuant to Section 727. Under Section 727, a complaint may be filed objecting to the entry of the chapter 7 debtor's discharge.

### **3. USTP Data Validation and Verification Process**

The Significant Accomplishments and Reporting System (SARS) is the primary database utilized in connection with the U.S. Trustee Program's civil enforcement activity. Data of all informal and formal actions taken are entered by each of the USTP's 95 field offices. Data is verified at the end of each fiscal quarter by the AUST in each field office. The AUST conducts a SARS data verification process for the respective office and submits an email to the U.S. Trustee stating the data verification protocol for the office has been completed.

To ensure data integrity, efficiency, and effectiveness of existing and future data collection systems and to develop long-range goals and priorities to support the USTP mission, a Data Integrity Group (DIG) working group was formed. DIG, which consists of seven AUSTs, works closely with the EOUST Office of Research and Planning and IT staffs. In connection with SARS, DIG reviews a sampling of SARS reports from at least one office in each of the 21 regions. These "spot checks" are

conducted twice a year, or as needed. DIG establishes data element definitions, provides training and guidance to the field, and looks for ways to streamline the data collection process for more efficient and effective data collection systems.

### **Departmental Strategic Goals and Objectives and Results**

The USTP mission is included in the DOJ Strategic Plan under Goal II: Enforce Federal Laws and Represent the Rights and Interests of the American People and Strategic Objective 2.8: Protect the integrity and ensure the effective operation of the Nation's bankruptcy system. The following lists the USTP's strategies to achieve the objectives.

#### **Enforce compliance with federal bankruptcy laws and take civil actions against parties who abuse the law or seek to defraud the bankruptcy system.**

The USTP's anti-fraud and abuse efforts focus on wrong-doing both by debtors and by those who exploit debtors. The USTP 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 violations. The USTP protects consumer debtors from wrongdoing by attorneys, bankruptcy petition preparers, creditors, and others by seeking a variety of remedies, including disgorgement of fees, fines, and injunctive relief.

To accomplish these objectives, the USTP uses existing statutory tools to combat fraud and abuse in the bankruptcy system and to protect consumers. Civil enforcement actions include taking steps to dismiss abusive filings, deny discharges to ineligible or dishonest debtors, limit improper refilings by debtors, curb unfair practices by attorneys, sanction unscrupulous bankruptcy petition preparers and others who prey upon those in financial straits, and attack identity fraud in bankruptcy.

The USTP has focused its civil enforcement efforts to redress abuses by creditors on identified practices among mortgage servicer agencies in chapter 13 cases, including: the filing of false or inaccurate claims; the assessment of unreasonable charges post-petition; and the failure to properly account for post-petition mortgage payments. In FY 2008, the USTP initiated 68 actions against mortgage servicers, with at least 25 of those actions involving large mortgage servicers.

In October 2008, the USTP entered into a nationwide settlement agreement with a credit card issuer which had improperly collected on previously discharged debt. The agreement provides for the reimbursement of payments to more than 5,000 debtors or their estates and the auditing of more than 650,000 customer accounts to identify and remedy other instances of improper collections. The credit card company was further required to hire an independent auditor approved by the court to certify the accuracy of the audits.

Since the USTP began tracking its civil enforcement and related actions in 2003, it has taken more than 300,000 actions with a monetary impact in excess of \$4.4 billion. During FY 2008, the USTP's offices reported taking 50,752 formal and informal civil enforcement actions, yielding over \$905 million in debts not discharged in chapter 7, fines and other remedies. The USTP's attorneys prevailed in over 97 percent of the actions resolved by judicial decision or consent in the fundamental areas of dismissal for abuse (11 U.S.C. § 707(b)), denial of discharge (11 U.S.C. § 727), fines against bankruptcy petition preparers (11 U.S.C. § 110), and disgorgements of attorneys' fees (11 U.S.C. § 329).

**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 debtors to self-report honestly and accurately all their assets and liabilities when they file for bankruptcy protection. The U.S. Trustees have an affirmative duty to refer instances of possible criminal conduct to the U.S. Attorney and to assist in the prosecution of such criminal conduct. The bankruptcy system requires vigorous prosecution of criminal violations to encourage honest, lawful behavior. Moreover, criminal referrals from the USTP show that bankruptcy crimes are often linked to other white collar crimes such as fraud in obtaining federally guaranteed mortgage loans, money laundering, identity theft, mail fraud, and wire fraud. The USTP tracks criminal referrals, evaluates current efforts, and cooperates with other federal agencies (e.g., the U.S. Attorneys and the Federal Bureau of Investigation (FBI)) to address this multi-faceted problem.

The Program's Criminal Enforcement Unit (CREU) coordinates the criminal referral responsibilities carried out by the USTP's 95 field offices and directly assists prosecutors in pursuing bankruptcy crimes. CREU also provides extensive training, develops resource materials, and enhances coordination for the benefit of the USTP's staff, federal prosecutors, and other law enforcement personnel.

In FY 2008, the USTP made 1,471 criminal referrals, including cases involving housing fraud. This represents a 27 percent increase in referrals over FY 2007. In many cases, the USTP's lawyers directly prosecuted or assisted the prosecution team in cases initiated as a result of criminal referrals made by the USTP's offices. Three veteran career prosecutors within CREU, plus attorneys in field offices across the country who have been designated as Special Assistant U.S. Attorneys, are available to try cases involving bankruptcy crimes.

On June 19, 2008, the Program participated in a joint Department of Justice and FBI news conference announcing "Operation Malicious Mortgage." The Operation involved the arrest, indictment, or conviction of 406 criminal defendants who defrauded homeowners and lenders.

In addition, Program offices participate in more than 50 local law enforcement working groups, including bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces that are led by federal law enforcement agencies around the country. The USTP also works closely with the Federal Bureau of Investigation, the Internal Revenue Service – Criminal Investigation, the Office of Inspector General of the Department of Housing and Urban Development, and other federal law enforcement agencies. With the enactment of 18 U.S.C. § 158 as part of the BAPCPA, every U.S. Attorney office is required to designate a prosecutor and every FBI field office an agent who will assume primary responsibility for bankruptcy fraud cases. This provision further strengthens existing working groups by formalizing points of contact and provides a foundation for establishing working groups where currently none exist.

The Program is required to submit a report to the Congress annually which details the number and types of criminal referrals made by the Program; the outcome of each referral; for any year in which the number of referrals is less than the prior year, an explanation of the decrease; and the Program's efforts to prevent fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds. USTP has submitted its criminal referral report to the Congress annually since June 2007.

The USTP is continually improving its criminal enforcement efforts. Field offices are required to prepare annual criminal enforcement plans that describe current practices, propose strategies for

enhancing the detection and referral of criminal activity, and provide a status on the existence or development of a local bankruptcy fraud working group. These plans provide a basis for additional action and the development of best practices in this area.

**National Bankruptcy Fraud Working Group**

The USTP plays a leading role in the National Bankruptcy Fraud Working Group (NBFWG) comprised of U.S. Attorneys’ offices, DOJ Criminal Division, FBI, IRS-Criminal Investigation, Postal Inspection Service, the Federal Trade Commission, the Housing and Urban Development’s Office of Inspector General, the Executive Office for U.S. Attorneys (EOUSA), and other agencies. The NBFWG helps to coordinate a national response to bankruptcy fraud issues.

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

Trustees are fiduciaries who administer cases filed under chapters 7, 12, and 13. They are appointed and supervised by the U.S. Trustee. It is a fundamental duty of the U.S. Trustee to regulate and monitor the activities of these private trustees, and to ensure their compliance with fiduciary standards. The USTP administers a formal system for merit selection of trustees; trains trustees and evaluates their overall performance; regularly reviews their financial operations; and intervenes to prevent loss of estate assets when instances of embezzlement, mismanagement, or other improper activity are uncovered. The USTP maintains data on trustee oversight in several database files. To measure the return of estate assets, the USTP tracks distributions to creditors.

**Chapter 7 and Chapter 13 Distribution of Assets:**

Calendar Year	Chapter 7		Chapter 13	
	Total Disbursements	Distributions	Total Disbursements	Distributions
2005	\$1,723,313,444	\$1,023,136,746	\$5,119,236,318	\$4,396,378,738
2006	\$2,838,592,296	\$1,798,936,973	\$5,306,339,777	\$4,640,258,097
2007	\$2,861,789,782	\$1,742,786,134	\$5,150,455,224	\$4,450,453,900
2008	Available in Spring 2009		Available in Spring 2009	

**Ensure financial accountability, compliance with the Bankruptcy Code, and prompt disposition of Chapter 11 bankruptcy cases.**

The USTP’s staff must continually address emerging legal issues and challenges in chapter 11. Annually, the USTP participates in a variety of chapter 11 reorganization cases, ranging from small, single proprietorship cases to giant, multinational conglomerates. Without substituting its business judgment for that of parties with a monetary stake in a case, the USTP focuses its attention on such areas as the appointment of official committees of creditors and equity holders, the retention of professionals under §327, professional compensation issues, and the adequacy of disclosure statements, especially in smaller cases.

In the area of retention of professionals, the USTP focuses on the lack of disinterestedness and actual conflicts of interest which may take the form of the professional regularly representing other parties in matters unrelated to the bankruptcy case such as a large shareholder, a priority or secured creditor, or a stalking horse bidder or potential purchaser. To the extent that a waiver may have been obtained, the U. S. Trustee will act to make sure that the waiver allows for the professional to

meet the fiduciary duty that is owed to the debtor or committee client. The USTP also focuses on compensation issues and continues to monitor professional fees in large chapter 11 cases at the time of retention. The U.S. Trustee has attempted to negotiate or ensure more favorable rates, akin to those rates the professional might provide to its most favorable clients, and require professionals to submit and live within their budgets.

During FY 2008, the USTP filed over 2,766 motions to convert or dismiss chapter 11 cases. The grounds for such motions, which are critical to the effective functioning of the reorganization provisions of the Bankruptcy Code, typically include dissipation of estate assets without a reasonable likelihood of rehabilitation, failure to file financial reports, cancellation of insurance, or non payment of taxes.

#### **4. Performance, Resources, and Strategies**

##### **a. Performance Plan and Report for Outcomes**

Performance Measure: Percent of Assets/Funds Returned to Creditors

<b>Fiscal Year</b>	<b>Measure</b>	<b>Target</b>	<b>Actual</b>
FY 2001	Chapter 7 Assets returned to creditors	52%	59%
	Chapter 13 Funds returned to creditors	80%	87%
FY 2002	Chapter 7 Assets returned to creditors	52%	57%
	Chapter 13 Funds returned to creditors	80%	86%
FY 2003	Chapter 7 Assets returned to creditors	52%	58%
	Chapter 13 Funds returned to creditors	80%	85%
FY 2004	Chapter 7 Assets returned to creditors	54%	58%
	Chapter 13 Funds returned to creditors	80%	86%
FY 2005	Chapter 7 Assets returned to creditors	54%	59%
	Chapter 13 Funds returned to creditors	80%	86%
FY 2006	Chapter 7 Assets returned to creditors	55%	63%
	Chapter 13 Funds returned to creditors	83%	87%
FY 2007	Chapter 7 Assets returned to creditors	56%	61%
	Chapter 13 Funds returned to creditors	84%	86%
FY 2008	Chapter 7 Assets returned to creditors	58%	N/A
	Chapter 13 Funds returned to creditors	86%	N/A
FY 2009	Chapter 7 Assets returned to creditors	58%	N/A
	Chapter 13 Funds returned to creditors	86%	N/A

##### **b. Strategies to Accomplish Outcomes**

*Discussion:* The USTP has a comprehensive oversight process that ensures cases filed each year are effectively and efficiently moved through the bankruptcy system. The USTP audits and evaluates private trustees, follows up on deficiencies, ensures that old cases are closed promptly, and initiates action when private trustees fail to comply with their obligations. The USTP tracks the cost of trustee operations, as well as distributions to creditors. In particular, the Distribution Report for Closed Asset Cases helps trustees to identify specific distributions in closed asset cases. Portions of all trustee operations are closely reviewed each year by private accounting firm audits or on-site examinations by the USTP's personnel. Finally, the USTP's civil enforcement initiatives, by reducing the amount of fraud and abuse in the system, will increase the amount of funds potentially available for creditors. As

a direct result of the USTP's oversight and efforts, a total of \$1,742,786,134 in assets--61% of the total disbursements--was distributed to chapter 7 creditors in calendar year 2007. During FY 2007, a total of \$4,450,453,900 was distributed to chapter 13 creditors. This represents 86% of the total chapter 13 disbursements. Audited data on 2008 calendar year and fiscal year distributions will not be available until the second quarter of FY 2009

### **c. Results of Program Assessment**

*A program assessment of the USTP was completed during FY 2005. The findings are as follows:*

- *The USTP has a clear purpose and addresses a specific need for the efficient, effective, and fair resolution of bankruptcy cases.*
- *The USTP has long-term, outcome oriented measures, as well as, annual performance targets.*
- *There need to be regular, independent evaluations of the Program to measure future success in meeting program objectives.*

To exhibit continual improvement of our practices, the USTP completed all follow-up actions including:

- Completing a comprehensive review of performance targets and obtaining Department and OMB approval to include more aggressive targets.
- Developing an additional performance measure that reflects the new responsibilities assigned to the USTP as a result of the bankruptcy legislation enacted in 2005. The USTP obtained Department and OMB approval on the new measure.
- Continuing to develop a capacity for independent evaluations, either by re-focusing internal resources or contracting for evaluations by outside entities. The USTP has participated in a number of independent evaluations, including: 1) the fraud and abuse study performed by Rand, that expanded to include the effectiveness of pre-bankruptcy credit counseling; 2) the Government Accountability Office (GAO) study of the credit counseling and debtor education process; and, 3) the Justice Management Division, Management and Planning Staff's evaluation of the quality and efficiency of the credit counseling and debtor education renewal and complaint processes. While JMD made several recommendations for future improvements to the credit counseling/debtor education process, they agreed with the GAO's conclusion that the USTP had developed and implemented a comprehensive and effective process for the approval of credit counselors and debtor educators.
- In the latter part of FY 2008, OMB performed a quality review of the USTP's program measures. As a result of this review, OMB recommended that the Program develop a new efficiency measure to replace two previously approved efficiency goals. The USTP received Department and OMB approval for the new measure and it is reflected in the Program's most recent program assessment update as well as the Performance Tables section of this request.

## V. Program Increases by Item

**Item Name:** Mortgage and Other Consequential Fraud and Abuse SWAT Teams

**Budget Decision Unit(s):** Administration of Cases

**Strategic Goal(s) & Objective(s):** 2.8: Protect the Integrity and Ensure the Effective Operation of the Nation's Bankruptcy System

**Organizational Program:** U.S. Trustee Program

**Program Increase:** Positions 18 Agt/Atty 15 FTE 9 Dollars \$2,228,441

### **Description of Item**

This initiative requests additional attorney and support staff to lead and participate in litigation swat teams with a focus on areas of emerging complex litigation. Current areas include mortgage-related bankruptcy schemes, foreclosure rescue scams, and other complex cases. The SWAT teams would enable the USTP to leverage resources to ensure the availability of highly skilled litigation teams and to provide the highest quality legal representation regardless of the venue. The initiative includes \$500,000 for a litigation support and information system.

### **Justification**

The Department is committed to working with other federal and state agencies to investigate and prosecute mortgage fraud activities and to restore stability and confidence in the nation's housing and credit markets. The USTP has actively participated in a number of civil and criminal enforcement efforts involving both bankruptcy and mortgage fraud and abuse, including the recent Operation Malicious Mortgage takedown. As the housing market and overall economy continue to experience challenging times, the USTP has an increasing role in ensuring the integrity of the bankruptcy system, including the duty to redress violations by creditors, particularly when the abuse is systemic or multi-jurisdictional. One of the basic principles of our nation's bankruptcy system is that the honest but unfortunate debtor deserves a fresh start. Those who prey upon debtors for their own financial gain undermine that basic principle. Thus, protecting consumer debtors and being able to quickly mobilize to address increasingly complex abuse of the bankruptcy system is an important objective of the Program's enforcement efforts. One example of the need to be able to quickly address emerging, complex issues is the significant litigation involving national mortgage servicing firms, many of whom vigorously oppose the Program's intervention. Other examples of current creditor abuse include creditors who attempt to illegally collect on debts that have been previously discharged through a bankruptcy proceeding.

The majority of the USTP's litigation against national mortgage servicing firms involves homeowners who are behind on their mortgage payments and file for relief under chapter 13 of the Bankruptcy Code. Under chapter 13, debtors with sufficient regular income can keep their homes by paying arrearages over three to five years and making future mortgage payments on time. In FY 2008, the USTP initiated 68 actions against mortgage servicers, with at least 25 of those

actions involving large mortgage servicers. In addition, the Program is investigating a significant number of allegations involving systemic abuse by national mortgage servicers and other creditors.

The USTP has investigated complaints that some mortgage servicers were filing inaccurate papers in court claiming that debtors owe more money than they actually owe, as well as complaints that some mortgage servicers were adding charges that were undisclosed and impermissible under the terms of the loan contract or other applicable law. In the most extreme cases, a debtor makes all payments required in chapter 13, and after emerging from bankruptcy, is hit with a new bill for previously undisclosed charges. If this new bill is not paid, then the lender can foreclose on the property and the entire chapter 13 process will have been for naught.

In FY 2008, the USTP won a court decision allowing it to examine the mortgage servicing practices of Countrywide Home Loans, Inc. Countrywide is being investigated for a number of infractions, including factually inaccurate motions and inflated or unsubstantiated foreclosure fees.

In a single chapter 13 bankruptcy case involving Countrywide (In re Parsley) the USTP expended a significant amount of resources over an extended period of time to assist in the investigation effort. Approximately 12 people (attorneys, paralegals, analysts, IT staff and clerical support) were devoted to this case. In order to investigate and subsequently litigate this case, the USTP pulled staff from a number of field offices to provide the support needed.

The current issues with the mortgage industry have also impacted the USTP's responsibility for overseeing chapter 11 business reorganization cases. The Program reviews the chapter 11 cases filed by mortgage lenders, et al., and ensures that the mortgage lenders seeking bankruptcy relief comply with the bankruptcy laws. As of September 2008, nearly 60 mortgage lenders, including more than 20 subprime lenders, had filed for bankruptcy. These cases present a range of important issues. For example, New Century TRS Holdings, Inc., filed for bankruptcy relief after disclosing accounting and financial statement irregularities in the operation of its business. The company acknowledged that it needed to restate its financial results and amend its previous filings with the Securities and Exchange Commission. The misstatements were significant and hid major losses from New Century's creditors and investors.

Under chapter 11, the U.S. Trustee or other parties may seek to oust management for fraud, mismanagement or other reasons set forth in the Bankruptcy Code. If the motion is granted, the U.S. Trustee appoints a trustee to take control of the debtor. In the New Century case, the USTP filed a motion for authority to appoint a trustee to replace existing management. The motion met with opposition from the debtor and creditors, and the bankruptcy court declined to authorize such an appointment. However, the court did grant the U.S. Trustee's request for authority to appoint an independent examiner to report on the financial affairs of the debtor and possible causes of action that may be pursued on behalf of the estate and its stakeholders.

The U.S. Trustee also has a responsibility to review proposals to pay bonuses to executives of bankrupt companies. The Bankruptcy Code prohibits most retention bonuses and generally requires that bonuses to senior officials be based upon achievement of legitimate performance goals. Nine days after filing under chapter 11, New Century proposed payments in excess of \$2.8 million to eight top company officials. The U.S. Trustee filed objections on the grounds that the payments were disguised retention bonuses, and that the bonuses were premature, given that the company's pre-petition financial conduct was being investigated. A subsequent modification to

the bonus plan made by the debtor was again objected to by the U.S. Trustee, but that objection was overruled by the bankruptcy court.

In addition, the USTP has participated in several nationwide law enforcement sweeps aimed at investigating and prosecuting mortgage and bankruptcy fraud, including the most recent endeavor, Operation Malicious Mortgage. These investigations are extremely resource intensive and because of their nature and their far-reaching impact in areas beyond “traditional” bankruptcy fraud and abuse, they require a whole new level of knowledge and expertise.

For example, one of the prevalent mortgage fraud schemes found in bankruptcy is the foreclosure rescue operation. This type of scheme was highlighted in Operation Malicious Mortgage. Foreclosure rescue operators defraud financially troubled homeowners using the bankruptcy system to perpetrate their crimes. There are several variations of the scheme, but generally the perpetrator entices the distressed homeowner to either make mortgage payments through them or to transfer a deed to them. The perpetrator then files a bankruptcy petition to delay foreclosure and continues to collect payments from the unsuspecting homeowner. Mortgage payments are usually never made by the perpetrator to the mortgage company and the homeowner ultimately loses the home to foreclosure.

While the USTP aggressively seeks to investigate both civil and criminal matters within its existing resources, the complexity and increasing number of fraudulent and/or abusive activities require that additional, dedicated resources be available for this purpose.

The USTP is requesting 18 new positions (15 attorneys) in FY 2010 for litigation swat teams that would focus on both the civil and criminal aspects of mortgage fraud, as well as other emerging and consequential forms of abuse as they arise. The group will complement the Program’s existing attorney and professional staff, whose focus is primarily on more traditional bankruptcy abuse situations. Of the Program’s 95 offices, 74 percent have 3 or fewer attorneys. The additional enforcement positions would alleviate some of the need to detail staff from already understaffed field locations at a time when bankruptcy filings are on the rise. It would also help to ensure the availability of a skilled litigation team that would be deployed to provide high quality litigation skills and a comprehensive response to systemic or multi-jurisdictional abuse, regardless of the venue.

The initiative includes \$500,000 to permit the USTP to expand its support of investigative and litigation efforts in potential creditor abuse cases, including mortgage servicers. The support will entail organizing discovery documents in preparation for depositions (Bankruptcy Rule 2004 examinations) and for litigation, as well as providing electronic paperless support in the court room, when appropriate. The associated information system will catalog and organize hundreds of transcripts and the thousands of discovery documents anticipated as the Program continues to identify improper practices and fraudulent activities by creditors within the bankruptcy system. The system will also track the creditors with unfair practices, thus allowing the Program to compile data on a national level and correlate systemic patterns of fraud and abuse.

### **Impact on Performance (Relationship of Increase to Strategic Goals)**

**Supports policy priority:** “Defend and protect the interests of the U.S. Government by vigorously enforcing environmental, civil, tax, antitrust and bankruptcy laws.”

**Supports Strategic Goal 2:** Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People.

**Strategic Objective 2.8:** Protect the integrity and ensure the effective operation of the Nation's bankruptcy system.

The initiative addresses the following three strategies to achieve strategic objective 2.8:

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

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

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

**USTP Strategic Goal 3:** Maintain operational excellence that achieves desired results through continuous improvements in administration.

Strategic Objective: Provide state-of-the-art information technology and systems.

The mission of the USTP is, *inter alia*, to promote integrity and efficiency in the nation's bankruptcy system. This is an increasingly challenging goal for a number of reasons:

1) the number, complexity and makeup of mortgage fraud and abuse activities; 2) the amount of time and expertise required to investigate and prosecute those involved in mortgage fraud and abuse; 3) the need to ensure that statutorily mandated responsibilities under the BAPCPA continue to be addressed with base resources; 4) the need to cope with a rapid increase in the number of large corporate, including publicly traded company, filings; and 5) the need to achieve and maintain as much balance as possible in addressing overall USTP responsibilities within existing resources while targeting emerging critical issues.

The USTP has a statutory obligation to refer criminal cases to the U.S. Attorneys and works closely with U.S. Attorney Offices on criminal referrals by consulting with Assistant U. S. Attorneys on investigative strategies and prosecution theories; drafting charging documents; advising on sentencing options; and securing cross designation to serve as Special Assistant U.S. Attorneys when appropriate. The additional resources requested in this initiative could result in an increase in criminal referrals, impacting on the U.S. Attorneys workload and the courts.

### **Funding**

The USTP is funded by bankruptcy fees paid by debtors. Fees are deposited in the U.S. Trustee System Fund and remain available for expenditure across fiscal years. Balances in the Fund, as well as offsetting collections received during the fiscal year, are available to fund the USTP. This initiative is fully supported by offsetting collections.

Base Funding

FY 2008 Enacted				FY 2009 Requirements				FY 2010 Current Services			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2010 Request (\$000)	FY 2011 Net Annualization (change from 2009) (\$000)
Attorney	\$105	15	\$1,573	\$2,789
Paralegal	\$54	2	\$108	\$250
Clerical	\$47	1	\$47	\$72
Total Personnel	\$206	18	\$1,728	\$3,111

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2010 Request (\$000)	FY 2011 Net Annualization (Change from 2009) (\$000)
Information & Litigation Support	\$500		\$500	
Total Non- Personnel	\$500		\$500	

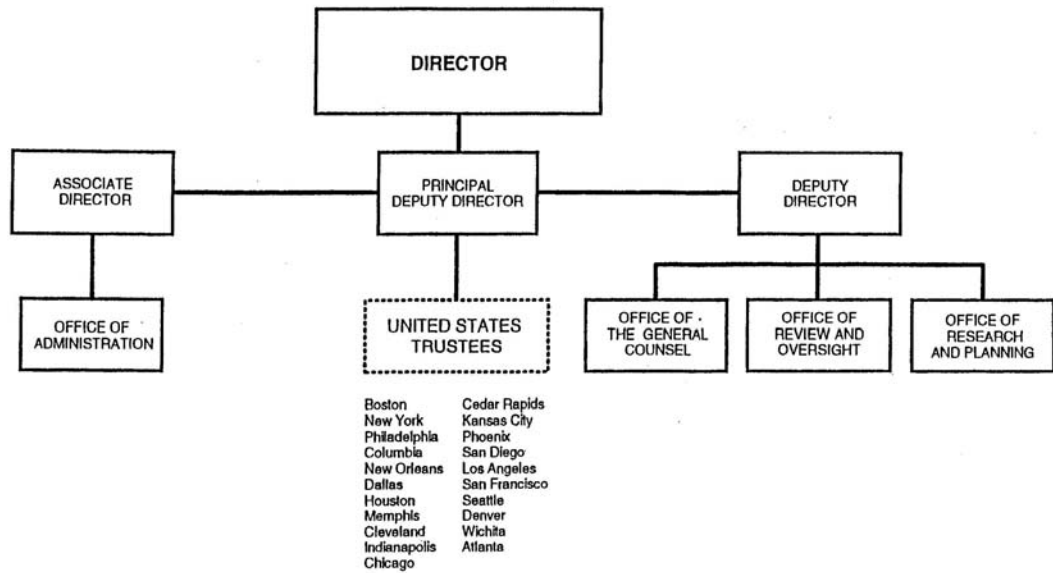
Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)
Current Services						
Increases	18	15	9	\$1,728	\$500	\$2,228
Grand Total	18	15	9	\$1,728	\$500	\$2,228

# **Exhibits**

**A: Organizational Chart**

**EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES**



Approved by:  Date: 5-14-02  
JOHN D. ASHCROFT  
Attorney General

