United States Trustee Program

FY 2012 Budget Request

February 14, 2011

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I. Overview of the United States Trustee Program

- The U.S. Trustee Program's ("USTP" or "Program") FY 2012 budget request totals 1,331 permanent positions (318 [1] attorneys), 1,327 workyears, and $234,115,000. The request includes a program increase of $5,816,000 and eight positions to contract for debtor audits as required by Section 603 of Public Law 109-8, the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA).

- The request includes a technical adjustment of $5,238,000 to restore the Program's FY 2010 base resources level.

- The request also includes program offsets (decreases) totaling $479,000.

- The USTP anticipates its budget request will be fully offset by bankruptcy fees collected during FY 2012.

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.justice.gov/02organizations/bpp.htm.

Rationale for Budget Request

The U.S. Trustee Program's total FY 2012 budget request represents roughly a 6.8 percent increase over the total resources available under the FY 2011 continuing resolution amount. The request specifically addresses the Administration's priority to defend and protect the federal fisc, identifying and combating debtor and creditor fraud and abuse, mortgage fraud and other consequential fraud and abuse and by protecting the integrity of the bankruptcy system. It reflects an increase in offsetting collections deposited into the U.S. Trustee System Fund as a result of increased filings. The request also cites the impact of recent budgetary constraints, the need to manage the sustained increase in workload, and the continuing need to address critical, complex enforcement issues.

Bankruptcy filings during FY 2010 totaled 1,534,202, an increase of 102.2 percent over the FY 2007 low of 758,673 filings that was recorded following BAPCPA implementation. Historically, filings have fluctuated from year to year. For the last century, filings have increased in about two thirds of the years and decreased during the other one third. Projecting filings even one year out is difficult as various factors that are external to the Program can result in significant volatility. The number of filings during FY 2011 and FY 2012 is projected to remain constant at approximately 1.5 million filings each year, with FY 2012 offsetting collections expected to reach over $274 million. In addition to supporting its current services operating needs, this request will provide permanent base funding to support the conduct of debtor audits in FY 2012 and beyond. It allows for more definitive planning relative to the Program's execution activities and minimizes the concerns related to the Program's reliance on prior year unobligated balances to fund debtor audit

[1] The USTP is working with the Department of Justice to reclassify the position of Assistant U.S. Trustee from the Miscellaneous Administration and Program Series (0301) to the General Attorney Series (0905) to reflect their primary duties as the legal and administrative management of an office. A total of 95 AUST positions would be reclassified.

activities. The Program's FY 2012 request is $40.2 million less than anticipated offsetting collections.

The USTP endured a drastic reduction in its resources immediately following implementation of the BAPCPA. The Program's appropriated level fell from $223.2 million in FY 2007 to $209.8 million in FY 2008 resulting in the loss of 163 positions. Conversely, filings increased from just below 760,000 in FY 2007 to well over 1.3 million in FY 2009. While the Program received its full request of $224.5 million in FY 2010, the resources were comprised of $219.3 million in appropriations and $5.2 million of the total $8.5 million available in carry over funding. The FY 2010 appropriation anticipated that the remaining $3.3 million in carry over will be used to fund debtor audit activities.

With the increased workload and resulting increased offsetting collections, it is critical that the Program rebuild its workforce and restore and maintain a sufficient level of base resources to address caseload increases and complexities. The Program strives to increase efficiency and effectiveness and looks toward capitalizing on advances in information technology to enhance productivity and staff capabilities.   Base funding for the conduct of debtor audits is a crucial element toward ensuring that the Program achieves and maintains an adequate base for its continued operations, to ensure compliance with bankruptcy law, and to ensure the integrity of the bankruptcy system. Debtor audit activities in FY 2011 are expected to be funded using available carry over funding. The Program plans to implement a sampling strategy for debtor audits that will reduce the number of audits conducted in FY 2011 with minimal effect on the precision of reporting material misstatements. The new strategy will allow the Program to continue to contract for debtor audits at a further reduced rate through the fiscal year.

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 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 – creditors (including mortgage servicers), attorneys, and bankruptcy petition preparers who prey on vulnerable debtors using fraud and deceptive practices. The combined result of the Program's efforts is to 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.

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.

During FY 2009 and FY 2010, the Program completed an extensive review of its performance measures with special emphasis on comprehensive programmatic results as they relate to resource expenditures and needs. The review resulted in significant changes to the Program's performance measures that better reflect its mission, outcomes and impacts. These changes are reflected in the Performance Tables included in this document.

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. There are a number of external factors that impact the operations of the United States Trustee Program. While the USTP is responsible for oversight of the panel and standing trustees who handle bankruptcy cases and for litigating issues that arise in those cases before the bankruptcy courts, the federal judiciary is responsible for adjudicating the bankruptcy cases. Thus, the Program must work cooperatively with the federal courts on numerous legal and other issues of mutual interest affecting the integrity of the bankruptcy system. 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 with the courts by panel and standing trustees.

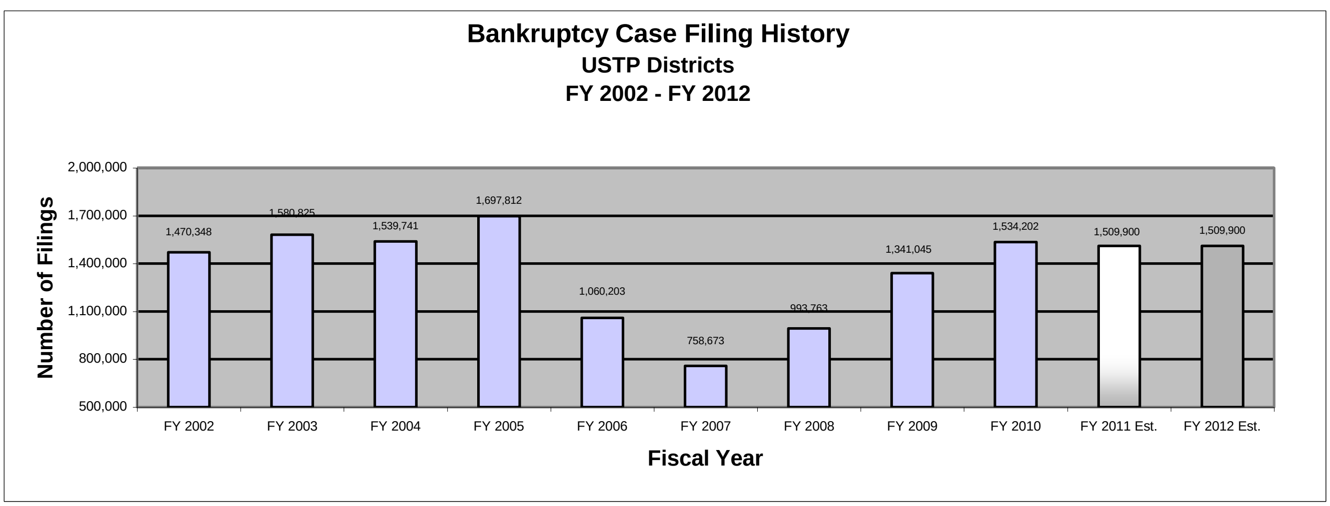
The USTP enforces and defends challenges to provisions of the Bankruptcy Code, including by litigating issues of first impression and carrying out numerous administrative and other duties arising under the bankruptcy law. The USTP also faces challenges in detecting evolving and innovative schemes of fraud and abuse, including creditor abuse, mortgage fraud, and complex financial fraud and 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 plunged and the USTP experienced a substantial decrease in the level of revenue that was collected to support its operations. Over the remaining fifty weeks of the year approximately 460,000 cases were filed.

Within two years of BAPCPA implementation, bankruptcy filings were again on the rise. During the period FY 2008 through FY 2010, filings increased by over 102 percent with FY 2010 filings totaling 1,534,202. The USTP is currently projecting that bankruptcy filings will stabilize in FY 2011 and FY 2012, remaining around 1.5 million filings for each the fiscal year. Although bankruptcy filing activities are routinely monitored to detect changing trends early on, the projections are extremely volatile.

The following chart reflects actual and projected filings for fiscal years 2002 through 2012.

1. Bankruptcy Filings



Internal Challenges The USTP also faces internal challenges resulting from its efforts to address new and increasing concerns in the areas of mortgage foreclosure and creditor abuse, an increased number of large, complex chapter 11 filings, its ongoing efforts to enforce bankruptcy reform, 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, requiring draw-downs from the System Fund 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 all other categories of expense. At the same time that revenues fell and authorized positions were reduced, the bankruptcy caseload began to rise, increasing a total of 77% during FY 2008 and FY 2009.

The Program assumed substantially increased duties mandated by BAPCPA and continues to be very much involved in new and complex issues associated with mortgage foreclosures, national mortgage servicers such as Countrywide, and large chapter 11 bankruptcy filings, e.g., Lehman Brothers, General Motors, and Chrysler. Conducting debtor audits with no added resources is a continuing challenge to the Program, as it requires that sufficient funding be identified within the Program's limited resources.

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 next three fiscal years were insufficient to support the USTP's operations, requiring draw-downs from the U.S. Trustee System Fund totaling $165.1 million over the 3-year period. During FY 2009 the number of filings exceeded 1.3 million and actual collections for the fiscal year totaled over $226 million. As a result, the System Fund grew by almost $9.2 million in FY 2009. Bankruptcy filings increased again, ending FY 2010 at over 1.5 million and resulting in the growth of the System Fund of over $58.6 million. Current revenue projections indicate that the fees collected during fiscal years 2011 and 2012 will exceed amounts made available for obligation, resulting in substantial growth of the System Fund.

D. Revenue Estimates

The following chart displays the actual revenue collected from FY 2007 through FY 2010, and the current revenue projections for FY 2011 and FY 2012.

Revenue Collected in FY 2007:

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

Revenue Collected in FY 2008:

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

Revenue Collected in FY 2009:

	Amount
Bankruptcy Fees:	
Filing Fees	$107,189,094
Chapter 11 Quarterly Fees	118,504,046
Other	87,500
Interest earnings on investments	790,276
TOTAL DEPOSITS	226,570,916

Revenue Collected in FY 2010:

	Amount
Bankruptcy Fees:	
Filing Fees	$121,696,328
Chapter 11 Quarterly Fees	155,210,330
Other	797,591
Interest earnings on investments	183,198
TOTAL DEPOSITS	277,887,447

Revenue Projections for FY 2011:

	Amount [2]
Bankruptcy Fees:	
Filing Fees	$120,809,540
Chapter 11 Quarterly Fees	155,570,853
Other	150,000
Interest earnings on investments	1,500,000
TOTAL DEPOSITS	278,030,393

Revenue Projections for FY 2012:

	Amount
Bankruptcy Fees:	
Filing Fees	$131,536,250
Chapter 11 Quarterly Fees	148,642,714
Other	150,000
Interest earnings on investments	1,500,000
TOTAL DEPOSITS	281,828,964

E. Program Efforts toward Creating and Implementing an Environmental Management System (EMS)

The USTP continues its work toward improving its environmental management activities. The Program actively participates in a number of recycling and other greening initiatives and ensures compliance with existing Federal Acquisition Regulations. The following activities reflect the Program's continuing efforts toward managing and improving its environmental and health safety matters:

- The USTP's Facilities Management Division works with the General Services Administration (GSA) to ensure continued purchases and use of environmentally preferable building products and materials for the design, construction and operation of commercially owned office space occupied by the Program. Specifically, lessors are required to use products that are phosphate-free, non-corrosive, non-flammable, and fully biodegradable. In addition, lessors are required to use paper products with recycled content conforming to EPA standards. This information is included in GSA's standard leasing documents, and is a requirement for all new lease acquisitions.

- As required by Federal Acquisition Regulation (FAR) 23.705, the Program makes every effort to purchase electronic products which are Electronic Product Environmental Assessment Tool (EPEAT) registered, or EnergyStar Compliant products. Such products include computer monitors, desktop computers, notebook computers, printers and copiers.

- As required by FAR Subpart 23, the Program purchases supplies that are environmentally preferable products made from recycled content, such as copier paper, file folders, pens and remanufactured toner cartridges. Original equipment manufacturer cartridges that contain remanufactured content, on occasion, are purchased.

[2]The FY 2011 revenue projection is updated and is based on filing estimates developed in the Spring of 2010.

- The Program recently implemented a personal cell phone and rechargeable battery recycling project at the Executive Office for U.S. Trustees. The project will be expanded to other field offices following a pilot period.

- Recycling of paper products, cans, bottles and plastics are encouraged throughout the Program -- an effort highlighted through the use of signage, posters, and the continual availability of appropriate recycling receptacles. The Program also encourages its employees to reuse items such as notebooks and file folders rather than discarding them through recycling or other means.

II. Summary of Program Changes

Item Name	Description				Page
		Pos.	FTE	Dollars (000's)	
Debtor Audits	Eight additional staff and funding for the conduct of statutorily mandated debtor audits	8	4	$ 5,816	
Administrative Efficiencies	The Program will effect administrative efficiencies to reduce requirements for travel, printing and reproduction, supplies and materials, and publications			($216)	
Extend Technology Refresh Cycle	The Program will extend by one year, the replacement rate of its desktop and laptop computers			($82)	
Reduce Physical Footprint	The Program will achieve savings by reducing the physical footprint in four district offices			($181)	

III. Appropriations Language and Analysis of Appropriations Language

The FY 2012 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, $234,115,000 , 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, $234,115,000 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 2012, so as to result in a final fiscal year 2012 appropriation from the Fund estimated at $0.

Analysis of Appropriation Language

No other substantive changes are proposed.

Note: The FY 2012 President's Budget uses the FY 2011 President's Budget language as a base so all language is presented as new.

IV. Decision Unit Justification

Decision Unit: Administration of Cases

Decision Unit Administration of Cases	Perm. Pos.	FTE	Amount
2010 Enacted with Rescissions	1,323	1,314	$219,250[3]
2011 CR	1,323	1,314	219,250
Adjustments to Base and Technical Adjustments	0	9	9,528
2012 Current Services	1,323	1,323	228,778
2012 Program Increases	8	4	5,816
2012 Program Offsets	0	0	-479
2012 Request	1,331	1,327	234,115
Total Change 2011-2012	**8**	**4**	**14,865**

Decision Unit: Administration of Cases- Information Technology Breakout	Perm. Pos.	FTE	Amount
2010 Enacted with Rescissions	39	39	$22,024
2011 CR	39	39	18,933
Adjustments to Base and Technical Adjustments	0	0	78
2012 Current Services	39	39	19,011
2012 Program Increases	0	0	0
2012 Request	**39**	**39**	19,011
Total Change 2011-2012	**0**	**0**	**78**

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 (AUSTs) who manage 95 field offices located in 46 states.[4]

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

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3/ In addition to the FY 2010 appropriation, Congress directed that the USTP utilize $5,238,000 in carry over funding to supplement its operational resources.

4/ 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.

General Counsel, the Office of Oversight, the Office of Criminal Enforcement, the Office of Planning and Evaluation, the Office of Administration and the Office of Information Technology.

Creditor Abuse

Addressing violations of the Bankruptcy Code by creditors, including national mortgage servicers, remains a top Program priority. The USTP investigates and takes civil 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. The Program is investigating a significant number of allegations involving systemic abuse by national mortgage servicers and other creditors.

The United States Trustee Program has worked diligently to address all types of mortgage-related fraud and abuse as it is identified in bankruptcy cases. Protecting consumer debtors, including distressed homeowners facing foreclosure, continues to be an important Program objective, and we have diligently pursued those who prey on these individuals, whether it is mortgage servicers, attorneys, foreclosure rescue fraud operators, or bankruptcy document preparers. We also continue to combat fraud and abuse committed by debtors who use the bankruptcy system to further a mortgage-related or other fraud scheme.

The Program has been involved in litigation against national mortgage servicing entities. For example, the Program investigated allegations that Countrywide Home Loans, Inc., one of the nation's largest home loan servicers, was filing inaccurate documents in court, charging excessive or unearned fees, and pursuing home foreclosure actions after debtors emerged from bankruptcy in violation of court orders. Over a two-year period, the Program litigated against Countrywide in various jurisdictions and worked closely with the FTC to carry out parallel investigations. The investigations and litigation culminated in a global resolution including a consent order with Countrywide agreeing to pay over one hundred million dollars, a portion of which will compensate homeowners in bankruptcy who were victimized by Countrywide's improper practices.

Also, in a recent decision involving Wells Fargo, the Program participated in an appeal where the court upheld the imposition of audit procedures on claims filed by Wells Fargo. The United States Trustee supported the bankruptcy court's authority to impose sanctions where a creditor files inaccurate claims with the court. While the matter is currently on further appeal, this case highlight's the Program's important role in this area. Similarly, the Program participated on appeal in a case where the court imposed accounting procedures against Ocwen Loan Servicing, LLP after finding Ocwen had attempted, through bankruptcy cases, to collect improper fees and charges and to foreclose on debts that had been disallowed or discharged. The United States Trustee filed an *amicus* brief supporting the bankruptcy court's power to enter appropriate orders to remedy abusive conduct committed by mortgage servicers.

In addition to its nationwide efforts involving mortgage servicers, the Program has assigned about one-fifth of its field offices to a special concentrated effort. These offices are conducting a review of 100 percent of the proofs of claim and selected motions for relief from stay filed by major mortgage servicers and inquiring into the servicers' policies and procedures where the offices identify facial deficiencies. These offices are currently engaged in litigating numerous legal challenges to their efforts.

The Program also seeks to guard against improper actions by other creditors. The Program reached an agreement with Capital One Bank (USA) N.A. in 2008 to resolve allegations that the company attempted to collect on debts that previously had been discharged in bankruptcy. At that time, the USTP alleged that Capital One had filed erroneous claims in bankruptcy cases, and the company acknowledged that it had received approximately $340,000 to which it was not entitled. However, the Program recently announced that Capital One Bank will refund approximately $2.35 million to consumers for amounts received by Capital One as a result of erroneous claims it filed.

In an action involving abuses by both attorneys and document preparers, the United States Trustee sought to protect consumer debtors by initiating a complaint against The American Debt-Free Association, Inc. (TADFA) based on TADFA's misrepresentations and deceptive practices. This entity solicited those in financial peril, advised and steered most of them who could afford its fees toward bankruptcy and promised benefits it could not produce. It then funneled these individuals to a separate law firm that ultimately filed bankruptcy cases for an additional charge. At the United States Trustee's request, the Court voided all agreements between TADFA and the debtors, ordered TADFA to pay a total of $143,107 to the victimized debtors, and fined TADFA $22,500.

The Program also seeks to protect debtors' privacy rights. The Program entered into a national settlement with First Tennessee Bank to resolve complaints involving the bank's improper disclosure of more than 2,500 Social Security numbers and other personal information on proofs of claim filed in bankruptcy courts in 47 states. Under the agreement, First Tennessee has amended 2,874 claims with an aggregate total value of more than $159 million, provided notice to each debtor and third party whose information was disclosed in a filed claim, and is required to adopt and maintain appropriate policies, procedures, and controls to ensure that future claims that are filed do not contain improper disclosures.

The USTP has enhanced its creditor abuse enforcement training program 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.

In addition to enhancing its creditor abuse enforcement training for senior field staff, the USTP has also established a creditor abuse working group, consisting of AUSTs and attorneys 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's FY 2010 enacted appropriation included an additional 18 positions to establish litigation swat teams to address creditor abuse and other complex litigation schemes.

The USTP also developed new guidance for chapter 13 standing trustees to ensure appropriate review of proofs of claim, including those filed by mortgage servicers.

<u>Mortgage Fraud Schemes</u>

Individuals who engage in mortgage fraud often use the bankruptcy system as an essential tool in carrying out their fraudulent schemes and victimizing desperate homeowners. The USTP routinely identifies mortgage rescue fraud and other mortgage fraud schemes involving the bankruptcy system. Where appropriate, the USTP makes criminal referrals to its law enforcement partners, including the United States Attorneys and the Federal Bureau of Investigation. In many cases, USTP efforts involve identifying the scheme, conducting an investigation, preparing the referral to law enforcement, and assisting law enforcement with the investigation and prosecution.

One of the prevalent mortgage fraud schemes found in bankruptcy is the foreclosure rescue operation. Foreclosure rescue operators defraud financially troubled homeowners using the bankruptcy system to help perpetrate their crimes.

- One of the most egregious schemes we see are those perpetrated on consumers facing foreclosure. In some instances, individuals facing foreclosure are preyed upon by unscrupulous attorneys and document preparers who purport to be foreclosure rescue operators, but instead use the bankruptcy system to victimize distressed homeowners. For example, the United States Trustee sought to protect consumer debtors by filing an action against individuals engaged in a mortgage rescue scheme that solicited 60 debtors named in newspaper foreclosure listings with promises of repayment plans, short sales, and other foreclosure alternatives. The fraudsters convinced individuals to file bankruptcy cases to stop foreclosures but failed to prepare and file all appropriate documents resulting in dismissal of many of the cases and foreclosure on the individuals' homes. The bankruptcy court granted the relief requested by the U.S. Trustee and entered judgments prohibiting the perpetrators from preparing bankruptcy documents and imposing fines.

The Program also combats fraud and abuse by attorneys. For example, the United States Trustee's office recently worked with law enforcement agencies to investigate bankruptcy attorneys who were involved in a mortgage fraud scheme. The investigation resulted in a 15-count indictment that charged the attorneys and others with a $14.7 million mortgage fraud scheme that targeted financially distressed homeowners facing foreclosure by falsely promising to save their homes, engaged in real estate transactions with straw purchasers, and obtained fraudulent mortgages for the purpose of stripping equity in the properties for their own profit.

The USTP protects the integrity of the bankruptcy system by combating fraud and abuse committed by debtors. For example, the United States Trustee sought to protect the integrity of the bankruptcy system by objecting to the bankruptcy discharge of an individual who served as the straw purchaser of three houses in an alleged house flipping scheme. He had fraudulently incurred almost $1 million in mortgage debt although he was unemployed and resided with his parents. He testified that an associate was responsible for handling the money and he could not explain what happened to the money that passed through his bank account and credit card accounts. Ultimately, the bankruptcy court entered an order denying the discharge of $1,064,200 in unsecured debt.

The Program also takes action to protect consumer creditors. For example, the United States Trustee objected to the chapter 7 discharge of an individual who operated a multi-state Ponzi scheme that claimed more than 300 victims. After the Ponzi scheme was discovered, an involuntary chapter 7 case was filed against the debtor, who had previously sold notes totaling more than $30 million to his unsuspecting victims. The bankruptcy court granted the United States Trustee's request to deny the discharge.

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 BAPCPA, 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.

In FY 2010, approximately 12 percent of chapter 7 debtors had income above their state median. Of those cases filed by above median income debtors, 7 percent were "presumed abusive" under the means test. However, after consideration of a debtor's special circumstances – most frequently job loss – the USTP exercised its statutory discretion to decline to file motions to dismiss in about 63 percent of the presumed abuse cases that did not voluntarily convert or dismiss.

The USTP was extensively involved in the Judicial Conference's Advisory Committee on Bankruptcy Rules in 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. 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.

As of January 1, 2011, there were 164 credit counseling agencies covering 88 judicial districts for pre-bankruptcy counseling. In addition to offering Internet and telephonic access, the companies had 791 walk-in locations for credit counseling. For post-bankruptcy debtor education, there were 269 approved debtor education providers covering 88 judicial districts. In addition to debtor education providers offering internet and telephonic access, there were 936 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 12 QSRs during FY 2010.

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 to 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. The U.S. Trustees object to executive bonus plans that violate limits established by the BAPCPA in 11 U.S.C. § 503(c). That statute seeks to prevent the same management that brought the company into bankruptcy from paying themselves large cash awards merely for staying with the company. Such cash awards are often portrayed as "performance bonuses." The U.S. Trustee is often the only player in the system seeking to enforce the restrictions imposed by Section 503. While many of the U.S. Trustee's objections are resolved through negotiation, courts have sustained the U.S. Trustee's objections in cases such as Fountainebleau Las Vegas Holdings (court denied incentive bonus payments of $1.069 million) and GPX International Tire Corp. (court denied bonuses of $1.65 million to two senior executives).

The Program's responsibilities in business reorganization cases include such matters as the appointment of trustees when there are grounds to suspect that current management has participated in fraud, dishonesty, or other improper activity. The U.S. Trustee seeks the appointment of examiners when independent investigations are needed. The U.S. Trustees have appointed independent examiners to investigate the financial affairs of DBSI, Inc., the Tribune Company, and other chapter 11 debtors. In DBSI, the U.S. Trustee sought and obtained the appointment of a chapter 11 trustee after an examiner filed a report showing that management had misused the proceeds of a $90 million notes offering. In the Tribune Company case, the U.S. Trustee supported the appointment of an examiner to investigate and evaluate potential claims arising from a pre-bankruptcy leveraged buyout. The U.S. Trustee also successfully sought the appointment of a chapter 11 trustee in the Thornburg Mortgage Company case based on evidence that corporate officers had established a parallel company that was using Thornburg employees and resources to operate its business. Chapter 11 trustees were also appointed in cases such as Rothstein Rosenfeld Adler (an out-of-trust law firm), M.W. Sewall (an oil company with highly-conflicted management), and The Vaughan Company Realtors (where the debtor allegedly participated in a pre-bankruptcy Ponzi scheme involving approximately 600 investors with over $80 million in claims being asserted).

The U.S. Trustees continue to take steps to address the burgeoning cost of chapter 11 cases. The U.S. Trustee was instrumental in negotiating the appointment of a fee examiner in the General Motors case to aid the court in the review and evaluation of fee requests by attorneys, financial advisors, and others. In the Lehman case, the U.S Trustee has served as a member of the court-appointed fee committee that has sought to establish meaningful controls over the costs of the chapter 11 case.

One of the Program's most important roles under the BAPCPA in terms of its appellate activities has been to develop consistent case law. 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. The USTP has been handling an increasing number of appeals, many of which may have a profound and long-standing effect on the bankruptcy system. Overall, the Program participated in 110 appeals beyond the bankruptcy court this past year, including about two dozen cases at the United States court of appeals level. Additionally, the USTP has assisted the Office of the Solicitor General in its participation in four important bankruptcy cases that have reached the Supreme Court and the government's position was upheld in each of the four cases.

Under the BAPCPA, the USTP contracts 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 authorized by the BAPCPA commenced on October 20, 2006.

In fiscal years 2007 through 2010, the Program utilized available carry over funding to contract for debtor audits. The amount of carry over that was available limited the number of audits that could be funded. In FY 2008, the audits were suspended for several months until funding could be identified to resume the activity. Debtor audits continued each subsequent year at a reduced level. The Program's FY 2010 enacted appropriation was augmented with $5.23 million in carry over funding, leaving only $3.3 million available for debtor audits and other operational priorities. The Program obligated approximately $2.9 million during FY 2010, supporting 2,729 audits. In the absence of base funding, contracting for the audits in FY 2011 will again be dependent upon the availability of carry over funds. The Program intends to implement a sampling strategy for debtor audits that will reduce the number of audits conducted in FY 2011 with minimal effect on the precision of reporting material misstatements. The new strategy will allow the Program to continue to contract for debtor audits at a further reduced rate through FY 2011.

Performance and Resources Table

Appropriation: United States Trustee Program
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 FY 2010 Target	Actual FY 2010	Projected FY 2011 CR	Changes Current Services Adjustments and FY 2012 Program Changes	Requested (Total) FY 2012 Request
Number of Chapter 7 Cases Filed	1,236,000	1,116,745	1,107,000	0	1,107,000
Number of Chapter 11 Cases Filed	13,000	13,680	14,000	0	14,000
Number of Chapter 12 Cases Filed	400	678	500	0	500
Number of Chapter 13 Cases Filed	360,500	403,099	388,400	0	388,400
Total Filings	**1,609,900**	**1,534,202**	**1,509,900**	**0**	**1,509,900**

Total Costs and FTE		**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**
TYPE / Strategic Objective	**Performance /Resources**	1,314	$224,488	1,263	225,360	1,323	$219,250	4	$14,865	1,327	$234,115
Program Activity	**1. Civil Enforcement**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**
		574	$90,957	471	83,968	467	$78,515	4	8,618	471	87,133
Performance Measure	Number of motions, complaints & inquiries	42,000		39,400		**MEASURE IS DISCONTINUED IN FY 2011**				**N/A**	
	Percent of successful motions & complaints	92%		98%		**MEASURE IS DISCONTINUED IN FY 2011**				**N/A**	

	Success rate of civil adversary complaints filed	96%		99%		**MEASURE IS DISCONTINUED IN FY 2011**				**N/A**	
	Success in litigating means testing	94%		98%		**MEASURE IS DISCONTINUED IN FY 2011**				**N/A**	
Program Activity	**2. Case and Trustee Administration**	**FTE** 740	**$000** $133,531	**FTE** 792	**$000** 141,392	**FTE** 856	**$0** $140,735	**FTE** 0	**$000** 6,247	**FTE** 856	**$000** 146,982
Efficiency Measure	Number of motions & inquiries to convert or dismiss Chapter 11 cases	3,400		6,008		**MEASURE IS DISCONTINUED IN FY 2011**				**N/A**	
	Number of 707(b) inquiries per successful outcome	7.5		5.5		7.0		0.0		7.0	
Payments to Creditors / Percentage of Total Disbursements 1/		**Final Target FY 2010**		**Actual FY 2010**		**Projected FY 2011 Enacted**		**Current Services Adjustments and Program Changes**		**Requested (Total) FY 2012 Request**	
Outcomes	Chapter 7	$1.0 B		DATA IS NOT AVAILABLE UNTIL SPRING 2011		**MEASURE IS DISCONTINUED IN FY 2011**				**N/A**	
	Chapter 12	$25.0 M				**MEASURE IS DISCONTINUED IN FY 2011**				**N/A**	
	Chapter 13	$4.6 B				**MEASURE IS DISCONTINUED IN FY 2011**				**N/A**	
	Median days in Chapter 11 before case dismissal or conversion	175		186		180		0		180	
	Number of successful actions related to consumer protection	1,800		3,280		2,000		200		2,200	

	Number of successful discharge complaints	550	517	550	0	550
	Potential Additional Returns to Creditors through Civil Enforcement and Related Efforts	$700,000,000	$2,415,426,772	$900,000,000	$0	$925,000,000
	Number of Civil Enforcement Adversary Actions Filed	1,600	1,966	**MEASURE IS DISCONTINUED IN FY 2011**		**N/A**

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

1/ Actual data reflecting payments to creditors for the previous fiscal year are not available to the USTP until the subsequent fiscal year (mid-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

Performance Report and Performance Plan Targets		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010		FY 2011	FY 2012
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Performance Measure	Number of Motions, Complaints & Inquiries	41,940	40,518	39,207	48,011	62,501	50,752	42,619	42,000	39,400	Discontinued	
Performance Measure	Percent of Successful Motions & Complaints	94.50%	94.90%	97.40%	97.50%	96.4%	97.63%	97.90%	92.00%	98.38%	Discontinued	
Performance Measure	Success Rate of Civil of Civil Adversary Complaints Filed	N/A	N/A	99.30%	99.10%	98.8%	99.18%	98.98%	96.00%	99.25%	Discontinued	
Performance Measure	Success in litigating Means Testing	N/A	N/A	N/A	N/A	97.00%	97.98%	97.08%	94.00%	98.05%	Discontinued	
Efficiency Measure	Number of Motions & Inquiries to Convert or Dismiss Chapter 11's	6,741	4,081	3,595	3,306	3,456	3,911	4,740	3,400	6,008	Discontinued	

	No. of 707(b) inquiries per successful outcome	N/A	N/A	N/A	13.8	9.5	7.5	6.0	7.5	5.5	7.0	7.0
Outcome	Payments to Creditors and Percent of assets paid to creditors in Chapter 7 Cases	$907.81M 58%	$1.02B 58%	$1.02B 59%	$1.80B 63%	$1.7 B 61%	$1.8 B 60%	$1.4B 56%	$1.0 B 58%	Not Available Until Spring 2011	Discontinued Discontinued	
	Payments to Creditors and Percent of assets paid to creditors in Chapter 12 Cases	$40.01M 84% **	**	$27.9M ** 85%	$24.05M 85%	$23.67 M 85.7%	$25.7M 78.5%	$21.7M 80%	$25.0 M 82%	Not Available Until Spring 2011	Discontinued Discontinued	
	Payments to Creditors and Percent of assets paid to creditors in Chapter 13 Cases	$3.58B 85%	$4.02B% 86%	$4.39B 86%	$4.6B 87%	$4.45B 86%	$4.18B 84%	4.08B 82%	$4.6 B 84%	Not Available Until Spring 2011	Discontinued Discontinued	
	Median number of days in chapter 11 before case dismissal or conversion				N/A	224	190	181	175	186	180	180
Outputs	Number of successful actions related to consumer protection				1,393	1,283	1,530	2,706	1,800	3,280	2,000	2,200

	Number of successful discharge complaints				552	642	512	512	550	517	550	550
Outcome	Potential Add'l. Returns to Creditors	$644.62M	$522.37M	$593.9M	$878.7M	$866M	905M	$1,090 B	$700 M	$2.415 B	$900 M	$925 M
	# of Civil enforcement adversary actions filed	N/A	N/A	1,301	1,704	1,639	1,810	2,006	1,600	1,966	Discontinued	

NOTE: In FY 2009, the Program completed an extensive review of its performance measures with special emphasis on comprehensive programmatic results as they relate to resource expenditures and needs. The review resulted in significant changes to the Program's performance measures that better reflect its mission, outcomes and impacts. Measures that will be discontinued beginning in FY 2011 are noted above. Of the five measures being proposed in FY 2011 and beyond, two are existing measures and three are new measures; all have received Department and OMB approval. The new measures are identified in the table above.

** The Chapter 12 trustee annual cycle was changed from a calendar year to a fiscal year (1/1/03 to 6/30/04). During that 18-month period, a total of $40.01 million was distributed to creditors. Chapter 13 data for FY 2006 is actual data from audited reports.

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 707(b) inquiries per successful outcome: This measure reflects the quality of U.S. Trustee Program inquiries to debtors or debtor attorneys. An efficiency ratio is calculated by dividing the sum of all 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.

Inquiries made under 707(b)(2) and (b)(3) help the Program assess a debtor's eligibility for chapter 7 relief. If a debtor 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 debtors to either agree to convert their case to chapter 13 or dismiss (cancel) their chapter 7 bankruptcy petition. Some motions granted and inquiries resulting in voluntary conversions or dismissals were initiated in the prior fiscal year. **(NOTE: This measure was proposed in FY 2008. At that time, initial targets were developed for FY 2010 and subsequent fiscal years.)**

Number of successful discharge complaints filed by the U.S. Trustee Program to prevent fraud and abuse by bankruptcy filers: Successful formal discharge complaints in a bankruptcy court to prevent fraud and abuse by bankruptcy filers. These complaints result in denial or revocation of a discharge of debt. It is the most serious civil remedy available to the Program in its effort to prevent fraud and abuse in the bankruptcy system and is taken to resolve issues such as hidden assets, unreported income, and exaggerated expenses. These figures do not include successful discharge complaints against debtors who are ineligible due to a prior discharge or who failed to complete a debtor education course. **(NOTE: This is a proposed new measure for which targets are initially developed for FY 2010 and subsequent fiscal years.)**

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. **(NOTE: This measure is to be discontinued beginning in FY 2011.)**

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. **(NOTE: This measure is to be discontinued beginning in FY 2011.)**

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. **(NOTE: This measure is to be discontinued beginning in FY 2011.)**

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. **(NOTE: This measure is to be discontinued beginning in FY 2011.)**

Case and Trustee Administration:

Number of cases: 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 complaints granted and successful inquiries made by the U.S. Trustee Program to protect bankruptcy filers from fraud, abuse and error: Formal motions and complaints granted in a bankruptcy court and successful inquiries made by the U.S. Trustee to prevent fraud, abuse and error resulting from the inappropriate actions of creditors, petition preparers, attorneys, mortgage service agencies, and rescue mortgage scams. **(NOTE: This is a proposed new measure for which targets are initially developed for FY 2010 and subsequent fiscal years.)**

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. **(NOTE: This measure is to be discontinued beginning in FY 2011.)**

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. **(NOTE: This remains a current Program outcome measure.)**

Median number of days in chapter 11 before case dismissal or conversion: This measure documents the outcomes of effective monitoring of chapter 11 cases. Various Program actions and monitoring activities are designed to ensure chapter 11 cases that cannot successfully reorganize do not spend an excessive amount of time in chapter 11. The sooner the Program is able to ascertain a reorganization of a chapter 11 case is not viable, the sooner the case will be dismissed or converted for liquidation of assets. **(NOTE: This is a proposed new measure for which targets are initially developed for FY 2010 and subsequent fiscal years.)**

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. **(NOTE: This measure is to be discontinued beginning in FY 2011.)**

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 Planning and Evaluation 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.

Since the USTP began tracking its civil enforcement and related actions in 2003, it has taken nearly 500,000 actions with a monetary impact in excess of $7.9 billion. During FY 2010, the USTP's offices reported taking over 57,000 formal and informal civil enforcement actions, yielding over $2.4 billion in debts not discharged in chapter 7, fines and other remedies. The USTP's attorneys prevailed in 98.3 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 2010, the USTP made 1,721 criminal referrals, an increase of almost 7 percent over FY 2009. Criminal referrals are almost 48% higher than those reported in FY 2007 due in part to the increasing number of cases involving mortgage and housing fraud. Over 200 of the criminal referrals made by the USTP in FY 2010 were specific to mortgage fraud. 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.

In October 2007, a USTP analyst noticed several anomalies in a bankruptcy case. After a thorough and extensive civil investigation, the USTP submitted a criminal referral to the United States Attorney's Office. Evidence presented during the criminal trial demonstrated that an Israeli national living in Los Angeles operated a business called STOPCO, which had three employees who mailed 1,000 flyers each day to homeowners facing foreclosure. The homeowners were convinced to deed fractional interests in their homes to fictitious businesses and they were promised that they would not have to make mortgage payments for two years. STOPCO then filed or caused the filing of fraudulent bankruptcy cases in the names of the fictitious businesses. After the bankruptcy court determined that the bankruptcy cases were fraudulent and lifted the automatic stays, the homeowners were then persuaded to deed their properties to other fictitious companies and additional fraudulent bankruptcy cases were filed in the names of the other fictitious businesses. If the homeowners stopped paying the monthly fee, the fraudulent bankruptcy cases were not filed, and the homes would be foreclosed.

A second defendant who worked as a paralegal in Los Angeles, prepared the fraudulent bankruptcy petitions and mailed them to the District of Kansas for filing. The defendants were convicted of conspiracy and numerous counts of mail fraud after a two-week trial. The government's evidence demonstrated that the defendants had filed 119 fraudulent bankruptcy cases in six different districts during their two-year fraud scheme. One defendant was sentenced to 60 months imprisonment and the other to 18 months imprisonment. Both defendants were ordered to forfeit more than $1,000,000 in addition to the $1,000,000 that had been seized by the government.

In another example, a bankruptcy petition preparer (BPP) who engaged in a rescue fraud scheme in the District of Maryland preyed on individuals facing foreclosure. He fraudulently represented that for a fee, he could save their properties. In fact, the BPP only collected the fees and filed bare bone bankruptcy petitions (often containing false information and forged signatures). The bankruptcy cases would then be dismissed, the debtors would be even further behind on their mortgage payments, and foreclosure proceedings would be re-instituted.

Although the USTP obtained an injunction against the BPP permanently enjoining him from acting as a bankruptcy petition preparer, he continued to do so. The USTP and the bankruptcy judge referred the matter to the U.S. Attorney's Office. During the course of the criminal investigation, it was discovered that the BPP had filed petitions for more than 75 victims from whom he collected more than $58,000 in fees. The BPP pleaded guilty to one count of contempt and in March 2010, he was sentenced to two years imprisonment.

Seventy five program offices across the country participate in bankruptcy fraud working groups, mortgage fraud working groups, or both. 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. Section 158 of Title 18, which was enacted as part of the BAPCPA, requires every U.S. Attorney's Office to designate a prosecutor and every FBI field office to designate an agent to 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 none currently 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. The 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.

The President's Financial Fraud Enforcement Task Force

The USTP also plays an integral role in the Financial Fraud Enforcement Task Force that was recently established to provide information to the public on how to protect themselves from fraud and to report it wherever and however it occurs. The Task Force was established to wage an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes. It includes a broad range of federal agencies, regulatory authorities, inspectors general and state and local law enforcement, all of whom bring a powerful array of criminal and civil enforcement resources.

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. The following table reflects disbursements and distributions of assets for chapter 7 and chapter 13 bankruptcy cases for the period FY 2005 through FY 2009.

Chapter 7 and Chapter 13 Distribution of Assets:

	Chapter 7 (Calendar Year)		Chapter 13 (Fiscal Year)	
Calendar or Fiscal Year	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	$3,035,254,999	$1,817,013,320	$4,969,797,399	$4,183,543,013
2009	$2,458,992,128	$1,379,494,584	$4,960,579,248	$4,082,290,321
2010	Available in Spring 2011		Available in Spring 2011	

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, similar to those rates the professional might provide to its most favorable clients, and require professionals to submit and live within their budgets.

During FY 2010, the USTP filed 4,400 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

Fiscal Year	Measure	Target	Actual
FY 2001	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	52% 80%	59% 87%
FY 2002	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	52% 80%	57% 86%
FY 2003	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	52% 80%	58% 85%
FY 2004	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	54% 80%	58% 86%
FY 2005	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	54% 80%	59% 86%
FY 2006	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	55% 83%	63% 87%
FY 2007	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	56% 84%	61% 86%
FY 2008	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	58% 86%	60% 84%
FY 2009	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	58% 86%	56% 82%
FY 2010	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	58% 84%	N/A N/A
FY 2011	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	58% 84%	N/A N/A
FY 2012 [5]	Chapter 7 Assets returned to creditors Chapter 13 Funds returned to creditors	TBD	TBD

[5] The USTP may discontinue its reporting of assets returned to creditors and replace them with measures that more clearly indicate Program accomplishments.

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 Program 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 result of the USTP's oversight and efforts, a total of $1,379,494,584 in assets—56% of the total disbursements--was distributed to chapter 7 creditors in calendar year 2009. During FY 2009, a total of $4,082,290,321 was distributed to chapter 13 creditors. This represents 82% of the total chapter 13 disbursements.

Distribution amounts in both chapters 7 and 13 indicate the amounts paid to priority, secured, and unsecured creditors. The distribution amounts will never reach 100% because they exclude payments for attorney and other administrative and professional fees. Audited data on 2010 calendar year and fiscal year distributions will not be available until the second quarter of FY 2011.

V. Program Increases by Item

Item Name: **<u>Debtor Audits</u>**

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: UST

Component Ranking of Item: __1__

Program Increase: Positions _8_ Agt/Atty ___ FTE _4_ Dollars: <u>$5,816,225</u>

<u>Description of Item</u>

The USTP requires 8 positions, 4 FTE, and $5,816,225 to contract for debtor audits during FY 2012, as authorized by Section 603 of the BAPCPA. The amount requested would fund audits of consumer bankruptcy cases filed under chapters 7 and 13 of the Bankruptcy Code. Approximately 5,982 random audits and 1,000 exception audits will be conducted during the fiscal year at a cost of $5,201,300. The request is based on the number of chapters 7 and 13 bankruptcy cases projected to be filed in FY 2012. In addition to funding for the audit contracts, the Program requires 8 positions and $614,925 to support debtor audit activities in the field, as described below, and to manage the increased workload related to contract oversight, management and reporting activities performed in the Executive Office.

Justification

The integrity of the bankruptcy system depends upon debtors reporting honestly and accurately on their assets and liabilities and financial affairs when filing for bankruptcy protection. The BAPCPA authorized the Attorney General to establish and implement procedures to determine the accuracy, veracity and completeness of petitions, schedules and other information filed by debtors. Debtor audits are a means of verifying the accuracy of financial information provided in a debtor's schedules and statement of financial affairs, and are an important component among a number of tools utilized by the USTP for deterring fraud and abuse and detecting errors.

The USTP contracts with independent audit firms to review the debtor's information and as required, file a report with the bankruptcy court specifying any material misstatement of income, expenditures, or assets. A material misstatement indicates the audit produced information that challenges the accuracy, veracity and completeness of a debtor's petition, schedules or other filed bankruptcy documentation. If a material misstatement is found and is not adequately explained, the debtor may be subject to civil enforcement actions or a criminal referral by the U.S. Trustee. A civil enforcement action may also be brought against a debtor who does not satisfactorily explain a failure to provide papers requested by the audit firm.

The audits provide baseline data to gauge the magnitude of fraud, abuse, and error in the bankruptcy system; assist the USTP in identifying cases of fraud, abuse, and error; and enhance deterrence.

In addition to funding the independent audit contracts, the Program requires an additional eight positions to support a number of audit-related activities and reporting requirements, and to monitor and update the Debtor Audit System (DAS).

The BAPCPA authorizes the USTP to randomly select cases to be audited and to designate cases for exception audit when the income or expenditures of a debtor deviate from the statistical norm of the district in which the case was filed. While the selection of cases for random audits is fully automated, Program staff must perform follow on activities for each random case that is selected to ensure the appropriate documentation has been provided. The designation of exception audits is primarily a manual task. It requires that a debtor's petitions, schedules and statements be carefully reviewed to ensure completeness and to determine if the case meets the criteria for audit. In designating the exception audits, the Program typically has to review over a dozen cases that are initially selected by the system to ascertain their eligibility for exception audit. This is an extremely time-consuming activity, and one that is difficult to automate due to instances of error or omission on some or all of the schedules and statements submitted.

Chapters 7 and 13 case data is automatically downloaded from the courts' electronic filing system into the DAS. When a case is designated for audit, a number of additional data elements is downloaded into the DAS, including information on the debtor, the debtor's attorney, the audit contractor that will conduct the audit, and court information. All subsequent activity including but not limited to the results of the audit, civil or criminal enforcement actions and their outcomes, and the final disposition of the case are input manually into the DAS by field office staff. The staff also are primarily responsible for notifying the debtor of the prospective audit, ensuring documentary requirements are fulfilled, monitoring audit progress, reviewing audit results, verifying data, and ensuring accurate and timely case updates in the system. Seven of the eight positions requested would be located in those field offices with the largest caseload and hence, a larger number of audits being conducted (e.g., Detroit, Atlanta, Chicago).

Although the actual audits are conducted by independent audit firms, the Program has additional reporting requirements and other critical responsibilities directly related to the audits and their results. For example, the BAPCPA requires that the USTP prepare an annual public report on debtor audits that provides information concerning the aggregate results of the audits, including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported. The Program also prepares a number of management reports, data integrity reports and peer review reports for internal use, and various other ad-hoc reports for both internal and external purposes.

The audits are being conducted by five audit firms, each of which is under contract with the USTP and each having several individual delivery orders. Contract monitoring and oversight responsibilities are performed by the Contracting Officer's Technical Representative (COTR), who is also responsible for reviewing and approving invoices for payment. Executive Office Program staff provide assistance to the field on a daily basis regarding data entry into the DAS and also serve as troubleshooters for all debtor audit related issues. They research and respond to legal questions, follow up on cases requiring subsequent enforcement action, and provide training to field staff and to the audit firms themselves. The staff also communicate regularly with the private audit firms regarding audit processing, audit requirements, billing, and extension requests when additional time is needed to complete an audit.

These additional responsibilities are collateral duties that currently are performed by several existing staff in the Executive Office whose primary duties and responsibilities lie elsewhere. The increasing caseload over the past two years has exacerbated overall resource issues as the number of cases designated for audit and the associated workload increases concomitantly. One management analyst position is requested to address the most fundamental requirements related to contract oversight, reporting, and other audit-related activities that are performed in the Executive Office.

While conducting the debtor audits is statutorily authorized, the USTP has never received funding or staffing to support the requirement. The USTP utilized carryover funds from FY 2006 to pay for its debtor audit activities in FY 2007, the first year in which the audits were implemented. In FY 2008, the USTP temporarily suspended its designation of cases subject to audit for budgetary reasons. The USTP resumed its designation of cases subject to audit in mid-May 2008 using carryover funding, but reducing the number of cases designated for random audit due to budgetary constraints. During FY 2009 and FY 2010, the Program continued to use its carryover balances to fund debtor audit activities at reduced levels. During FY 2010, 1,444 cases were selected for random audit and 1,285 cases were selected for exception audit.

Although filings and revenue have increased significantly, the Program continues to have funding constraints that limit the number of audits that can be conducted. Carryover funding is being used in FY 2011 to support the continuation of debtor audits. The Program intends to implement a sampling strategy that will reduce the number of audits conducted in FY 2011 with minimal effect on the precision of reporting material misstatements. The new strategy will allow the Program to continue to contract for debtor audits at a further reduced rate through FY 2011.

In FY 2012, the USTP is requesting resources to support conducting debtor audits at the statutorily authorized rate of 1 out of every 250 cases for random audits and to conduct 1,000 exception audits (audits of cases with income or expenditures above the statistical norm). There is no statutory audit rate for exception audits. Accordingly, with funding for this item, the number of cases selected for random audit would increase by approximately 414% -- from 1,444 in FY 2010 to a projected 5,982 in FY 2012.

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. Specifically supports policy priority: "Defend and protect the interests of the U.S. Government by vigorously enforcing environmental, civil, tax, antitrust and bankruptcy laws."

Strategic Objective 2.8: Protect the integrity and ensure the effective operation of the Nation's bankruptcy system.
The initiative addresses the following two 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.

Debtor audits are designed to help ensure the integrity of the bankruptcy system by identifying prospective fraud, abuse, and error that could result in civil penalties such as a denial of discharge or the dismissal of a case or in criminal charges. As specified by statute, criminal charges that may arise from debtor audits are referred to U.S. Attorney Offices for prosecution. USTP staff work closely with the staff of U.S. Attorneys on criminal bankruptcy referrals.

Debtor Audit Results

In FY 2010, the USTP designated 2,729 cases for audit. Of the cases designated for audit, 54 cases were still in process as of January 5, 2011. Of the remaining 2,675 cases, 1,395 were random audits and 1,280 were exception audits. Reports of Audit were filed in 2,562 of the completed audits, and at least one material misstatement was reported in 23 percent (584) of these cases. Twenty-nine percent of exception audits identified at least one material misstatement compared to 17 percent of random audits. There were also 113 Reports of No Audit filed. A Report of No Audit is filed when a case selected for audit is closed without completion either because the debtor failed to provide sufficient information to complete the audit or the case was dismissed while the audit was in process.

The table below summarizes the number of audits performed during the period FY 2007 through FY 2009 and the percentage of reports of audit with material misstatements.

	FY 2008 Actual		**FY 2009 Actual**		**FY 2010 Actual**	
	Random	Exception	Random	Exception	Random	Exception
No. of Cases Designated	1,177	514	1,299	1,106	1,444	1,285
Cases with No Report	152	154	39	11	49	5
Total Cases with a Report	1,025	360	1,260	1,095	1,395	1,280
No Material Misstatements	82	72	1,014	751	1,110	868
One or more Material Misstatements	172	93	200	296	223	361
% of Reports of Audit with Misstatement(s)	18%	28%	16%	28%	17%	29%

The increase of $5,816,225 in FY 2012 will support approximately 6,982 random and exception audits and will ensure that permanent resources are available in the Program's base to address debtor audit requirements.

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 projected offsetting collections received during the fiscal year, are available to fund the USTP. This initiative is fully supported by offsetting collections.

Base Funding

The USTP has never received dedicated funding specifically for debtor audit requirements.

FY 2010 Enacted				FY 2011 Requirements				FY 2012 Current Services			
Pos	agt/ atty	FTE	$(000)	Pos	agt/ atty	FTE	$(000)	Pos	agt/ atty	FTE	$(000)
0		0	0	0		0	0	0		0	0

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (Lapsed) ($000)	Number of Positions Requested	FY 2012 Request ($000)	FY 2013 Net Annualization (change from 2012) ($000)
Mgmt. Analyst	$62.4	1	$62.4	$45.8
Bankruptcy Analyst	$93	4	$371.5	$241.9
Paralegal	$60.3	3	$181	$144.1
Total Personnel		8	$614.9	$431.8

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2012 Request ($000)	FY 2013Net Annualization (Change from 2012) ($000)
FY 2012 Debtor Audit Contracts	Random Audits @ $650 per audit	5,982	$3,888.3	$3,996.0
	Exception Audits @ $1,313 per audit	1,000	$1,313.0	$1,350.0

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel ($000)	Non-Personnel ($000)	Total ($000)
Current Services	0	0	0	0	0	0
Increases	8	0	4	$614.9	$5,201.3	$5,816.2
Grand Total	8	0	4	$614.9	$5,201.3	$5,816.2

The Program is playing an active part in the Administration's efforts to identify sustainable operational efficiencies and to incorporate processes that utilize best practices as they relate to day-to-day operations in general and to debtor audit functions in particular. The Program is reviewing alternatives to reduce the cost of debtor audits without measurably impacting their effectiveness. The alternatives focus on developing a sampling strategy that reduces the number of audits while ensuring the validity and reliability of annual public reporting. The proposal, which is currently under review, could reduce audit contract requirements to approximately $1.5 million and eliminate the need for additional staffing.

VI. Program Offsets

Item Name: Administrative Efficiencies

Budget Decision Unit: Administration of Cases
Strategic Goal & Objective: 2.8 Protect the integrity and ensure the effective operation of the Nation's bankruptcy system

Component Ranking of Item: 1 of 3

Program Offset: $216,000

Description of Item

The Program will effect administrative efficiencies to reduce requirements for travel, printing and reproduction, supplies and materials, and publications.

Non-Personnel Reduction Cost Summary

	Pos	Agent/Atty	FTE	Personnel ($000)	Non-Personnel ($000)	Total ($000)
Current Services					4,866	4,866
Decreases					(216)	(216)
Grand Total					4,650	4,650

Item Name: Technology Refresh

Budget Decision Unit: Administration of Cases
Strategic Goal & Objective: 2.8 Protect the integrity and ensure the effective operation of the Nation's bankruptcy system

Component Ranking of Item: 2 of 3

Program Offset: $82,000

Description of Item

The Program will extend by one year, the replacement rate of its desktop and laptop computers.

Non-Personnel Reduction Cost Summary

	Pos	Agent/Atty	FTE	Personnel ($000)	Non-Personnel ($000)	Total ($000)
Current Services					410	410
Decreases					(82)	(82)
Grand Total					328	328

Item Name: Reduce Physical Footprint

Budget Decision Unit: Administration of Cases
Strategic Goal & Objective: 2.8 Protect the integrity and ensure the effective operation of the Nation's bankruptcy system

Component Ranking of Item: 3 of 3

Program Offset: $181,000

Description of Item

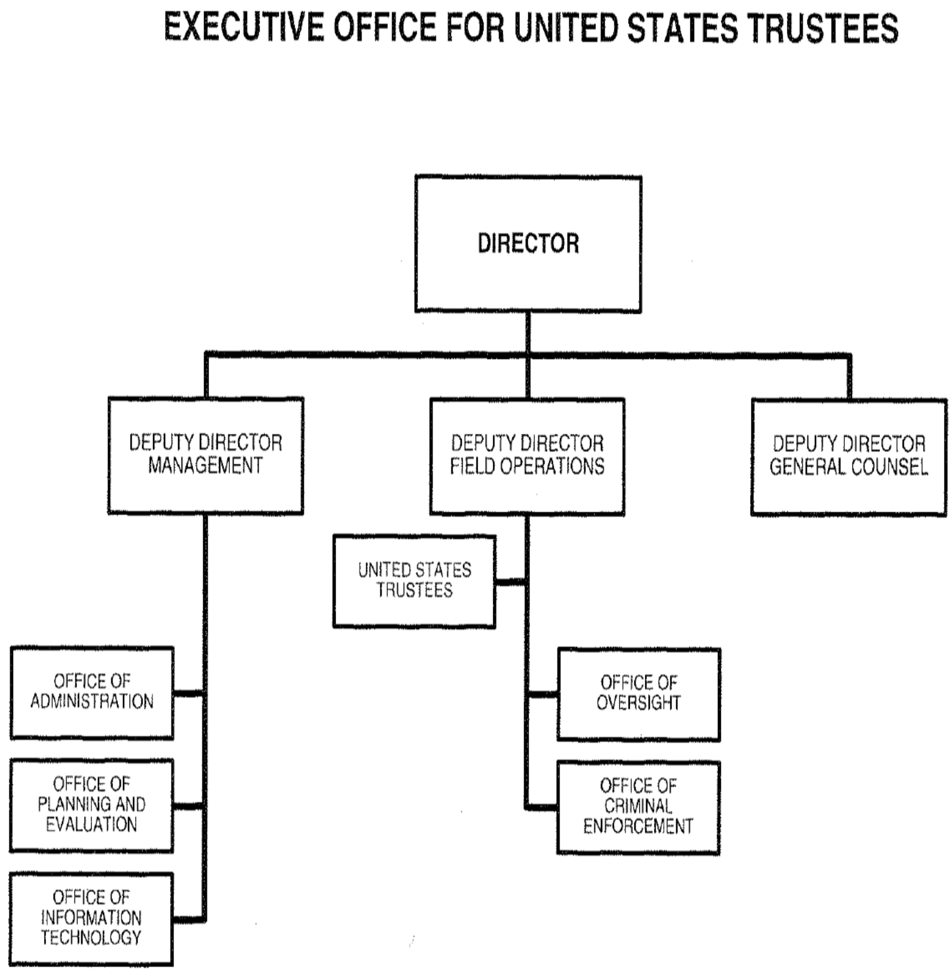
The Program will achieve savings by reducing the physical footprint in four district offices.

Non-Personnel Reduction Cost Summary

	Pos	Agent/Atty	FTE	Personnel ($000)	Non-Personnel ($000)	Total ($000)
Current Services					1,325	1,325
Decreases					(181)	(181)
Grand Total					1,144	1,144

Exhibits

A: Organizational Chart



Approved by: ______________________ Date: April 5, 2010

ERIC H. HOLDER, JR.
Attorney General