



**United States Department of Justice
Executive Office for United States Trustees**

Public Report:

**Debtor Audits by the
United States Trustee Program
Fiscal Year 2007**

*(As required by Section 603(a)(2)(D) of the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8)*

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EXECUTIVE SUMMARY

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005) (BAPCPA), the United States Trustee Program (USTP) is authorized to audit individual chapter 7 and chapter 13 bankruptcy cases. Section 603(a)(2)(D) of the BAPCPA states that the Attorney General must:

(D) Establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

In Fiscal Year 2007, the USTP designated 4,095 cases for audit. Of the cases designated for audit, 146 were either still in process as of January 2, 2008, or were dismissed before the case was assigned to an audit firm. Of the remaining 3,949 cases, 3,016 were random audits (audit of at least 1 out of every 250 consumer cases per federal judicial district) and 933 were exception audits (audits of cases with income or expenditures above a statistical norm). Reports of Audit were filed in 3,582 of the completed cases, and at least one material misstatement was reported in 30 percent (1,061) of these cases. There were also 367 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.

INTRODUCTION

The United States Trustee Program is the component of the Department of Justice whose mission it is to promote the integrity and efficiency of the bankruptcy system by enforcing bankruptcy laws, providing oversight of private trustees, and maintaining operational excellence. The Program consists of 21 regions with 95 field offices nationwide and an Executive Office in Washington, DC. Each field office is responsible for carrying out numerous administrative,

regulatory, and litigation responsibilities under title 11 (the Bankruptcy Code) and title 28 of the United States Code.^{1/}

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the USTP is authorized to contract with independent firms to perform audits of individual chapter 7 and chapter 13 cases designated by the USTP. The purpose of the audit is to determine the accuracy, veracity, and completeness of petitions, schedules, and other information required to be provided by the debtor under sections 521 and 1322 of title 11. To perform the audits, the USTP selected, through a competitive procurement process, independent audit firms that employ certified public accountants or independent licensed public accountants.^{2/} The debtor audits are conducted in accordance with audit standards promulgated by the USTP and published in the *Federal Register*.^{3/} The designation of cases for audit began on October 20, 2006.

The BAPCPA authorized the USTP to randomly designate for audit at least 1 out of every 250 consumer bankruptcy cases per federal judicial district and also to designate cases for audit in which the income or expenditures of the debtor deviate from a statistical norm of the district in which the case was filed. Annually, the Attorney General is required to publicly report the results of the audits, including material misstatements of income or expenditures by judicial district.

I. CASE DESIGNATION PROCESS AND TERMINOLOGY

Random audits are selected at a rate of at least 1 out of every 250 consumer bankruptcy cases per federal judicial district from all cases as specified under uncodified section 603(a)(2)(B) of the BAPCPA. In contrast, cases designated for an exception audit must meet

^{1/} The USTP has jurisdiction in all federal judicial districts except those in Alabama and North Carolina.

^{2/} BAPCPA Section 603(a)(2).

^{3/} BAPCPA Section 603(a)(1); *Federal Register*, Vol. 71, No. 190 (October 2, 2006).

specific criteria established by the USTP. These criteria are based on income or expenditures greater than a statistical norm for the district where the case was filed, as specified under uncodified section 603(a)(2)(C) of the BAPCPA.

An audit consists of a comparison between selected items on a debtor's originally filed bankruptcy papers and documents produced by the debtor at the request of the audit firm. Audit firms also conduct at least two searches using commercially and publicly available database services to look for unreported assets and to verify the market value of assets.

After an audit has been completed, a Report of Audit is filed with the court by the audit firm and a copy is transmitted to the United States Trustee. The Report of Audit identifies any material misstatement being reported by the audit firm. Prior to filing a Report of Audit with the court, the audit firm contacts the debtor, through counsel if represented, to provide the debtor an opportunity to offer an explanation or supply additional information which may negate the finding. A material misstatement indicates the audit produced information that challenged the accuracy, veracity, and completeness of a debtor's petition, schedules, or other filed bankruptcy documentation. Inaccurate or incomplete information deprives the court, the United States Trustee, the private trustee, and creditors of adequate information to decide whether to conduct further investigation, recover assets, or seek or impose relief against the debtor.

The specific criteria for reporting a material misstatement are not released to the public to preserve the integrity of the audit process. If a material misstatement is identified in a Report of Audit, the bankruptcy court gives notice to all creditors in the case. In addition, the United States Trustee determines what action is appropriate based on the material misstatement(s) and may pursue a variety of actions depending on the circumstances in the case, including denial of discharge, revocation of discharge, or reporting the material misstatement to the U.S. Attorney.^{4/} In many instances, the United States Trustee may take no action on a Report of Audit based on a number of factors, including whether the debtor corrected the error (e.g., filed amended schedules) or whether the material misstatement was intentional.

^{4/} See 11 U.S.C. §§ 707; 727(a); 727(d)(4)(A).

If the audit firm cannot complete the audit because the debtor did not produce documents requested in connection with the audit or because the case was dismissed while the audit was in process, a Report of No Audit is filed with the court by the audit firm and a copy is transmitted to the United States Trustee. When a Report of No Audit is filed, the United States Trustee may take appropriate enforcement action, including seeking revocation of discharge, if the debtor fails to satisfactorily explain the failure to make available the documentation requested for the audit.^{5/}

II. OUTCOMES

Outcomes are presented in this report both in the aggregate for all judicial districts within the jurisdiction of the USTP and also separately by judicial district.

Aggregate Audit Outcomes

Table 1 which follows shows the total number of cases designated for audit, broken down between cases with no report (i.e., cases that were still in process as of January 2, 2008, or were dismissed prior to assignment to an audit firm) and cases where either a Report of No Audit or a Report of Audit was filed with the court. For Reports of Audit filed with the court, the table also identifies the number of cases with no material misstatements and the number of cases with at least one material misstatement. Further, for all cases designated for audit, the table shows the distribution between random audits and exception audits.

In Fiscal Year 2007, the USTP designated 4,095 cases for audit. Of the cases designated for audit, 146 were either still in process as of January 2, 2008, or were dismissed by the debtor before the case was assigned to an audit firm (cases with no report). Of the remaining 3,949 cases, 3,016 were random audits and 933 were exception audits. Reports of Audit were filed in 3,582 of the completed cases, and at least one material misstatement was reported in 30 percent

^{5/} See 11 U.S.C. § 727(d)(4)(B).

(1,061) of these cases. Thirty-eight percent of exception audits identified at least one material misstatement as compared to 27 percent of random audits.

Table 1: USTP Debtor Audits for Fiscal Year 2007 (Nationwide Aggregate)

	Total	Random	Exception	% of Cases Designated*
Cases Designated for Audit	4,095	3,161	934	
Cases with No Report (As of 1/2/08)	146	145	1	4
Cases with Report	3,949	3,016	933	96
Report of No Audit Filed	367	287	80	9
Report of Audit Filed	3,582	2,729	853	87
No Material Misstatements	2,521	1,989	532	
% of Reports of Audit	70	73	62	
At Least One Material Misstatement	1,061	740	321	
% of Reports of Audit	30	27	38	

Outcomes by Judicial District

Table 2 which follows shows the distribution of cases by judicial district in which either a Report of No Audit or a Report of Audit was filed. For cases with a Report of Audit, a breakdown of the number and percentage of cases with at least one material misstatement is provided. This table combines information from both random and exception audits. Due to differences in the number of case filings per judicial district, there is wide variation among districts in the number of reports of audit (districts with fewer filings will have fewer reports). For districts with ten or more audits, the percent of audits with material misstatements ranged from 9 percent to 55 percent.

Table 2: Outcomes by Judicial District for Fiscal Year 2007

District	Reports of No Audit	Reports of Audit	At Least One Material Misstatement	
			# of Cases	% of Reports of Audit
Alaska	0	3	0	0
Arizona	8	47	19	40
Arkansas Eastern	5	38	12	32
Arkansas Western	2	19	6	32
California Central	15	116	34	29
California Eastern	8	69	24	35
California Northern	6	55	22	40
California Southern	5	32	5	16
Colorado	0	76	29	38
Connecticut	1	31	9	29
DC	3	2	1	50
Delaware	0	10	3	30
Florida Middle	12	101	35	35
Florida Northern	0	12	3	25
Florida Southern	3	48	17	35
Georgia Middle	5	47	11	23
Georgia Northern	15	128	53	41
Georgia Southern	4	38	13	34
Guam	0	2	0	0
Hawaii	0	9	0	0
Idaho	0	21	7	33
Illinois Central	1	42	5	12
Illinois Northern	14	99	33	33
Illinois Southern	4	27	9	33
Indiana Northern	11	52	11	21
Indiana Southern	9	83	24	29
Iowa Northern	1	13	3	23
Iowa Southern	0	23	6	26
Kansas	3	40	10	25
Kentucky Eastern	0	39	13	33

District	Reports of No Audit	Reports of Audit	At Least One Material Misstatement	
			# of Cases	% of Reports of Audit
Kentucky Western	1	46	11	24
Louisiana Eastern	0	12	3	25
Louisiana Middle	0	12	6	50
Louisiana Western	7	40	18	45
Maine	0	13	3	23
Maryland	15	45	17	38
Massachusetts	11	53	14	26
Michigan Eastern	15	152	62	41
Michigan Western	5	51	16	31
Minnesota	3	60	16	27
Mississippi Northern	1	22	8	36
Mississippi Southern	2	33	8	24
Missouri Eastern	5	50	19	38
Missouri Western	6	45	7	16
Montana	0	10	3	30
Nebraska	2	26	9	35
Nevada	5	41	16	39
New Hampshire	0	18	5	28
New Jersey	11	76	27	36
New Mexico	1	17	3	18
New York Eastern	8	55	12	22
New York Northern	2	81	25	31
New York Southern	5	31	8	26
New York Western	1	43	6	14
North Dakota	0	7	2	29
Northern Mariana Islands	0	0	0	0
Ohio Northern	6	127	33	26
Ohio Southern	2	98	25	26
Oklahoma Eastern	0	11	6	55
Oklahoma Northern	0	16	5	31

District	Reports of No Audit	Reports of Audit	At Least One Material Misstatement	
			# of Cases	% of Reports of Audit
Oklahoma Western	1	23	5	22
Oregon	7	42	11	26
Pennsylvania Eastern	8	43	10	23
Pennsylvania Middle	2	35	7	20
Pennsylvania Western	5	56	14	25
Puerto Rico	7	35	6	17
Rhode Island	3	13	3	23
South Carolina	2	34	3	9
South Dakota	0	9	4	44
Tennessee Eastern	4	57	19	33
Tennessee Middle	7	44	11	25
Tennessee Western	26	61	25	41
Texas Eastern	1	31	8	26
Texas Northern	15	63	21	33
Texas Southern	6	61	19	31
Texas Western	3	48	9	19
Utah	2	27	8	30
Vermont	0	8	3	38
Virgin Islands	0	1	0	0
Virginia Eastern	5	60	16	27
Virginia Western	0	30	4	13
Washington Eastern	1	23	5	22
Washington Western	4	51	16	31
West Virginia Northern	0	13	2	15
West Virginia Southern	1	15	2	13
Wisconsin Eastern	6	51	12	24
Wisconsin Western	2	27	8	30
Wyoming	0	8	0	0
Total	367	3,582	1,061	30

CONCLUSION

The United States Trustee Program successfully developed and implemented an effective system of debtor audits in a short period of time. Since inception on October 20, 2006, debtor audits have helped identify cases of fraud, abuse, and error. Moreover, the audits provide benefits as a deterrent to fraud and abuse. As with all civil enforcement activities of the USTP, discretion is exercised to ensure that an enforcement action is taken only when appropriate. Debtor audits, with prudent oversight by United States Trustees, have proven to be a useful tool in protecting the integrity of the bankruptcy system.