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## VOLUME 1

### OVERVIEW OF THE UNITED STATES TRUSTEE PROGRAM POLICY AND PRACTICES MANUAL

#### CHAPTER 1-1: INTRODUCTION

The United States Trustee Program Policy and Practices Manual (Manual) is designed to assist United States Trustee Program (Program) personnel in performing their duties as Program employees. In particular, this Manual provides advice on fulfilling the responsibilities mandated by section 586 of title 28, United States Code. It is intended to be a repository of materials relating to the general policies and procedures of the Program and its relationships with other components of the Department of Justice (Department) and other government agencies. The Manual is intended to be comprehensive and supersedes any other earlier document, directive, or policy statement. When the materials in this Manual conflict with earlier Program statements, with the exception of Attorney General pronouncements, the Manual will control.

This Manual provides internal Department guidance only. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any entity in any matter. See *Lojeski v. Boandi*, 788 F.2d 196 (3d Cir. 1986) (procedures provided in IRS manual only established internal operating procedures - not a constitutional due process standard). Instead, it is intended to help ensure consistency and efficiency in the operation of the Program.

The Manual is not an original source of material for legal research. It should serve as a desk book to which a Program employee may turn for initial guidance on a subject of interest.

The Manual is designed to accommodate changes that may occur over time in the laws relating to bankruptcy or in policy and should be kept current. Comments on the Manual are solicited and may be forwarded to the Director of the Executive Office for U.S. Trustees (EOUST).

#### 1-1.1 Organization Of The Manual

The Manual is divided into several volumes, which are identified by both number and title and include a table of contents. Pursuant to the Freedom of Information Act's (FOIA) proactive disclosure requirements enunciated in [5 U.S.C. § 552\(a\)\(2\)\(C\)](#), Volumes 1-9 are posted on the EOUST's public website. Where disclosure would significantly impede detection or prosecution of law violators; however, certain volumes have not been provided to the public. In addition, certain volumes that address only internal issues and do not affect the public have not been made publicly available.

Volume 1:	Overview of the United States Trustee Program
Volume 2:	Chapter 7 Case Administration
Volume 3:	Chapter 11 Case Administration
Volume 4:	Chapters 12 and 13 Case Administration

Volume 5:	Chapter 9 Case Administration
Volume 6:	Chapter 15 Case Administration
Volume 7:	Banking and Bonding
Volume 8:	Ethics
Volume 9:	Credit Counseling and Debtor Education

### **1-1.2 Paragraph Numbering And Cross Referencing Topics**

The Manual employs a paragraph numbering system to facilitate the citation, retrieval, and revision of its contents. When appropriate, paragraph numbering will be used to reference similar subject matter located in other parts of the Manual.

### **1-1.3 Distribution And Disclosure**

The Manual is United States Government property. The EOUST may periodically issue supporting reference material that will be posted only on the Program's Intranet site where access is limited to Program staff. Such Limited Official Use (LOU) material cannot be disseminated outside the Program without written permission from the EOUST. Any electronic or paper copies of the Manual and supporting reference material must be returned to the region's Administrative Officer prior to leaving the Department's employ.

### **1-1.4 Manual Updates**

#### **1-1.4.1 Revision of Manual**

Revisions to the Manual may be proposed by anyone in the Program. Suggestions may be sent to the Deputy Director for Management for review and approval.

#### **1-1.4.2 Policy Changes**

All new policy changes will be issued by the EOUST and inserted into the appropriate section of the Manual. Program staff will be notified via e-mail as soon as a policy change has been posted.

#### **1-1.4.3 Staff Responsibility**

Each holder of an electronic or paper copy of the Manual or any volume thereof is responsible for updating and proper storage of the materials.

## **CHAPTER 1-2: THE DEPARTMENT OF JUSTICE**

### **1-2.1 The Attorney General**

The Attorney General is the head of the Department. [28 U.S.C. § 503](#). The Attorney General supervises the administration of all law enforcement operations of the Department; represents the United States in legal matters as its chief attorney; furnishes legal advice and opinions to the President, the Cabinet, and the heads of executive departments and agencies; and represents the

United States before the Supreme Court, or any other court when appropriate. As a member of the Cabinet, the Attorney General assists in the formulation and implementation of national policy.

### **1-2.2 The Deputy Attorney General**

The Deputy Attorney General is authorized to exercise all the powers and the authority of the Attorney General except when those powers and authority are required by law to be exercised by the Attorney General personally or have been specifically and exclusively delegated to another Department official. The Deputy Attorney General assists in the overall supervision and management of the Department and in the formulation and implementation of major Departmental policies and programs. 28 C.F.R. § 0.15.

### **1-2.3 The Associate Attorney General**

The Associate Attorney General advises and assists the Attorney General and the Deputy Attorney General in formulating and implementing policies and programs of the Department relating to a broad range of civil justice matters. The Director of the EOUST (Director) reports to the Deputy Attorney General and the Attorney General through the Associate Attorney General. 28 C.F.R. § 0.19.

### **1-2.4 The Solicitor General**

The primary function of the Solicitor General is to supervise and conduct government litigation before the United States Supreme Court. Except for a few situations in which administrative agencies have statutory authority to pursue litigation of their own cases in the Supreme Court, neither the United States nor its agencies may file a petition for certiorari or take a direct appeal to the Supreme Court unless the Solicitor General authorizes it. 28 C.F.R. § 0.20. The Solicitor General determines whether and to what extent appeals will be taken by the government to all appellate courts (including petitions for rehearing *en banc* and petitions to such courts for the issuance of extraordinary writs). 28 C.F.R. § 0.20(b). In addition, the Solicitor General may authorize intervention by the government in cases involving the constitutionality of acts of Congress. 28 C.F.R. § 0.21.

The Solicitor General also assists the Attorney General, the Deputy Attorney General, and the Associate Attorney General in developing broad Departmental policy.

### **1-2.5 Office Of The Inspector General**

The Inspector General is responsible for conducting investigations and audits relating to the economy and efficiency of the Department's programs and operations, and for detecting and preventing fraud and abuse in programs and operations administered or financed by the Department. The Inspector General can access all Department records and documents, request information or assistance from any governmental agency or unit (federal or state), administer oaths and take affidavits, and subpoena records from outside sources necessary to the performance of the functions of the office. 28 C.F.R. §§ 0.29 - 0.29j.

### **1-2.6 Office Of Professional Responsibility**

The Office of Professional Responsibility (OPR) reports directly to the Attorney General and is responsible for overseeing investigations of allegations of criminal and ethical misconduct by the Department's attorneys, criminal investigators, or other law enforcement personnel. OPR ensures that Department employees perform their duties in accordance with the high professional standards expected of the nation's principal law enforcement agency. 28 C.F.R. §§ 0.39 - 0.39c.

### **1-2.7 Office Of Legal Counsel**

The Office of Legal Counsel is responsible for preparing the formal opinions of the Attorney General; preparing or revising orders, proclamations, regulations, and similar matters that require the approval of the President or the Attorney General and advising the President and the Attorney General with respect to the document's form and legality; sending informal opinions and legal advice to the Attorney General, to the heads of the various organizational units of the Department, and to the various governmental agencies; resolving legal disputes between departments in the Executive Branch; and performing special assignments from the Attorney General, Deputy Attorney General, and Associate Attorney General. 28 C.F.R. § 0.25.

### **1-2.8 Office Of Information Policy**

The Office of Information Policy manages the Department's responsibilities relating to the FOIA. These responsibilities include coordinating the development and government-wide compliance with the FOIA and adjudicating administrative appeals from denials of access to records made by Department components under the FOIA or the Privacy Act. 28 C.F.R. § 0.24.

### **1-2.9 Office Of Privacy And Civil Liberties**

The Office of Privacy and Civil Liberties provides guidance to the Department's components regarding the protection of citizens' privacy and civil liberties, which includes advice on compliance with the Privacy Act of 1974, and the privacy provisions of the E-Government Act of 2002 and the Federal Information Security Management Act.

### **1-2.10 Office Of Public Affairs**

The Office of Public Affairs is the principal point of contact for the Department with the public and the press. It disseminates information about the Department through the news media and by personal contact with the public. It serves reporters by responding to queries, issuing press releases and statements, arranging interviews, and conducting press conferences and mailings. 28 C.F.R. § 0.28.

### **1-2.11 Office Of Legislative Affairs**

The Office of Legislative Affairs (OLA) is the coordinating center for all Department activity relating to legislation and communications with the Congress and other agencies. It coordinates

the appearances of Department witnesses before congressional committees. OLA also coordinates all correspondence between the Department and members of Congress.

### **1-2.12 Justice Management Division**

The Justice Management Division (JMD) is the principal unit responsible for management and administrative support in the Department. Under the direction of the Assistant Attorney General for Administration, JMD serves as the Attorney General's principal management and administrative resource and establishes Department-wide administrative policies, programs, and procedures on a variety of management, administration, and organizational matters. JMD also provides for the review of Department activities to ensure compliance with federal laws and regulations and Department directives and policies. Additionally, JMD provides management, financial, and administrative assistance, including the operation of central administrative facilities and services, to the Department's offices, boards, and divisions. 28 C.F.R. §§ 0.75 - 0.79.

### **1-2.13 United States Attorneys**

The Offices of the United States Attorney were created by the Judiciary Act of 1789, which provided for the appointment "in each district of a meet person learned in the law to act as attorney for the United States . . . whose duty it shall be to prosecute in each district all delinquents for crimes and offenses, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned . . ." 1 Stat. 92. Today, as in 1789, the United States Attorney retains, among other responsibilities, the duty to "prosecute for all offenses against the United States." [28 U.S.C. § 547\(1\)](#). This duty is to be discharged under the supervision of the Attorney General. [28 U.S.C. § 519](#).

By virtue of this grant of statutory authority and the practical realities of representing the United States throughout the country, United States Attorneys conduct most of the trial work in which the United States is a party. They are the principal federal law enforcement officers in their judicial districts. 28 C.F.R. § 0.22.

### **1-2.14 Civil Division**

The Assistant Attorney General of the Civil Division is assigned the following matters pursuant to 28 C.F.R. § 0.45: all litigation involving admiralty and shipping, alien property, and related matters; the defense of all suits against the United States in the Claims Court and the Court of Appeals for the Federal Circuit (except cases assigned to the Environment and Natural Resources Division by 28 C.F.R. § 0.65 or the Tax Division by 28 C.F.R. § 0.70); all civil and criminal litigation and grand jury proceedings arising under federal consumer protection legislation; litigation involving customs; litigation before foreign tribunals and related matters; prosecution of civil claims arising from fraud on the government (other than antitrust, land, and tax frauds); pursuit of all claims and suits for money on behalf of the government not otherwise specially assigned within the Department; and all litigation, not otherwise assigned, by or against the United States, its agencies, and officers in all courts.

Of particular interest among these, the Civil Division represents the government in asserting its claims in bankruptcy cases. It also provides representation to Department employees who are sued in their individual capacity for acts performed within the scope of their employment. The Civil Division also represents the United States and its officers and agencies in a wide variety of suits challenging the constitutionality or legality of governmental policies, procedures, or actions, including review of agency actions under the Administrative Procedure Act.

### **1-2.15 Civil Rights Division**

The Civil Rights Division enforces the Civil Rights Acts of 1957, 1960, 1964, and 1968; the Voting Rights Act of 1965, as amended in 1970, 1975, and 1982; the Equal Credit Opportunity Act; the Americans with Disabilities Act of 1990; and civil rights provisions in numerous other statutes. These laws prohibit discrimination in education, employment, credit, housing, public accommodations and facilities, voting, and certain federally funded and conducted programs.

In addition, the Division prosecutes actions under several criminal civil rights statutes; coordinates civil rights enforcement efforts of the federal agencies whose programs are covered by Title VI of the 1964 Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and various program-specific civil rights statutes; and assists federal agencies in identifying and eliminating sexually discriminatory provisions in their policies and programs.

### **1-2.16 Criminal Division**

The Criminal Division develops, enforces, and supervises the application of all federal criminal laws except those specifically assigned to other divisions. In addition to its direct litigation responsibilities, the division formulates and implements criminal enforcement policy and provides advice and assistance. For example, the division advises the Attorney General, Congress, the Office of Management and Budget, and the White House on matters of criminal law; provides legal advice and assistance to federal prosecutors and investigative agencies; and provides leadership for coordinating international, as well as federal, state, and local law enforcement matters. 28 C.F.R. §§ 0.55 - 0.64-5.

### **1-2.17 Federal Bureau Of Investigation**

The Federal Bureau of Investigation (FBI) is one of the principal investigating arms of the Department and is charged with investigating violations of the laws of the United States and with collecting evidence in cases in which the United States is or may be a party in interest, except in cases where responsibility is by statute or otherwise specifically assigned to another investigative agency. Thus, the FBI does not initiate, although it may participate in, the investigation of internal revenue matters, counterfeiting and forgery of government obligations, alcohol tax or other revenue violations, immigration and naturalization matters, or other matters not within the jurisdiction of the Department. 28 C.F.R. §§ 0.85 - 0.89a.

## **1-2.18 United States Marshals Service**

The Director of the United States Marshals Service directs and supervises all activities of the Marshals Service. These include the execution of federal arrest, parole violation, custodial, and extradition warrants as directed; investigative responsibility for all federal escapees; investigative responsibility for certain federal bond default statutes; the service of all civil and criminal process; the protection of federal jurists, court officers, government witnesses, and other threatened persons; and the transportation of prisoners held in the custody of a marshal or transported by the Marshals Service under cooperative or intergovernmental agreements. 28 C.F.R. §§ 0.111 - 0.114.

## **1-2.19 Other Offices**

Title 28 of the Code of Federal Regulations should be consulted for further information regarding the organization of the Department, and for information on the other offices of the Department.

## **CHAPTER 1-3: UNITED STATES TRUSTEE PROGRAM**

The Program is the component of the Department whose mission it is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public. The Program monitors the conduct of bankruptcy parties and private estate trustees, oversees related administrative functions, and acts to ensure compliance with applicable laws and procedures. It also identifies and helps investigate bankruptcy fraud and abuse in coordination with United States Attorneys, the FBI, and other law enforcement agencies.

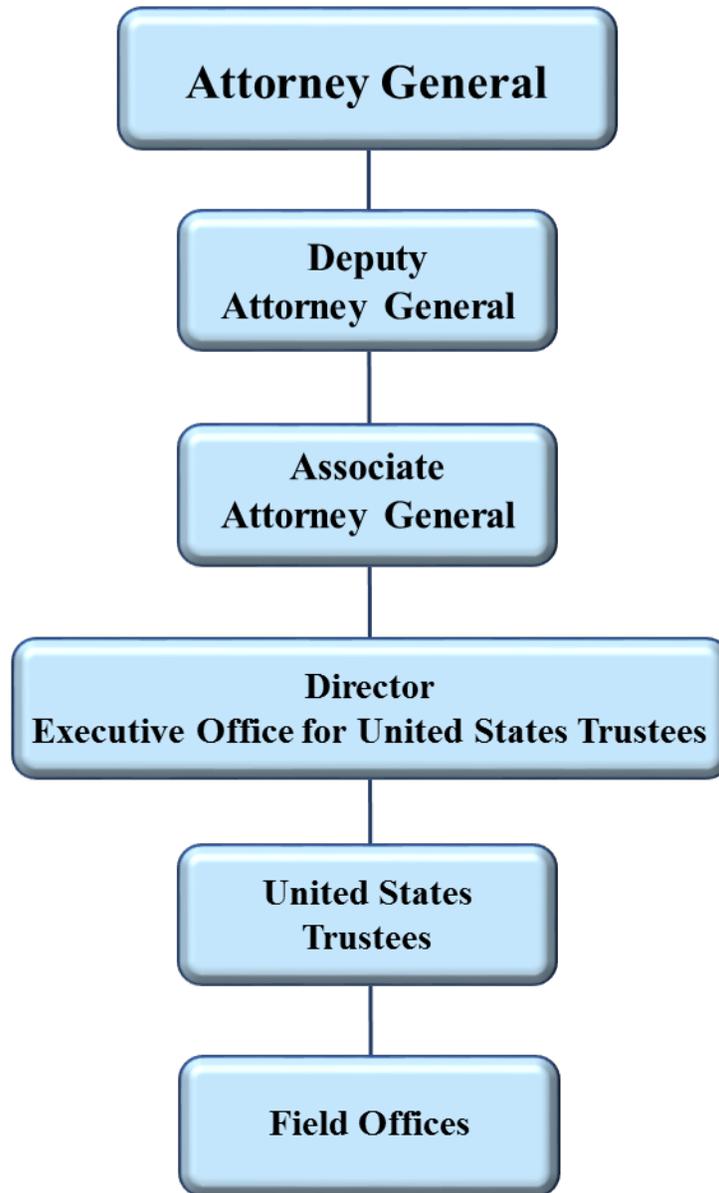
The Program is managed by the EOUST in Washington, D.C., which is led by the Director. Twenty-one regions are managed by United States Trustees and 93 field office locations are supervised by Assistant U.S. Trustees. The geographic jurisdiction of each region is determined by statute. More than 90 percent of the Program's employees are located in the field offices.

The Program has jurisdiction in all federal judicial districts except those in Alabama and North Carolina.

### **1-3.1 Executive Office For United States Trustees**

The Attorney General created the EOUST to provide legal, administrative, and management support to the Attorney General, Deputy Attorney General, and Program staff. The EOUST also implements the Program's policies and programs that are established by guidelines issued by the Attorney General, and supervises the Program's field offices. 28 C.F.R. §§ 0.37 - 0.38.

The following chart illustrates the organizational relationship between the Department and the Program:

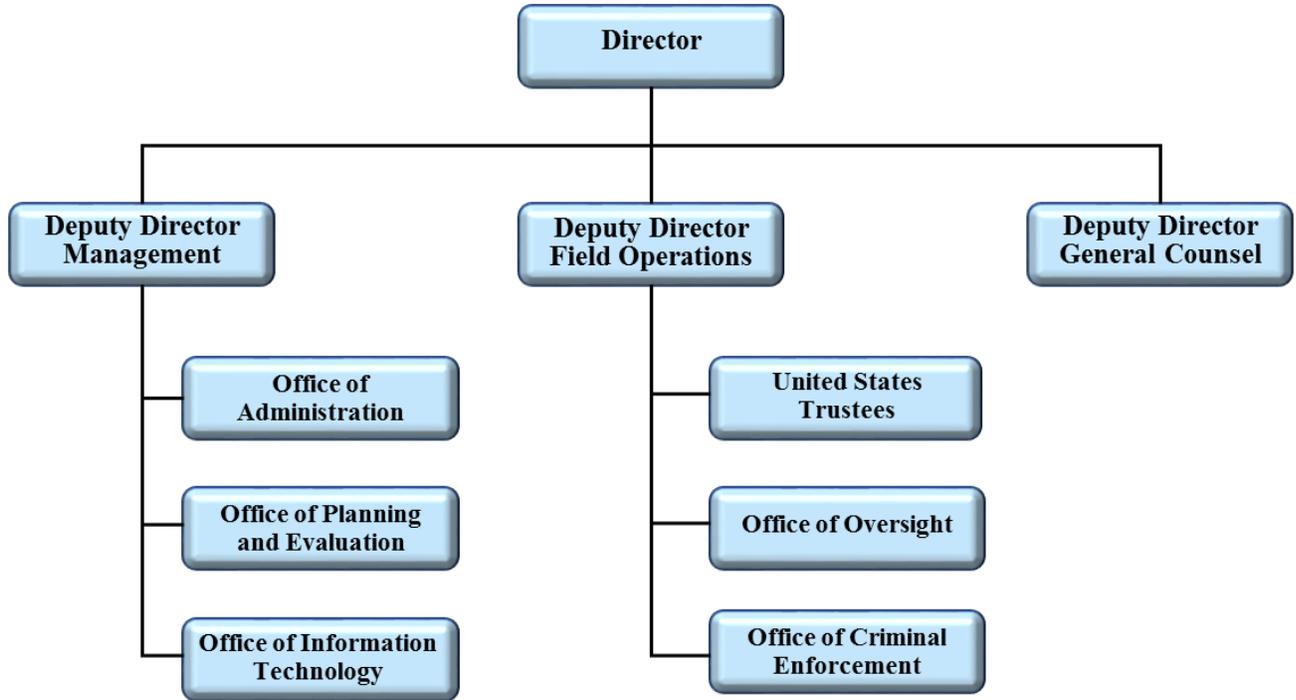


See the [Department of Justice Organizational Chart](#) which illustrates the placement of the Program within the Department more fully.

**1-3.2**

**Organizational Chart Of The Program**

**EXECUTIVE OFFICE FOR UNITED STATES TRUSTEES**



**1-3.3 Executive Office Operations**

The responsibilities of the various offices within the EOUST are as follows:

**1-3.3.1 The Director**

The Director approves Program policy and coordinates interaction with other Executive Branch agencies, Congress, and the Judiciary.

**1-3.3.2 Deputy Director/General Counsel**

The Deputy Director/General Counsel oversees the Office of the General Counsel (OGC) and provides legal guidance and opinions to the Director and Program staff to ensure compliance with Departmental guidelines, regulations, and statutory requirements.

### **1-3.3.3 Office of the General Counsel**

The primary responsibilities of OGC are to provide legal counsel to the Director and to the United States Trustees, to coordinate and assist the Program's litigation activities, and to provide legal guidance and opinions to ensure compliance with Departmental guidelines, regulations, and statutory requirements.

In carrying out these goals, the OGC supervises or handles all appeals in which the Program is a party, assists in bankruptcy court litigation when issues of Program-wide significance are raised, and participates in the development of Program policies. As the legal advisor for the Program, the OGC provides legal assistance and litigation support to the field offices; drafts and comments on proposed bankruptcy legislation; drafts, reviews, and comments on regulatory proposals; maintains liaison and guidance in intergovernmental legal affairs; and responds to inquiries from members of Congress and private citizens.

The OGC also furnishes legal assistance on administrative matters and litigation involving employee rights, equal employment opportunity, and adverse actions. When employees are sued for actions taken in the performance of official duties and Departmental representation is requested, the OGC reviews and recommends whether representation should be afforded and otherwise works to ensure that the institutional interests of the Program and its employees are properly asserted and defended. The OGC also processes all requests for information under the FOIA and the Privacy Act and provides ethics guidance, training, and opinions on a wide range of ethics matters and conflicts of interest questions.

### **1-3.3.4 Deputy Director for Field Operations**

The Deputy Director for Field Operations oversees the United States Trustees and field operations, the Office of Oversight, and the Office of Criminal Enforcement.

### **1-3.3.5 Office of Oversight**

The Office of Oversight is responsible for developing and supervising the Program's audit policies and private trustee reporting requirements, conducting inquiries resulting from the misappropriation of funds by private trustees, coordinating audits and supervising the resolution of the audits, and reconstructing trustee financial records. In addition, the Office of Oversight provides training to field staff involved in trustee supervision, analyzes trustee security forms and background checks, and assesses the quality of written evaluations of trustee performance.

The Office of Oversight also is responsible for the Credit Counseling and Debtor Education Unit (CCDE). CCDE oversees the approval and renewal of credit counseling agencies and debtor education providers.

### **1-3.3.6 Office of Criminal Enforcement**

The Office of Criminal Enforcement (OCE) is responsible for coordinating the Program's criminal enforcement activities and providing training to Program staff, private trustees, and federal law enforcement personnel. OCE monitors all criminal enforcement activities to

include specialized task forces, bankruptcy fraud working groups, and Special Assistant United States Attorney case assignments.

### **1-3.3.7 Deputy Director for Management**

The Deputy Director for Management oversees the Office of Administration, the Office of Planning and Evaluation, and the Office of Information Technology.

### **1-3.3.8 Office of Administration**

The Office of Administration provides administrative services such as personnel, procurement and contracts, automation, budget and finance, training, and facilities management, and ensures the security of the Program's personnel, offices, and meeting rooms. The Office of Administration develops written policy and procedures and is responsible for budget formulation and execution, and the coordination of routine and special audits of administrative functions.

The Office of Administration is also responsible for all oversight, communication, and training of field Administrative Officers.

### **1-3.3.9 Office of Planning and Evaluation**

The Office of Planning and Evaluation (OPE) is responsible for strategic planning, evaluation, research, training, and communications. Strategic planning provides a foundation for Program goals. Evaluation and research efforts focus on improving Program performance, ensuring accountability, and increasing knowledge about the bankruptcy system.

OPE also manages the National Bankruptcy Training Institute (NBTI), the Peer Evaluation Program, the Debtor Audit Program, and the Executive Secretariat, and oversees communications with the press and the public.

### **1-3.3.10 Office Of Information Technology**

The Office of Information Technology (IT) provides technical direction and management for all Program computer systems. These responsibilities include information systems planning, development, acquisition, maintenance, training, technical support, and evaluation, and centralized management and administration of the Program-wide Justice Consolidated Office Network (JCON).

In addition, IT develops policies and procedures to ensure the consistent application of computer system and network support nationwide.

## **1-3.4 Field Operations**

### **1-3.4.1 Location of Field Offices**

The Program consists of 21 regions with 93 field office locations. The regional office serves as headquarters for the United States Trustee. Field offices are located at different points

throughout the region and are headed by an Assistant U.S. Trustee. The organization and staffing of offices vary from region to region.

See the [Geographical Map](#) of the United States Trustee Program.

### **1-3.4.2 Positions and Responsibilities**

***United States Trustee:*** In accordance with [28 U.S.C. § 581](#), a United States Trustee is appointed by the Attorney General to a five-year term to head each region and serves as the chief executive officer of the region. In addition to supervising all Program employees in the region, the United States Trustee is responsible for appointing trustees and for supervising all bankruptcy cases and trustees in the region. [28 U.S.C. § 586](#). The United States Trustee is the regional liaison with the legal community, the public, the EOUST, the Department, and other federal agencies.

***Assistant United States Trustee:*** In accordance with [28 U.S.C. § 582](#), the Attorney General may appoint one or more Assistant United States Trustees in any region when the public interest so requires. The Assistant U.S. Trustee assists the United States Trustee in supervising the administration of bankruptcy cases and trustees, and in acting as a liaison with the bankruptcy community in his or her area. The Assistant U.S. Trustee serves as a senior advisor to the United States Trustee on policy issues and unique or unusual cases. The Assistant United States Trustee also is responsible for providing direct day-to-day supervision over the field office staff.

***Trial Attorney:*** Acting on behalf of the United States Trustee, the Trial Attorney brings matters before the court and provides case-related legal advice to other employees in the office. The Trial Attorney monitors the progress of assigned cases to determine whether legal action is warranted and prepares and argues appropriate pleadings. The Trial Attorney recommends appropriate action to either the United States Trustee or the Assistant U.S. Trustee, prepares a variety of motions and judicial pleadings, and facilitates the formation and operation of creditors' committees.

***Bankruptcy Analyst:*** The Bankruptcy Analyst applies economic and financial analysis skills to the administrative supervision of bankruptcy cases filed by businesses and consumers primarily under chapters 7, 11, 12, and 13 of the Bankruptcy Code. The Bankruptcy Analyst reviews financial and operating statements, debtors' bankruptcy petitions and schedules, business records, periodic financial reports, and any proposed reorganization plans for technical sufficiency to determine financial viability of businesses. The Bankruptcy Analyst also assists in supervising trustees, ensures that cases are being properly administered, and consults with parties to resolve problems.

***Paralegal Specialist:*** The Paralegal Specialist is responsible for performing a variety of duties that require the application of legal knowledge and financial analysis skills to the examination and processing of cases initiated under the Bankruptcy Code. The Paralegal Specialist reviews bankruptcy petitions for compliance with the Bankruptcy Code and refers cases that may require an inquiry or enforcement action. As necessary, the Paralegal Specialist performs research to

assist attorneys, drafts pleadings, and participates in monitoring and reviewing the performance of trustees.

***Legal Data Technician:*** The Legal Data Technician is responsible for assisting in the maintenance of the office's automated bankruptcy case management information system and word processing. Duties may include the following: abstracting data from bankruptcy petitions and schedules and entering that data into a complex case management information system; scheduling meetings with creditors; preparing management caseload reports; assisting in training users on information systems; and assisting in evaluation of word processing and data processing workloads. The Legal Data Technician may be called upon to provide technical support to the Information Technology Specialist.

***Legal Clerk:*** The Legal Clerk provides clerical support in the performance of daily routine office requirements as they relate to the administration of bankruptcy cases. Primary duties include the following: electronic case filing; typing legal documents from rough drafts; abstracting and assembling data from bankruptcy petitions, schedules, and files and entering the data into a complex automated case management information system; assisting with scheduling meetings of creditors and court appearances; creating and maintaining files and records; answering telephone inquiries from debtors' and creditors' attorneys, court clerks, and trustees; receiving visitors and providing requested information or routing the request to the proper person; and archiving records. The Legal Clerk may be called upon to provide technical support to the IT specialist, secretarial, and/or administrative support.

***Administrative Officer:*** The Administrative Officer assists the United States Trustee in managing the administration of the region, including personnel, procurement, and other administrative functions. The Administrative Officer maintains administrative forms and records, monitors the implementation of the region's budget, and ensures regional compliance with applicable administrative policies and procedures of the Program and the Department.

***Information Technology Specialist:*** The Information Technology Specialist serves as the Region's technical expert for all computer hardware, software, and telecommunication services. The Information Technology Specialist is responsible for planning, monitoring, and carrying out a wide range of technical computer systems and telecommunication duties.

***Secretary:*** The Secretary coordinates and carries out administrative and clerical work. The Secretary maintains a calendar for the supervisor, schedules appointments, meetings and conferences, and procures office supplies and services. The Secretary interacts with internal staff and managers and individuals external to the organization for the purposes of coordinating and receiving information, and performs office automation tasks.

### **1-3.5 United States Trustee System Fund**

Section 589a of title 28 of the United States Code establishes the United States Trustee System Fund (Fund) which allows for self-funding of the Program. The Fund receives deposits from four sources:

1. A portion of the filing fee in every bankruptcy case;

2. Chapter 11 quarterly fees;
3. Excess percentage fees collected by chapter 12 or chapter 13 standing trustees;  
and
4. Interest on invested funds.

An annual report via the President's budget is submitted to the Congress each year by the Attorney General setting forth the amounts deposited into the Fund and a description of the expenditures made. Although funding does not come from the general treasury, the Program's appropriation must still be authorized by Congress.

## **CHAPTER 1-4: MISSION AND ROLE OF UNITED STATES TRUSTEE PROGRAM**

The Program is the litigating component of the Department that is responsible for overseeing the nation's bankruptcy system. The Program's mission is to promote the integrity and efficiency of the bankruptcy system by enforcing bankruptcy laws; supervising private trustees; and ensuring that those involved in the process, including debtors, creditors, attorneys, and other professionals, fulfill their legal obligations. To carry out its mission, the Program has standing to participate in every bankruptcy case within its jurisdiction. By statute, the Program does not have jurisdiction in Alabama and North Carolina.

### **1-4.1 History**

The Program was established within the Department as a pilot program by the Bankruptcy Reform Act of 1978 (1978 Reform Act). Pub. L. No. 95-598, 92 Stat. 2549 (1978). The 1978 Reform Act instituted significant changes in the federal bankruptcy system that were designed to relieve judges of administrative responsibilities in bankruptcy cases and to focus judicial functions on the adjudication of disputes. The Program was piloted to carry out the administrative functions and responsibilities previously performed by the bankruptcy judges. The Program became permanent and was expanded nationwide by the Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986. Pub. L. No. 99-554, 100 Stat. 3088 (1986).

Before the 1978 Reform Act, bankruptcy cases in the United States were administered by bankruptcy referees who were employees of the judicial branch of the federal government. Referees were responsible for resolving or deciding disputes among debtors, creditors, trustees, and other parties in interest, as well as executing other administrative duties that required the referees to engage in *ex parte* communications with various parties. This conflicted with the need for impartial decision making, fostered the appearance of impropriety, and led to charges of favoritism.

By way of background, in 1968, the Subcommittee on Bankruptcy of the Senate Committee on the Judiciary held hearings to determine whether a commission to review the bankruptcy laws of the United States should be formed. As a result of those hearings, the Commission on the Bankruptcy Laws of the United States was formed in 1970 to study, analyze, evaluate, and recommend changes in the substance and administration of the federal bankruptcy laws. The

commission found that case management under the Bankruptcy Act's referee system was basically inefficient, ineffective, and inconsistent.

The Brookings Institution conducted a study for the commission and issued a report [Stanley, Girth, et al., *Bankruptcy: Problem, Process, Reform* (1970)], which stated that many of the problems of bankruptcy administration were due in large part to the breakdown of the theory of creditor control contemplated under the Bankruptcy Act. The study also identified several problem areas with regard to the role of the case trustee. These problems included slow and faulty mechanisms for the selection of trustees in individual proceedings; the appearance of political patronage or cronyism in the appointment of trustees; unequal quality and ability among trustees; and actions by trustees that reflected their own economic interests rather than those of creditors. To combat these problems, the commission recommended separation of the administration of bankruptcy cases from the adjudication of adversarial controversies. Its recommended solution involved creation of an independent federal agency with decentralized day-to-day operations, but with national supervision to assure the uniform achievement of goals.

In July of 1973, the commission submitted its report to the President, the Chief Justice of the United States, and the Congress, together with the text of the proposed new statute. The bill was introduced in both Houses of Congress during the 93rd Congress, and a competing bill proposed by the National Conference of Bankruptcy Judges was introduced in the House. Legislative action was suspended, however, due to the pending impeachment proceedings of then-President Richard Nixon.

In the 94th Congress, the commission's bill and the judges' bill were re-introduced in the House as H.R. 31 and H.R. 32, and in the Senate as S. 236 and S. 235, respectively. Extensive hearings were conducted on the bills. As a result of the hearings and suggestions solicited from various authorities, a new bill resolving many of the differences between the bills of the commission and of the judges was introduced during the 95th Congress as H.R. 6. After more amendment, the bill went to the House Judiciary Committee as H.R. 8200. The Judiciary Committee reported the bill favorably to the full House on September 8, 1977.

In the report accompanying the bill, the Judiciary Committee supported the design of a United States Trustee Program that was modeled on the United States Attorney system. The House proposed that the United States Trustee system would operate in all federal judicial districts. The House passed H.R. 8200 on February 8, 1978, and it was sent to the Senate. Meanwhile, the Senate Judiciary Committee was considering its version of bankruptcy legislation, S. 2266, the analogue of H.R. 8200, with some substantial differences. After hearings, committee review, and amendments, the Senate took up H.R. 8200. All of the text after the enacting clause was struck out and the text of S. 2266 was inserted. The essential differences involved the court and administrative systems. The House version established independent Article III bankruptcy courts and entrusted the administration of cases to United States Trustees placed in the Department of Justice. The Senate version allowed the bankruptcy courts to remain as adjuncts to the United States District Courts and did not provide for United States Trustees. The legislative history of the Program, accordingly, can only be found in the House Report.

The Senate version of H.R. 8200 was passed by unanimous consent in the Senate on September 22, 1978. Subsequent negotiations in the House and Senate produced the final version of the bill that became the Bankruptcy Reform Act of 1978. This legislation was signed into law by President Jimmy Carter on November 6, 1978. [A detailed account of the legislative history of the Bankruptcy Reform Act of 1978 may be found in Klee, *Legislative History of the New Bankruptcy Law*, reprinted in App. 2. *Collier on Bankruptcy* (MB) (15th ed. 1979).] The 1978 Reform Act created a United States Trustee pilot program that would administer bankruptcy cases in 18 judicial districts for a period of five years.

At the end of the five-year term, the Attorney General was to report to Congress, the President, and the Judicial Conference of the United States, the results of studies conducted to determine the effectiveness of the Program, as well as the desirability and method of extending the Program nationwide. That report, submitted to the appropriate officials in January 1984, indicated the success of the Program and outlined a proposed expansion of the system. See *Report of the Attorney General on the United States Trustee System* (1984).

Expansion did not occur immediately, however. The pilot program was extended to September 30, 1984, by Public Law No. 98-166, 97 Stat. 1081 (1983), and again to September 30, 1986, by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (1984). It was only with the passage of the Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986 that Congress created a timetable for expansion of the Program on a nationwide basis. With the exception of two states, Alabama and North Carolina, that process was completed by November 1988.

## **1-4.2 Mission And Goals**

### **1-4.2.1 Mission Statement**

The Program is the component of the Department whose mission it is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public.

### **1-4.2.2 Goals**

The Program's [Strategic Plan](#) documents the Program's goals, objectives and strategies. It is updated every three to five years.

## **1-4.3 Statutory Duties Of The United States Trustee**

United States Trustees act to ensure that the bankruptcy system is administered in such a manner that it provides an effective framework for debtors and creditors to resolve their financial difficulties. Section 586 of title 28 sets forth the statutory duties of each United States Trustee.

Section 586(b) provides that the United States Trustee may, if the number of cases under chapter 12 or 13 of the Code so warrants, and subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or

designate one or more Assistant U.S. Trustees to serve in cases under such chapter. The United States Trustee shall supervise any such individual appointed as standing trustee in the performance of the duties of the standing trustee.

In addition, section 586 provides that the Attorney General shall prescribe by rule qualifications for panel membership and standing trustees. In addition, the Attorney General, after consultation with a United States Trustee, shall fix the annual compensation of standing trustees in cases under chapters 12 and 13.

Finally, under section 586(f), the United States Trustee is authorized to contract with independent firms to perform audits of individual chapter 7 and chapter 13 cases designated by the Program, in accordance with the procedures established by uncodified section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Reports of audit completed by the audit firms are to be filed with the court and identify any material misstatements in the debtor's income, expenditures, or assets. If a material misstatement is reported, the United States Trustee shall, if appropriate, report the material misstatement to the United States Attorney, and, if advisable, take appropriate action against the debtor. Such action shall include, but is not limited to, commencing a proceeding to revoke the debtor's discharge under [11 U.S.C. § 727\(d\)](#).