

U.S. Department of Justice  
U.S. Trustee Program



# UNITED STATES TRUSTEE PROGRAM

ANNUAL REPORT OF SIGNIFICANT ACCOMPLISHMENTS

FISCAL YEAR 2001

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## **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.



LAWRENCE A. FRIEDMAN

## MESSAGE FROM THE DIRECTOR

I am pleased to present the United States Trustee Program's *Annual Report of Significant Accomplishments* for Fiscal Year 2001, which sets forth many of our activities and accomplishments from October 1, 2000, through September 30, 2001.

When Congress created the U.S. Trustee Program as a pilot program in the 1978 Bankruptcy Reform Act, it described the Program as a "watchdog" to monitor the integrity of bankruptcy case administration. The breadth of this mandate is reflected in the variety of responsibilities carried out by Program staff in the Executive Office and in regional and field offices across the nation.

The *Annual Report of Significant Accomplishments*—the Program's first report of this kind—demonstrates our strong record of combating fraud and abuse in the bankruptcy system, both by using the available civil enforcement tools and by working with law enforcement agencies to pursue criminal remedies. It highlights our role in Chapter 11 reorganization cases, where our actions include appointing trustees, examiners, and creditors' committees; monitoring professionals such as attorneys and accountants; and appearing as a party to protect the public interest. It describes how we carry out our duties to appoint and supervise private trustees who administer cases filed under Chapters 7, 12, and 13, to ensure that estate assets are preserved, distributions to creditors are maximized, and the rights of all parties are protected. It also provides information about how we collect data, perform research, and engage in outreach activities to bring transparency to the bankruptcy process.

Attorney General John Ashcroft has given the Program a mandate to preserve the integrity of the bankruptcy process and to protect the bankruptcy system from fraud and abuse. I invite you to read this report and learn how we are implementing this mandate, which is so critical to the fair and efficient functioning of our nation's bankruptcy system.

A handwritten signature in dark ink, appearing to read "Lawrence A. Friedman".

Lawrence A. Friedman, Director  
Executive Office for United States Trustees

## CHAPTER 1. U.S. TRUSTEE PROGRAM'S MISSION AND RESPONSIBILITIES

### SERVING THE PUBLIC INTEREST

Each year, more than one million individuals and businesses file bankruptcy, making the bankruptcy caseload the largest in the federal court system. In FY 2001, U.S. Trustees processed 1,367,704 new bankruptcy case filings. More than 70 percent of those cases were filed as Chapter 7 liquidations (982,934); approximately 27 percent were Chapter 13 repayment plans (374,133); and just under one percent were Chapter 11 reorganizations (10,225). The remaining cases were filed under Chapter 9, Chapter 12, or ancillary to a foreign proceeding.

Federal bankruptcy law offers a fresh start to the honest but unfortunate debtor. By filing a bankruptcy case, the debtor is immediately protected from creditor collection efforts and can obtain a discharge from most debts and/or a readjustment of certain liabilities. In return, the debtor is required to disclose information voluntarily and truthfully regarding all assets and liabilities as well as any pre-bankruptcy transactions to which the debtor may have been a party. If the case is filed under Chapter 7, the debtor is also required to surrender assets to the trustee for liquidation and distribution to creditors, except for assets that are exempt under state or federal law. Chapter 11 and Chapter 13 debtors retain possession of their assets, but pay all or a portion of their debts through plans approved by the court. Once a bankruptcy case is filed, it is critical that it proceed through the system quickly and efficiently to minimize costs of administration and maximize the return to creditors. The U.S. Trustee participates in every case either directly or through trustee oversight.

The U.S. Trustee is a neutral party who litigates issues and provides administrative and regulatory supervision of bankruptcy cases and relieves the bankruptcy courts from many administrative duties. When the Program was first created in 1978 as a pilot in 18 judicial districts, Congressional leaders described the Program as a “watchdog” to prevent fraud and abuse, enhance compliance with fiduciary standards, eliminate conflicts of interest among attorneys and other professionals, and promote efficient case administration.

Congress expanded the U.S. Trustee Program nationwide in 1986. The Program oversees bankruptcy case administration in 88 federal judicial districts. By statute, judicial districts in Alabama and North Carolina do not participate in the Program; instead, bankruptcy cases in those districts are overseen by administrators appointed by the federal judiciary. The U.S. Trustee Program is organized into 21 regions, with each region headed by a U.S. Trustee who is appointed by the Attorney General. There are 95 regional and field offices staffed by Assistant U.S. Trustees, attorneys, bankruptcy analysts, paralegals, legal clerks, legal data technicians, information technology specialist/case managers, administrative officers, and secretaries.

Four characteristics of the bankruptcy system help to clarify the Program's unique role in bankruptcy cases.

- **Bankruptcy cases usually involve the interests of more than two parties.** Most legal actions in federal court involve disputes between two parties, with both parties actively participating to protect their interests. In bankruptcy cases, a debtor who seeks relief from the court must list all creditors as “parties in interest.” Although creditors receive notice of the bankruptcy filing, most do not participate because the cost of their involvement may be greater than the amount of their ultimate recovery. Without the natural tension created by a two-party

case, a bankruptcy case may languish or one creditor may take undue advantage of the debtor and other creditors. The U.S. Trustee serves as a neutral party who represents the public interest by ensuring timely case administration and fair treatment of all parties.

- **Debtors in bankruptcy are required to disclose their financial circumstances.** The integrity of the bankruptcy system depends upon complete and voluntary disclosure of financial information by debtors. The U.S. Trustee enforces the disclosure requirements by informing debtors of their obligations under the Bankruptcy Code, reviewing financial information that is provided, and taking appropriate legal action when financial information is either withheld or misstated. Bankruptcy crimes, such as concealing assets and making false statements, are referred to the United States Attorney for prosecution.

- **Most bankruptcy cases are administered by private bankruptcy trustees** and their professionals. The private trustee acts as a fiduciary—a person legally entrusted with the property of others—to represent the best interests of the bankruptcy estate in cases filed under Chapter 7, Chapter 12, and Chapter 13. Each year, private trustees collect and distribute more than \$5 billion under those three chapters. The U.S. Trustee appoints these private trustees and supervises them to ensure adherence to fiduciary standards. The U.S. Trustee also monitors the attorneys, accountants, and other professionals hired by the trustees and debtors, to ensure that their compensation is not unreasonable.

- **Due to their dire financial circumstances, many consumer debtors are particularly vulnerable to fraudulent schemes.** Those who prey on the financially vulnerable often use the bankruptcy system to engage in schemes that harm debtors and creditors. For example, some scam operators promise—for an up-front fee—to help clients deal

with their delinquent mortgages. Instead of working with the client's mortgage lender, however, the scam operator retains monies provided by the client and files a bankruptcy case in the client's name to stop collection proceedings temporarily. Ultimately, when the mortgage lender is not paid, the lender is allowed to foreclose and the debtor loses the home. As part of its duty to police the bankruptcy system, the U.S. Trustee works to identify these and other fraudulent schemes and pursues appropriate enforcement actions against the perpetrators.

## MAJOR FUNCTIONS

**The U.S. Trustee Program has broad authority in bankruptcy cases**, including the legal right to appear and be heard in all matters pertaining to a bankruptcy case.

The Program's primary functions include:

- **Supervision of case administration** to ensure that cases proceed without delay, parties adhere to the bankruptcy laws, assets are appropriately distributed to creditors, and only honest and deserving debtors have their debts discharged.
- **Identification of fraud and abuse in the bankruptcy system** and litigation against debtors, creditors, attorneys, and other professionals who violate the Bankruptcy Code and the Rules of Bankruptcy Procedure.
- **Appointment and supervision of private trustees** who administer bankruptcy estates.
- **Identification and referral of federal crimes** to the United States Attorney and assistance in prosecuting such cases.

## CHAPTER 2. ADMINISTRATIVE MATTERS AND FUNDING

### ORGANIZATION AND MANAGEMENT

#### Executive Office for U.S. Trustees

The Executive Office for U.S. Trustees (EOUST) provides comprehensive policy and management direction to the U.S. Trustees and their staff, as well as providing administrative support and central coordination to the regional and field offices. The EOUST is headed by Director Lawrence Friedman, who reports to the Associate Attorney General in the Justice Department. There are approximately 70 employees in the Executive Office in five operational units.

- **The Office of General Counsel** coordinates the Program's litigation activities and provides legal counsel to the Program. It advises U.S. Trustees and Assistant U.S. Trustees to ensure consistency in the Program's legal positions, coordinates responses on significant legal issues, decides whether to take appeals of court decisions, and coordinates with the Justice Department's Civil Division and Solicitor General where necessary.
- **The Office of Review and Oversight** coordinates the supervision of private trustees who administer cases under Chapters 7, 12, and 13. It ensures that trustees satisfy fiduciary standards through the regulation and auditing of trustee financial and administrative operations.
- **The Office of Research and Planning** conducts research, analyzes management and case data, and engages in programs and activities to inform and educate the public on bankruptcy-related issues. It also contains the Program's information technology unit, which supports the automation activities of the EOUST and the field offices.

- **The Office of Administration** handles administrative functions for the Program, including budget, personnel, procurement, facilities, travel, and security. It provides administrative guidance and support to the U.S. Trustees and their staffs.

- **The National Bankruptcy Training Institute** develops and provides comprehensive training programs for all Program staff. It is housed within the Justice Department's National Advocacy Center in Columbia, S.C.

#### Regional Structure and Field Offices

The Program operates through a system of 21 regions defined pursuant to 28 U.S.C. § 581(a). Each region is led by a U.S. Trustee whose basic authority is conferred under 28 U.S.C. § 586. The U.S. Trustees are appointed by the Attorney General for a five-year term, subject to removal by the Attorney General. The U.S. Trustees generally maintain a small regional staff that typically consists of an administrative officer, computer specialist, and clerical assistant. The U.S. Trustees supervise a cadre of Assistant U.S. Trustees who head 95 field offices located in 46 states. (By statute, the six judicial districts in Alabama and North Carolina do not participate in the Program; in those states, bankruptcy case administration is overseen by a court official called a Bankruptcy Administrator. All states within the jurisdiction of the Program have at least one Program office except for North Dakota and Vermont.)

The U.S. Trustees serve under the Director of the EOUST to ensure national uniformity in policies and procedures, while allowing for necessary variances due to local case precedent, practices, and rules. They also represent the Program locally in dealing with other participants in the bankruptcy system, including bankruptcy judges, private trustees, and bankruptcy practitioners.

The role of the U.S. Trustee Program in bankruptcy case administration is unique, melding aspects of both law and financial analysis. Consequently, U.S. Trustee field offices are unique in their staffing composition. U.S. Trustees are routinely represented in court by Program trial attorneys and by Assistant U.S. Trustees, almost all of whom are also attorneys. Because of the U.S. Trustee's involvement in the financial aspects of bankruptcy, both in case administration and trustee supervision, many Program bankruptcy analysts are Certified Public Accountants. Some are also Certified Fraud Examiners. At the conclusion of FY 2001, the Program field offices were staffed by 95 Assistant U.S. Trustees, 183 trial attorneys, 197 bankruptcy analysts, 203 paralegals, and 209 support staff.

The number of Program offices per region varies, and there are significant differences in the number of employees per office. Approximately 25 percent of the offices have five or fewer employees. The largest office is in Los Angeles with 54 employees in FY 2001, followed by New York City with 26 employees.

The difference in staffing levels reflects the wide variance in caseload among the regions and offices, as well as the types of cases that are filed. For example, Region 21 had responsibility for 165,521 cases filed during FY 2001, while Region 15 had responsibility for 18,406 cases filed during the same period. The Chicago office handled 43,468 cases filed during this period, whereas the Anchorage office was responsible for 1,467 cases. The character of the caseload also differs widely by office. During FY 2001, the Wilmington office handled the largest number of Chapter 11 filings, followed by New York and Newark; Los Angeles had the largest number of Chapter 7 filings, followed by Chicago and Cleveland; and Atlanta and Memphis had the largest number of Chapter 13 filings.

## BUDGET AND APPROPRIATIONS

The U.S. Trustee Program is funded entirely through fees assessed against debtors who file bankruptcy. No general revenues are appropriated to fund the Program.

Within this funding structure, the Program has two principal sources of revenue. First, each debtor pays a filing fee in an amount set under 28 U.S.C. § 1930(a)(1)-(5). Pursuant to a statutory formula, the fees are allocated among the Program, the U.S. Treasury, the court system, and the Chapter 7 trustees. Second, the Program receives quarterly fees from each Chapter 11 debtor throughout the life of the Chapter 11 case, as set forth in 28 U.S.C. § 1930(a)(6). In addition to these principal sources of revenue, smaller amounts of revenue are generated from interest on U.S. Trustee System Fund balances and investments in Treasury notes and bills, Chapter 7 case administration receipts, and excess operating reserves of Chapters 12 and 13 trustees.

Funds allocated to the Program are deposited into the U.S. Trustee System Fund, which is a government trust fund. Congress makes annual appropriations for the Program from this fund, and revenues in excess of the amount appropriated by Congress remain in the fund. If fee collections fall short of the amount Congress appropriated, the Program may withdraw monies from the U.S. Trustee System Fund.

The Program's appropriation for FY 2001 totaled almost \$126 million, with 1,034 authorized positions. Approximately 84 percent of the budget was needed to cover costs relating to personnel and facilities. Costs associated with facilities include rent for the offices and for more than 450 meeting rooms where the first meetings of the debtors and creditors are held as required under 11 U.S.C. § 341.

## GOVERNMENT PERFORMANCE AND RESULTS ACT

At the Department of Justice, performance planning and reporting is incorporated into the budget process. Performance information is vital to making resource allocation decisions. This is the heart of the Government Performance and Results Act of 1993 (GPRA). As part of the GPRA initiative, the Program established four strategic goals:

- **Provide administrative support** to move cases effectively and efficiently through the bankruptcy process.
- **Ensure that parties adhere to the standards of the law** by policing for embezzlement, fraud, and other abuses.
- **Maximize the return of estate assets to creditors** by maintaining and promoting uniform fee and expense guidelines relating to the employment of professionals and others in the bankruptcy system, as well as other forms of oversight.

- **Act as a resource for accurate, thorough information** and for practical analysis about the operations of the bankruptcy system.

These goals are stated and further explained in the Department of Justice's *FY 2001-2006 Strategic Plan*, which sets forth as Goal Seven: "Protect the Federal Judiciary and Provide Critical Support to the Federal Justice System to Ensure It Operates Effectively." Objective 7.4 of the *Strategic Plan* is to protect the integrity and ensure the effective operation of the nation's bankruptcy system.

Consistent with the President's Management Agenda, and as part of the Department's strategic planning process, the Program is actively working to revise the GPRA measures to reflect our emerging initiatives. Of particular interest is the Civil Enforcement Initiative, which commenced on October 1, 2001.

## CHAPTER 3. COMBATING FRAUD AND ABUSE

One of the U.S. Trustee Program's most critical responsibilities is to combat fraud and abuse in the bankruptcy system. To carry out this responsibility, the Program uses a range of civil and criminal enforcement tools.

Under federal law, the Program has direct authority to enforce the civil laws that protect against fraud and abuse in bankruptcy cases. In addition to granting civil enforcement powers to the Program, federal law directs the Program to refer criminal activity to the U.S. Attorneys and other law enforcement agencies and to assist in prosecuting criminal violations of the bankruptcy laws.

### CIVIL ENFORCEMENT

The U.S. Trustee Program's broad statutory powers to root out bankruptcy fraud and abuse are carried out through a variety of civil enforcement actions, including filing actions to:

- Dismiss abusive filings.
- Deny discharges sought by dishonest debtors.
- Limit improper refilings by debtors.
- Curb unfair practices by attorneys and creditors.
- Sanction unscrupulous bankruptcy petition preparers and scam operators.
- Deter identity fraud in bankruptcy.

During FY 2001 the Program began implementing a national Civil Enforcement Initiative, for official launch on October 1, 2001, to focus its resources more specifically upon combating fraud and abuse in the bankruptcy system. This effort was undertaken to respond to mounting public concern that the bankruptcy system was being abused and that more should be done to protect the system and to root out the miscreants. The effort was a natural outgrowth of the Program's longstanding commitment to tackling fraud and abuse, improving the effectiveness of bankruptcy administration, and bolstering public confidence in the bankruptcy system.

Top priorities of the Program's civil enforcement activities are:

- Ensuring that Chapter 7 is not abused and that Chapter 7 debtors are held accountable.
- Protecting consumer debtors, creditors, and others who are victimized by those who mislead or misinform debtors, make false representations in connection with a bankruptcy case, or otherwise abuse the bankruptcy process.
- Ensuring that Chapter 11 debtors proceed with their cases promptly, and are informed of and held to account for their obligations under the Bankruptcy Code.

### Dismissal for "Substantial Abuse"

Chapter 7 is designed to give a fresh start to the honest but unfortunate debtor by granting the debtor a bankruptcy "discharge." The bankruptcy discharge releases the debtor from personal liability for payment of certain debts and prevents creditors from taking any action to collect those debts.



*“In the District of Nebraska, the staff reviews 100 percent of the Chapter 7 filings for fraud or abuse. What catches our eye is income or expenses that suggest the debtor is not realistically or honestly dealing with obligations to creditors as balanced against a fresh start. As these cases show, the courts agree with our concerns.”*

*Patricia Dugan  
Assistant U.S. Trustee  
Omaha*

However, a Chapter 7 consumer case may be dismissed under 11 U.S.C. § 707(b) for “substantial abuse.” The term “substantial abuse” is not defined, but under case law it is generally found to exist when a debtor files Chapter 7 but does not need or deserve Chapter 7 relief. This conclusion is drawn from considering the totality of a debtor’s circumstances including, most often, the debtor’s financial ability to repay creditors. For example, a high income Chapter 7 debtor who spends extravagant sums on luxury goods and services may be a prime candidate for a motion to dismiss for substantial abuse under Section 707(b) if the debtor can otherwise repay creditors outside of bankruptcy or through a Chapter 13 repayment plan. The U.S. Trustee is the only party who can file a substantial abuse motion; in addition, the court can do so on its own motion.

In FY 2001, U.S. Trustees filed approximately 1,950 substantial abuse motions. During FY 2001, approximately 660 substantial abuse motions were granted by bankruptcy courts, while another 600 Chapter 7 debtors voluntarily converted to Chapter 13 after U.S. Trustees filed motions to dismiss. Further, as a result of U.S. Trustee informal investigations, debtors either voluntarily converted to Chapter 13 or provided additional information to support their Chapter 7 filings in more than 3,000 cases, without the necessity of formal motions or litigation.

Examples of actions brought by the Program include the following:

- On motion of the U.S. Trustee’s office in San Antonio, the Bankruptcy Court for the Western District of Texas dismissed the Chapter 7 case of debtors who earned \$9,000 per month; contributed \$900 per month to various voluntary retirement plans; claimed over \$500,000 in retirement accounts as exempt property; and listed monthly expenses that included \$345 for their

children’s tennis, swimming, and gymnastics lessons; \$250 for recreation; and \$870 for transportation costs other than car payments.

- In another Texas case, the Bankruptcy Court for the Northern District of Texas granted the motion of the U.S. Trustee in Dallas for substantial abuse where the debtors earned about \$9,000 a month, claimed nearly \$600,000 in retirement accounts as exempt, and listed monthly expenses of \$400 for telephone service and \$422 to repay a loan from their 401(k) plan.
- The Bankruptcy Court for the Central District of California allowed a Chapter 7 debtor to convert to Chapter 13 after finding substantial abuse based on a motion filed by the Woodland Hills office of the U.S. Trustee. The debtors earned more than \$145,000 per year and were devoting \$1,655 per month to their retirement accounts. Also included in their monthly expenses were \$300 for entertainment and \$350 for commuting expenses although they worked in the same city where they lived.
- Based on motions brought by the Omaha office of the U.S. Trustee, the Bankruptcy Court for the District of Nebraska dismissed several Chapter 7 cases that demonstrated a range of excessive expenses and under-reported income. In one case, the debtor spouses wanted to discharge more than \$100,000 in credit card debt while they retained their interest in a time share arrangement in another country, continued to pay into various savings plans, kept both cable television and satellite television, and spent more than \$800 per month on clothes. In other cases, debtors listed various excessive monthly expenses, such as a \$600 boat payment, a \$570 vehicle lease payment, or life insurance premiums of \$615. Still other debtors understated their income by failing to report payments from sources such as mandatory overtime or large yearly bonuses.



PETER CARROLL

- Granting a motion filed by the St. Louis office of the U.S. Trustee, the Bankruptcy Court for the Eastern District of Missouri grounded its dismissal of a case for substantial abuse in part on the Internal Revenue Service's Collection Financial Standards, which address reasonable monthly housing expenses in the debtors' county of residence. The court noted that it was "called to go one step beyond" Eighth Circuit precedent by determining whether to use the standards, which are a cornerstone of the means test set forth in the pending bankruptcy legislation, where they are used to determine allowable expenses for Chapter 7 debtors.

### Denial or Revocation of Discharge

The primary reason an individual files for bankruptcy is to obtain a discharge of his or her debts. In a Chapter 7 case, the discharge is usually issued 60 days after the first date set for a meeting of creditors, unless a complaint objecting to the debtor's discharge has been filed.

A bankruptcy discharge may be denied if the debtor concealed assets or engaged in other improper conduct, including withholding information on the debtor's bankruptcy petition, schedules, or statement of financial affairs. In addition, a previously granted discharge may be revoked as a result of information discovered after the discharge was entered. These actions are time-consuming and require significant office resources, but provide one of the most potent remedies available against debtors who undermine the integrity of the bankruptcy system. Most often, U.S. Trustees file complaints seeking denial or revocation of discharge under 11 U.S.C. § 727 to address egregious actions such as destroying, mutilating, or concealing property to hinder or defraud a creditor or a trustee; knowingly making a false oath; or refusing to obey a court order.

Approximately 400 actions seeking denial or revocation of the debtor's discharge were filed in FY 2001. Discharges were denied in approximately 200 cases, and complaints were either voluntarily dismissed or resolved in about 125 cases. Discharges were granted in approximately 25 cases. In addition, in some cases criminal proceedings were instituted against the debtors based on the same conduct that led to denial or revocation of discharge.

Discharge actions brought by the Program include the following:

- A complaint seeking a denial of discharge filed in the Eastern District of California by the Fresno office of the U.S. Trustee led to a debtor's waiver of discharge of more than \$29 million in potential civil liability for an investment fraud scheme. The Securities and Exchange Commission had filed a securities action against the debtor, who then sought bankruptcy to discharge the massive potential liability. In his bankruptcy case, however, the debtor concealed his interest in 20 parcels of real property, eight property transfers, a promissory note, and debts owed to him. He also concealed his true identity, under which he held a second driver's license, Social Security number, credit cards, and real property. He made false oaths in his bankruptcy papers, and gave false testimony at the Section 341 meeting—the mandatory first meeting between the debtor and creditors—and at his deposition.
- Discharge of more than \$834,500 was denied by the Bankruptcy Court for the Northern District of Georgia based on a complaint for denial of discharge under Section 727 filed by the Atlanta office of the U.S. Trustee. The debtor and his corporation failed to disclose the pre-bankruptcy sale of vending machines and accounts receivable and the receipt of payments, both before and after bankruptcy, for the machines and accounts. The debtor denied under oath at

*"Our suspicions were first raised by the debtor's schedules, which listed \$29 million in debt and few assets. A national database search revealed several businesses in which the debtor held a controlling interest, and the private trustee found evidence that the debtor also used another name. We investigated and discovered the property and debts he had under the second name. When we saw the same picture on the second driver's license, we had final confirmation of his alternate identities. We filed the action to bar discharge and litigated it for over a year. The debtor refused to waive discharge until the last minute, after trial had commenced, believing that we would not go the distance in the case."*

*Peter Carroll  
Assistant U.S. Trustee  
Fresno*

the Section 341 meeting that the vending machines and accounts had been sold.

- Based upon a complaint filed by the U.S. Trustee's office in Cedar Rapids, the Bankruptcy Court for the Northern District of Iowa denied discharge of \$278,122 in unsecured debts owed by a couple who sought to discharge obligations associated with a home improvement scam they operated. They listed multiple Social Security numbers on their petition, including numbers belonging to their minor children.
- The Alexandria office of the U.S. Trustee successfully sought revocation of discharge in the Eastern District of Virginia on the ground that a debtor had concealed his interests in a bank account and a corporation. As a result of the U.S. Trustee's action, over \$590,000 was ultimately ruled non-dischargeable.

### Serial Filings

Some debtors abuse the bankruptcy laws by repeatedly filing bankruptcy solely to frustrate creditors' attempts to obtain payment. Usually these debtors do not complete their cases, but remain in bankruptcy just long enough to obtain the automatic stay's temporary protection from collection activity by creditors. The Bankruptcy Code prohibits a debtor from refiling within 180 days if the bankruptcy court dismissed the prior case because the debtor failed to abide by court orders, failed to appear before the court, or requested voluntary dismissal after seeking relief from stay.

Some serial filings are made as part of a larger scheme, such as a rent-skimming operation run by a perpetrator who acquires title to multiple properties with no intention of paying the mortgages. The perpetrator collects the rents and then repeatedly files for bankruptcy to stall foreclosure and allow the scheme to continue.

The U.S. Trustee monitors its own data bases as well as court records for evidence of abusive refiling, and seeks dismissal of the case or denial of discharge. Examples of cases include the following:

- Sanctions of \$85,000 against a serial filer found to be in civil contempt of court were imposed by the Bankruptcy Court for the Central District of California and affirmed by the District Court. The individual operated a long-time rent-skimming operation that included filing false bankruptcy cases to prevent lenders from foreclosing on as many as 500 properties while he collected rents from tenants. The U.S. Trustee's office in Santa Ana obtained orders against the individual enjoining him from engaging in future abuse of the bankruptcy system and imposing the sanctions. He violated these orders, and the U.S. Trustee successfully sought the bankruptcy court order finding him in civil contempt of court.
- A South Carolina debtor, along with her son and related entities, filed nine bankruptcy petitions in six years and used delaying tactics that included: seeking to pay court filing fees in installments, but never paying; filing deficient schedules or lists of creditors' addresses; seeking extensions of time to file schedules and statements; failing to appear at Section 341 meetings; and filing motions to reconsider, motions to convert to another chapter, and motions to appeal. The Columbia office of the U.S. Trustee asked the court to dismiss the debtor's case with prejudice, and to bar future cases from being filed by the debtor without leave of the court. The Bankruptcy Court for the District of South Carolina granted the motion to dismiss, denied future bankruptcy discharge of her existing debts, and prohibited her from filing bankruptcy within the district for one year without court permission.



DENNIS EARLY

## Attorney Misconduct

Lawyers who engage in unethical conduct or provide substandard representation harm their clients and undermine the integrity of the bankruptcy system. The U.S. Trustee monitors attorney conduct and adherence to professional standards, and pursues incompetent and unlawful activity by counsel. Civil enforcement actions by the U.S. Trustee include asking the court to temporarily or permanently bar the attorney from appearing in bankruptcy cases and coordinating with state bar associations as they pursue attorney disciplinary proceedings.

In FY 2001, the Program filed approximately 150 actions seeking sanctions for attorney misconduct, and made around 80 referrals to state bar associations and other disciplinary boards. These are examples of Program actions:

- The Virginia State Bar temporarily suspended an attorney's license after the U.S. Trustee's office in Alexandria made a referral and assisted in the Bar's investigation. The attorney was associated with another attorney, who had previously been disbarred in Florida and the District of Columbia. The disbarred attorney would solicit and counsel clients, including preparing and filing their bankruptcy petitions, while the licensed attorney would simply appear at the Section 341 meetings and court hearings, having virtually no other contact with her clients. Before making the referral to the Bar, the U.S. Trustee had successfully filed civil enforcement actions against the parties in both the District of Columbia and the Eastern District of Virginia.
- The Colorado Supreme Court disbarred an attorney in a disciplinary proceeding involving five separate claims, 14 client matters, and a finding of 49 rules violations. The U.S. Trustee's office in Denver filed a grievance regarding several of the claims and rule violations, and appeared

before the court. The bankruptcy matters included accepting payment to file a Chapter 7 bankruptcy case but failing to file the case, and failing to represent debtors adequately after their cases were filed.

- After a lengthy investigation of an Oregon law firm representing consumer debtors and personal injury claimants, the Eugene office of the U.S. Trustee discovered that the firm failed to list pending personal injury claims—which are assets because they represent possible funds for the estate—on two debtors' schedules. In both cases, the law firm represented the debtors in their bankruptcy cases and their personal injury lawsuits. The Bankruptcy Court for the District of Oregon approved a resolution negotiated by the U.S. Trustee, which included a temporary suspension from bankruptcy practice for one attorney, forfeiture of attorneys' fees earned in the personal injury cases, payment of a fine, and payment of attorneys' fees to the U.S. Trustee.

- The U.S. Trustee's office in Dallas investigated the practices of consumer debtors' attorneys who convinced clients to pay additional fees for the preparation of a power of attorney, a legal document unrelated to the bankruptcy filing. The law firm often promoted the additional "service" through high pressure sales tactics and misleading information, and it charged unreasonably high fees that were not properly disclosed. The scheme appeared to have been designed to circumvent local court rules requiring the filing of a fee application in any Chapter 13 case where the attorney's fees and costs exceed \$1,750. The law firms ceased these practices after the U.S. Trustee investigated.

- In a unique ruling, the Bankruptcy Court for the Western District of Oklahoma ordered a debtors' attorney not to miss any more of his clients' Section 341 meetings—and not to be more than five minutes late for any of the meetings. This ruling followed another in which the court,

*"Consumer debtors were paying hundreds of dollars in legal fees, not knowing that the legal decisions in their cases were actually directed by a disbarred attorney. That attorney took the bulk of each client's fee, giving a portion of it to the licensed attorney, essentially for the use of her name and her license."*

*Dennis Early  
Assistant U.S. Trustee  
Alexandria*



*“Cracking down on the unlicensed practice of law and excessive fees by bankruptcy petition preparers is the number one civil enforcement priority in the Central District of California. We have significantly reduced this activity over the past few years and we hope to improve further still the quality of the petitions being filed and the representation provided to consumer debtors.”*

*Maureen Tighe  
U.S. Trustee  
Region 16*

*Charmayne Mills  
Assistant U.S. Trustee  
Los Angeles*

on motion of the U.S. Trustee’s office in Oklahoma City, ordered the attorney to disgorge fees in two cases where he did not show up at the Section 341 meeting. In one case the attorney’s failure to appear forced the debtor, who used a wheelchair, to travel 280 miles round-trip to attend a rescheduled meeting.

### **Bankruptcy Petition Preparers**

A bankruptcy petition preparer is a non-attorney who prepares debtors’ bankruptcy documents for a fee. Petition preparers are regulated under 11 U.S.C. § 110, which requires, among other things, that they disclose in court filings their identities and the fees they receive. Section 110 also limits the practices that petition preparers may engage in, barring them from activities such as advertising “legal” services, collecting clients’ payments for court filing fees, or engaging in the unauthorized practice of law. Nonetheless, some petition preparers charge exorbitant rates, fail to make necessary disclosures, and engage in the unauthorized practice of law and other unlawful activities. To curb such conduct, U.S. Trustees bring civil actions to obtain orders to disgorge fees paid by clients, impose fines, and prohibit the petition preparers from future activities.

In FY 2001, U.S. Trustees initiated nearly 800 actions against petition preparers. During the same period, bankruptcy courts granted relief in approximately 650 actions which, in the aggregate, resulted in the imposition of nearly \$600,000 in fines and the return of approximately \$100,000 in client fees. Ninety-three injunctions were issued as a result of actions filed by 36 U.S. Trustee offices during FY 2001.

Also in FY 2001, the Program developed and began to pilot test a national data base for use in tracking bankruptcy petition preparers who are

under investigation or have been enjoined or found to engage in unauthorized practices. The data base is particularly important because these individuals often cross state lines to evade detection.

For a decade, the Los Angeles area has led the nation in the number of consumer bankruptcy debtors who file bankruptcy without a lawyer’s assistance. The Bankruptcy Clerk for the Central District of California reported that, in calendar year 2000, 29 percent of Chapter 7 debtors and 21 percent of Chapter 13 debtors--for a total of 21,873 debtors--filed bankruptcy without the assistance of counsel. Many of these debtors were assisted by bankruptcy petition preparers, and in many cases those petition preparers violated one or more of the provisions of 11 U.S.C. § 110. Monitoring petition preparers and engaging in enforcement actions against them is a major task for the U.S. Trustee’s office in the metropolitan Los Angeles area.

- In one such case, the Los Angeles office of the U.S. Trustee succeeded in negotiating a settlement with a bankruptcy petition preparer who agreed to a judgment for sanctions of \$29,000 and an injunction against preparing petitions in any jurisdiction in the United States. The U.S. Trustee alleged that in at least 35 cases the preparer misled clients into believing they were represented by attorneys, by using the names of licensed attorneys without their knowledge or consent. The settlement was approved by the Bankruptcy Court for the Central District of California.
- In a case pursued by the Riverside office of the U.S. Trustee, a bankruptcy petition preparer in the Central District of California was permanently enjoined from preparing petitions after the U.S. Trustee’s investigation revealed that she had filed a forged change of address form on behalf of debtors to whom she had been ordered to disgorge fees. The timing of the change of address ensured



MARY FRANCE

that the check would be mailed to the sister of one of the debtors and turned over to the petition preparer. Instead of repaying the fees to the debtors, the preparer forged their names on the \$1,200 check and converted it to her own purposes. Because the debtors had moved from the state, they had no way of knowing about the scheme until the U.S. Trustee contacted them.

- In the Southern District of California, the bankruptcy court granted a motion filed by the San Diego office of the U.S. Trustee and imposed a fine, ordered fee disgorgement, and permanently enjoined a bankruptcy petition preparer from providing services either directly or under an attorney's supervision. The petition preparer, who was also the subject of a U.S. Trustee enforcement action in 1998, sought to circumvent an order enjoining him from preparing petitions by alleging that he worked under the supervision of an attorney and by filing bankruptcy petitions using the attorney's State Bar number. During discovery, however, it was revealed that the preparer acted without the attorney's knowledge.

### Mortgage Foreclosure Scams

Many of the most egregious abuses in the bankruptcy system are perpetrated by those who prey upon debtors who are in dire financial straits and are not well equipped to scrutinize offers of assistance. Fraudulent schemes take advantage of people facing foreclosure, as well as the lenders to whom they owe their house payments, and can culminate in the preparation and filing of a bankruptcy petition. The scam operator typically solicits clients whose homes are listed in the foreclosure notices and falsely promises to work out the client's mortgage problems for a sizable fee. Instead, the operator either persuades the client to file bankruptcy or places the client in bankruptcy without the

client's knowledge. The bankruptcy filing temporarily stops the foreclosure action, but if the client does not proceed with the bankruptcy case, the foreclosure goes forward. As a result of the scam operator's activities, debtors may pay their last dollar, receive worthless services, and still lose their homes. Because mortgage foreclosure scam operators often fill out bankruptcy documents to place their clients in bankruptcy, the Program pursues them through 11 U.S.C. § 110, seeking orders to repay the defrauded debtors, impose substantial fines, and enjoin further unlawful actions.

The Program's civil enforcement actions against mortgage foreclosure scam operators in FY 2001 included the following:

- In FY 2001, the Harrisburg office of the U.S. Trustee filed an action under Section 110 that resulted in a \$300,000 judgment and a permanent injunction against four men who operated a foreclosure scam in Pennsylvania through their company. The defendants solicited persons facing foreclosure and persuaded them to enter into six-month contracts to save their homes. For an up-front fee of \$1,000, plus monthly payments of \$300 to \$700, the company promised to help delay foreclosure and obtain refinancing. In fact, the defendants frequently coached clients in the preparation and filing of pro se bankruptcy petitions to delay foreclosure, but the clients failed to file the additional paperwork required, and the cases were dismissed.

- An investigation and enforcement action by the U.S. Trustee's office in Santa Ana led to an injunction against further involvement in bankruptcy cases, a \$15,000 civil fine, and the seizure, by federal authorities, of more than \$50,000 in bankruptcy estate funds in two Chapter 13 cases filed by an apartment building owner who participated in a scheme to purchase as many as 20

*"Our office noticed a number of pro se petitions filed along with requests to pay filing fees in installments. The cases were getting dismissed because installment payments were not made and schedules were not filed, suggesting the existence of a mortgage foreclosure scam. We searched the court records for cases that fit this pattern, and contacted the debtors to ask if they had dealt with this company or a related mortgage foreclosure service. Eventually we contacted about 200 victims."*

*Mary France  
Assistant U.S. Trustee  
Harrisburg*

properties in the names of his non-English speaking tenants and employees. The landlord collected rents but at some point quit paying his mortgage lenders. Ultimately, he filed bankruptcy cases in the names of the “straw owners,” without their knowledge, to stay foreclosure on the properties.

The scheme was discovered through the cooperative efforts of the U.S. Trustee for the Central District of California, the Chapter 13 trustee, and the bankruptcy clerk’s office, which had flagged a group of bankruptcy petitions as unusual. The petitions were all filed for pro se debtors by a bankruptcy petition preparer who previously used a false Social Security number, and none of the petitions attempted to discharge anything but real property debt. The U.S. Trustee interviewed a number of these debtors, beginning with a young woman who explained that her landlord had asked her to sign some documents he needed to “help him own property.” The woman did not understand that the documents named her as a co-owner of an apartment building guaranteed by a Federal Housing Administration loan. The landlord had subsequently filed bankruptcy in her name, and in the names of numerous current or former tenants and employees.

### Identity Fraud

Bankruptcy-related identity fraud is a rapidly growing problem that can take various forms. One of the simplest methods is to incur debt under an assumed identity and to file bankruptcy using the false name and/or Social Security number. Sometimes the name or number is randomly chosen; other times it is the name or SSN of someone known to the filer, such as a parent, sibling, child, spouse, ex-spouse, co-employee, fellow student, or neighbor.

Other types of bankruptcy-related identity fraud include: transferring real property into the name of another person and then, to avoid foreclosure on the property, filing for bankruptcy using that person’s identity; transferring a partial interest in real property into the name of another person whose bankruptcy case is pending, thereby staying foreclosure on the real property; and using a false Social Security number when identifying oneself as a bankruptcy petition preparer. In extreme cases of identity fraud, a perpetrator may wholly co-opt another person’s identity—obtaining driver’s and professional licenses, obtaining employment, applying for apartments, taking out home and automobile loans, applying for credit cards, and even receiving traffic tickets and warrants under the false identity. The false identity is initially used to obtain employment and subsequently to establish credit; ultimately, the perpetrator files for bankruptcy using the false name and SSN to discharge the debts he or she incurred.

Regardless of the scope of the identity fraud involved, if a false name or Social Security number on a bankruptcy petition matches another person’s, that person may have a bankruptcy filing placed on his or her credit record, with damaging consequences. Even if the name or Social Security number does not match anyone else’s, the bankruptcy court record will be inaccurate and the true filer’s credit record may not reflect the bankruptcy filing. Depending upon the circumstances, the U.S. Trustee Program may pursue one or more civil remedies for identity fraud, including dismissal of the case, denial of discharge, and a court finding that the named person did not file the case or authorize the filing.

- The Woodland Hills office of the U.S. Trustee successfully sought denial of discharge in the Bankruptcy Court for the Central District of



IRA BODENSTEIN

California, where a debtor knowingly used another person's Social Security number on his bankruptcy petition. The debtor also stated under oath at the Section 341 meeting that the information on his petition was correct, and that he had two Social Security numbers.

In FY 2001, the Program launched a six-month pilot program designed to confirm debtors' identities and Social Security numbers, ensure a more accurate bankruptcy court record, and assess the prevalence of misidentified debtors and incorrect Social Security numbers on bankruptcy petitions. The Debtor Identification Pilot Program was modeled after a procedure that U.S. Trustee Ira Bodenstein launched in the fall of 1999 in Wisconsin and Northern Illinois. The Debtor Identification Pilot Program required consumer debtors in 18 judicial districts to provide photographic proof of identity as well as proof of Social Security number. It included efforts to help innocent victims whose credit reports could be affected by the use of incorrect Social Security numbers on bankruptcy petitions. The response to the national pilot program was overwhelmingly positive, as bankruptcy judges, trustees, and practitioners recognized the benefits of the new procedures.

The national Debtor Identification Pilot Program found inaccurate names or Social Security numbers in 1,225 Chapter 7 and Chapter 13 cases—about 1 percent of the pilot cases. Just over 80 percent of the inaccuracies were due to typographical errors such as transposition of digits in a Social Security number, but the rest involved questionable names, questionable identity documents, or possible misuse or falsification of Social Security numbers.

For example, the pilot program revealed a bankruptcy filer in New Hampshire who for 12

years had used a purchased Social Security number on his payroll deduction forms, tax forms, Medicaid benefit application, and credit applications, as well as on his bankruptcy petition. The purchased number matched the correct Social Security number of an innocent third party, interfering with her attempts to refinance her home loan and complete a rollover of her 401(k) plan. Moreover, the U.S. Trustee's office discovered yet another name associated with the same Social Security number, suggesting that the number may have been sold to more than one person.

The Debtor Identification Pilot Program's results showed that, while there are a significant number of problems regarding misidentification of debtors and incorrect use of Social Security numbers, some of these problems can be addressed by implementing relatively simple procedures. The identification requirements tested in the pilot program have been expanded nationwide in 2002. Key findings of the Debtor Identification Pilot Program are shown in the Appendix.

## CRIMINAL ENFORCEMENT

Under federal law, U.S. Trustees have an affirmative duty to refer instances of possible criminal conduct to the U.S. Attorney and to assist in criminal prosecutions. As with civil fraud and abuse, criminal bankruptcy fraud undermines the integrity of the bankruptcy system as well as public confidence in that system. Experience shows that bankruptcy fraud often is linked to other crimes, such as credit card fraud, tax fraud, identity fraud, federal benefits fraud, and money laundering. In addition, the bankruptcy system is susceptible to fraud perpetrated by those who prey upon unsophisticated consumers in deep financial distress. Moreover, the federal government is often the largest creditor in bankruptcy cases and suffers monetary loss from bankruptcy fraud.

*"We adopted our identification policy in Wisconsin and Northern Illinois after uncovering a substantial number of instances of incorrect Social Security numbers on bankruptcy petitions. Some were typographical errors, but others were instances of Social Security or identity fraud that our office referred to the U.S. Attorney for prosecution. We found that the local bankruptcy judges, trustees, and attorneys readily accepted the new policy. They recognized that it helped to ensure a more reliable court record and to maintain the accuracy of innocent victims' credit records."*

*Ira Bodenstein  
U.S. Trustee  
Region 11*

The U.S. Trustee's role in criminal enforcement is multi-faceted. Program staff help investigate cases of suspected bankruptcy fraud, often presenting comprehensive packages of documentary evidence in conjunction with their referrals to the U.S. Attorneys. In some districts, Program attorneys designated as Special Assistant U.S. Attorneys act as lead or assistant prosecutors in bankruptcy fraud cases. Further, Program staff are key members of a number of inter-agency working groups, providing information on how bankruptcy may fit into various crimes including federal benefits fraud, identity theft, and health care fraud. They also conduct training and outreach programs, where they teach law enforcement personnel and others how to recognize and pursue cases of potential criminal bankruptcy fraud.

### **Criminal Prosecutions**

In FY 2001, U.S. Trustee offices initiated nearly 2,650 criminal inquiries and made over 1,000 formal referrals to the U.S. Attorneys or other law enforcement agencies. During FY 2001, approximately 160 criminal charges issued and 180 convictions or guilty pleas were entered.

Criminal enforcement actions include prosecutions of:

- Concealment of assets by debtors and officers of debtor companies.
- Embezzlements from bankruptcy estates.
- Identity fraud and/or Social Security fraud.
- Credit card fraud.
- Mortgage foreclosure scams.

### **Concealment of Assets**

Perhaps the easiest bankruptcy crime to understand is the concealment of assets—hiding property from creditors and from the bankruptcy trustee by failing to list that property on the bankruptcy documents and by lying about the property at the Section 341 meeting or in bankruptcy court.

Sometimes, concealment of assets is only one part of a complex fraudulent scheme that includes other offenses such as wire fraud, mail fraud, securities fraud, and tax fraud. Concealment cases that were resolved in FY 2001 included the following:

- In the largest fraud case ever prosecuted in the District of Oregon, Walter “Jay” Hoyt III of Burns, Ore., was sentenced to 235 months—about 19 years—in prison for defrauding investors in 41 states out of more than \$100 million through an investment scheme that included selling non-existent cattle. A federal jury convicted Hoyt of all 52 counts against him. Additionally, David Cross, Hoyt's former ranch hand and computer expert, was convicted on 11 counts of conspiracy and mail fraud, and Phyllis King, Hoyt's former office manager, was convicted on 19 counts of bankruptcy fraud and money laundering.

For two decades, Hoyt solicited thousands of people to invest in the Hoyt cattle purchase tax shelter and retirement programs. Even after the bankruptcy court entered orders for relief in two involuntary Chapter 7 cases filed against Hoyt's businesses, Hoyt continued to collect more than \$1.6 million from investors. When the Hoyt operations were placed in bankruptcy, all of the Chapter 7 trustees in the district declined appointment in the cases, because they lacked the time and resources to administer a case involving hundreds of inter-related entities with convoluted and deceptive schedules of assets and liabili-



ALLEN PAINTER

ties. As authorized under the Bankruptcy Code, the U.S. Trustee for Region 18 appointed himself Chapter 7 trustee, and assembled a team from U.S. Trustee offices in Oregon and Montana. They uncovered the fraud, and worked to shut down the Hoyt operation and liquidate bankruptcy estate assets. When the U.S. Attorney brought criminal charges against the Hoyt operation, members of the team served as witnesses for the prosecution.

- Former penny-stock financier Robert E. Brennan was sentenced in the District of New Jersey to nine years and two months for money laundering and bankruptcy fraud. Brennan was also ordered to pay nearly \$4.6 million in restitution, approximately \$100,000 more than the amount he was convicted of fraudulently failing to list when he filed bankruptcy in 1995. The Newark office of the U.S. Trustee made the referral for bankruptcy fraud based upon Brennan's failure to disclose assets on his bankruptcy petition and monthly operating reports, and the referral for money laundering based on records compiled by the Chapter 11 trustee and pleadings in the underlying personal and corporate bankruptcy cases.

- The Newark office of the U.S. Trustee also assisted in a criminal matter filed in the Middle District of Pennsylvania, providing information about assets that Jeffrey Kimssy, a/k/a Hyoung Soo Kim, had not listed in his corporate and individual Chapter 11 cases in the District of New Jersey. Kimssy was sentenced to 46 months imprisonment and ordered to pay more than \$2.2 million in restitution based on his guilty plea to one count of conspiracy to commit bank fraud, provide false statements to lending institutions, commit bankruptcy fraud, and evade income tax.

- Attorney Paul B. Morley of Canton, Mass., pleaded guilty in the District of Massachusetts to

one count of bankruptcy fraud for concealing his interest in a condominium. Morley did not disclose the property interest in his bankruptcy documents. Later, in testimony he gave during an adversary proceeding filed by the Chapter 7 trustee who had objected to his discharge, Morley falsely asserted that he held no interest in the condominium when in fact he had moved the property back and forth between himself and his son, to benefit from its sale. The Boston office of the U.S. Trustee referred the case to the FBI and the U.S. Attorney for investigation and prosecution, and assisted by providing documents, tapes of Section 341 meetings, and transcripts of testimony.

- Evidence secured by the U.S. Trustee in support of a motion to convert, as well as testimony elicited by the bankruptcy court, was crucial in the U.S. Attorney's efforts to obtain a guilty plea from Raymond Koutz of Baltimore. Koutz, a principal in the Chapter 11 case of United Enterprises Construction Co., was sentenced in the District of Maryland to one year and one day in prison and ordered to pay restitution of \$418,411. Koutz diverted more than \$500,000 in accounts receivable owed to the debtor construction company. Along with another insider, Koutz skimmed the money to an undisclosed bank account and converted the proceeds to personal use, which was discovered through a combined investigation by the FBI, U.S. Trustee, and U.S. Attorney. The Baltimore office of the U.S. Trustee immediately sought conversion of the case to Chapter 7, and subpoenaed Koutz and the insider along with all of the debtor company's bank records. Koutz ultimately pleaded guilty to making a false oath.

- The Philadelphia office of the U.S. Trustee worked with the FBI on a case that resulted in three top executives of debtor company Interstate Savings Inc. pleading guilty in the Eastern District of Pennsylvania to charges of bankruptcy

*"Hoyt devised a web of more than 270 entities that made it difficult to learn the true state of his assets and financial affairs. Identifying assets was difficult because the schedules and testimony were so unreliable. For example, in some instances Hoyt's false computerized book entries relating to his cattle herds showed calves giving birth to their own mothers. To analyze Hoyt's financial affairs, Assistant U.S. Trustee Neal Jensen of Great Falls and Bankruptcy Analyst Allen Painter of Portland retrieved thousands of boxes of records containing millions of documents."*

*Pamela Griffith  
Assistant U.S. Trustee  
Portland*



*“When trial attorneys from the U.S. Trustee Program serve as Special Assistant U.S. Attorneys, we participate in the prosecutorial decision-making within the U.S. Attorney’s office from grand jury through sentencing. My role as a SAUSA complements the role of the Assistant U.S. Attorney: while I learn more about the criminal prosecution process, the Assistant U.S. Attorneys learn more about the bankruptcy process.”*

*Joe McGonigal  
Trial Attorney  
Indianapolis*

fraud and tax fraud. Matthew Freedman of Basalt, Colo., pleaded guilty to bankruptcy fraud; Edward Freedman, also of Basalt, pleaded guilty to unlawful conversion of bankruptcy estate funds; and Samuel Freedman, of Marina Del Rey, Calif., pleaded guilty to bankruptcy fraud and filing a false tax return. Among other charges, Matthew and Samuel Freedman were charged with transferring \$259,000 in funds belonging to the bankruptcy estate to a Merrill Lynch account in the name of a non-debtor corporation they controlled. The U.S. Trustee identified and provided certified copies of documents necessary to support the charges, gave testimony before the grand jury, and helped determine the amount of loss from the fraud.

- As a Special Assistant U.S. Attorney, an attorney from the Cleveland office of the U.S. Trustee worked with an Assistant U.S. Attorney to prosecute Robert Spisak and Mark Saffell, who were officers of debtor company Sequel Computers. Spisak and Saffell pleaded guilty in the Northern District of Ohio to charges of bank fraud, bankruptcy fraud, and check kiting. Both officers produced false collateral reports for Sequel and directed a pre-petition check kite, and Spisak made false statements in Sequel’s bankruptcy case.
- An attorney from the Indianapolis office of the U.S. Trustee was appointed Special Assistant U.S. Attorney and served as co-counsel at the trial of James A. “Tony” Scott, who was convicted on five counts of bankruptcy fraud after a three-day jury trial in the Southern District of Indiana. Scott made false statements on his bankruptcy papers, including failing to identify his sole proprietorship and the thousands of dollars that he ran through its bank account and his wife’s account. The case was originally investigated by the Bankruptcy Fraud Working Group for the Southern District of Indiana, which includes the U.S. Trustee. The Chapter 7 trustee and the trustee’s counsel testified at the trial.

## **Embezzlements from Bankruptcy Estates**

Embezzlements from bankruptcy estates are rare because of the strict controls upon individuals who have access to bankruptcy estate funds, but they do occur from time to time. Thefts from bankruptcy estates take various forms. Funds may be misappropriated rather than being disbursed to the proper creditors, parties, or debtors. Checks payable to a third party may be written on the bankruptcy estate account or trust account. Or checks may be forged, using advanced print and imaging technology.

The following embezzlement cases were among those resolved in FY 2001:

- The Bankruptcy Fraud Task Force for the District of Arizona, including the Phoenix office of the U.S. Trustee, investigated and prosecuted an embezzlement by the accountant retained by a restaurant in Chapter 11 bankruptcy. Fred E. Clanton Jr. falsified entries and wrote checks totaling more than \$90,000 to an entity that he controlled. After being convicted by a jury, Clanton was sentenced in the District of Arizona to two years in prison and three years supervised release, and ordered to pay \$90,535 in restitution. The case trustee referred the matter to the Task Force, and the U.S. Trustee provided support to the FBI and the U.S. Attorney by providing the pertinent bankruptcy records and consulting on bankruptcy law and procedures.
- In the Western District of Texas, Linda Kilibarda, a former employee of a Chapter 13 trustee, was sentenced to 51 months in prison followed by three years of supervised release, and was ordered to pay full restitution of \$511,510 she embezzled from Chapter 13 bankruptcy estates. After the Austin office of the U.S. Trustee received a call from the standing trustee concerning a creditor’s complaint about a payment discrepancy, a four-member investigation team from various



RICHARD SIMMONS

offices in the U.S. Trustee Program spent five weeks in the trustee's office reconstructing Kilibarda's theft. The U.S. Trustee's office, the Executive Office, and the reconstruction team also worked closely with the U.S. Attorney to prepare materials relating to the prosecution. Before the theft was discovered, Kilibarda had moved to Spain, where her husband had been transferred; she later refused federal requests to return to this country for prosecution. Following extradition proceedings, the Spanish police arrested her and U.S. Marshals returned her to the United States. Kilibarda pleaded guilty to one count of bankruptcy fraud, and received sentencing enhancements for obstruction of justice and abusing a position of trust within the Chapter 13 trustee's office.

- The U.S. Trustee's office in New Orleans discovered and assisted in the prosecution of an embezzlement by Chapter 7 trustee employee Laura Uli Lee, who stole over \$900,000 from 126 bankruptcy estates, primarily by making and depositing checks payable to a company she formed with her husband. The embezzlement was revealed during the U.S. Trustee's review of a trustee "final report," which indicated that receipts from the settlement of three adversary proceedings were not accounted for on required forms or on bank statements. As in the Kilibarda case, the U.S. Trustee Program sent a team to reconstruct the theft and extensively assisted in the prosecution of Lee and her husband John D. Lee, Sr. The Lees pleaded guilty in the Eastern District of Louisiana to conspiracy by an employee of a bankruptcy trustee to embezzle property. Laura Uli Lee was sentenced to 24 months in prison, her husband was sentenced to 21 months in prison, and both were ordered to pay restitution.

### Identity Fraud and/or Social Security Fraud

Bankruptcy-related identity fraud and Social Security fraud appear to be on the rise. The most likely reasons for engaging in this conduct are to avoid detection of earlier bankruptcy filings, to hide assets, or to avoid alerting creditors that a bankruptcy case has been filed.

The following are examples of successful prosecutions for criminal identity fraud and/or Social Security fraud:

- The U.S. Trustee's Norfolk office helped in the prosecution of a Virginia Beach, Va., man who had filed bankruptcy at least 10 times since 1994 to stop foreclosure on his real property. Once the foreclosure was stayed, Samuel M. Monroe allowed each case to be dismissed. To thwart detection, Monroe used variations of his name and transposed numbers in his Social Security number. He also obtained an Employee Identification Number, altered a photo identification card, and used the card when he applied for a new mortgage. The U.S. Trustee's financial analyst retrieved and reviewed all of Monroe's archived petitions and charted relevant information including the various names and Social Security numbers he used, and the Assistant U.S. Trustee helped recommend an appropriate restitution amount by calculating the victims' losses. Monroe pleaded guilty in the Eastern District of Virginia to bankruptcy fraud and making a false statement.
- Myra Santamaria of Plainfield, N.J., pleaded guilty in the District of New Jersey to one count of filing a false bankruptcy petition. Santamaria tried to discharge \$223,973 in unsecured debt that she incurred using a false Social Security number, which she also used on her bankruptcy petition. The true holder of the number, a retired police officer, found out about the bankruptcy filing in his name when he tried to buy a car. He

*"The U.S. Attorney relied almost exclusively upon the work of the reconstruction team in preparing the criminal case against the Chapter 13 trustee's employee. The FBI agent later told me that the team's work was critical to the prosecution of the case. The team members were from offices around the country—Richard Spangler, Senior Bankruptcy Analyst in Columbia; Richard Rader Jr., Bankruptcy Analyst in Indianapolis; Linda Aguilar, Bankruptcy Analyst in New Orleans; and Martha Hollowell, Office of Review and Oversight in the EOUST."*

*Richard Simmons  
U.S. Trustee  
Houston*



*“This scheme preyed on some of the most financially strapped and desperate members of our community. It was both professionally and personally rewarding to be part of the team that brought these defendants to justice. The more we can educate the public about these schemes, the more we can prevent future occurrences.”*

*Nancy Resnick  
Trial Attorney  
Dallas*

contacted the Newark office of the U.S. Trustee, which referred the case to the U.S. Attorney.

### **Credit Card Fraud**

Most often, bankruptcy-related credit card fraud consists of a debtor’s attempt to discharge credit card debt that was incurred through fraudulent conduct such as lying on a credit card application. Sometimes, this is part of a scheme called a “credit card bustout,” in which an individual runs up an enormous amount of consumer credit card debt for purchases and cash advances with the intent of filing bankruptcy, concealing the assets obtained by using the card, and discharging the entire debt. The individual may have made false statements on credit applications in order to obtain the credit, and may file bankruptcy several times using false names and Social Security numbers.

This case is an example of a credit card bustout:

- Acting on a referral by the Chapter 7 trustee, the Newark office of the U.S. Trustee helped provide bankruptcy documents and records to assist in the prosecution of Ibrahim O. Elwahsh of Clifton, N.J. Between November 1995 and February 1996, Elwahsh used more than 20 credit cards to obtain cash advances, gift certificates, and luxury items, including more than 50 round-trip airline tickets that he used or sold. As he reached his credit card limits, Elwahsh sent checks knowing that they were drawn on accounts with insufficient funds. He filed bankruptcy to eliminate the debts he incurred through fraud. Elwahsh ultimately pleaded guilty in the District of New Jersey to charges that he fraudulently incurred about \$450,000 in credit card debt and then sought to discharge the debt in bankruptcy. He was sentenced to two years in prison and two years supervised release, and ordered to pay \$496,000 in restitution.

### **Mortgage Foreclosure Scams**

Individuals who operate fraudulent schemes that target people facing foreclosure or eviction are subject to criminal as well as civil penalties. As described earlier, some bankruptcy petition preparers solicit clients whose homes are listed in the foreclosure notices, falsely promise to work out a client’s mortgage problems for a fee, and instead either persuade the client to file bankruptcy or place the client in bankruptcy without the client’s knowledge. In many mortgage foreclosure scams, the filing of the bankruptcy petition is merely a means to prolong the fraud—and the clients’ payments—until foreclosure becomes inevitable.

A single mortgage foreclosure scam can harm tens or even hundreds of families, many of whom end up losing their homes. These scams also interfere with bankruptcy administration by clogging the courts with bankruptcy cases that are never carried forward. The Program works closely with the FBI and other law enforcement agencies to detect and prosecute mortgage foreclosure scams.

Successful prosecutions for mortgage scam operations in FY 2001 include these cases:

- Several successful prosecutions resulted from “Operation Payback,” a year-long multi-agency undercover investigation in Dallas aimed at bankruptcy fraud and mortgage fraud in the Northern District of Texas. The operation was a joint undertaking by the Dallas offices of the U.S. Trustee, FBI, U.S. Postal Inspection Service, and HUD Office of Inspector General, with FBI undercover agents posing as homeowners facing eviction in order to develop evidence regarding mortgage foreclosure scams. The investigation resulted in the prosecution of several defendants whose businesses made their money from the “set-up fees” and monthly payments they charged



JAN PAUL MILLER

to homeowners while they purported to re-negotiate the defaulting mortgages. As part of their mortgage foreclosure scam, the defendants instructed the distressed homeowners to purchase a “bankruptcy kit” from a local stationery or business supply store. One of the scam operators even provided instructions over the telephone for preparing and filing a Chapter 13 bankruptcy petition. The sole purpose of the bankruptcy filings was to prolong the scheme—and the monthly payments—for another month or two before foreclosure on the client’s home. One business defrauded homeowners out of approximately \$500,000.

Trial Attorney Nancy Resnick from the U.S. Trustee’s Dallas office received a commendation from the FBI for her assistance in the undercover operation.

- After successfully participating in civil actions in Maryland, the Eastern District of Virginia, and the District of Columbia against bankruptcy petition preparer Edna Marie Hicks, the U.S. Trustee’s offices in Baltimore, Greenbelt, Alexandria, and Richmond worked with the U.S. Attorney in the District of Maryland to obtain a criminal conviction against her. U.S. Trustee staff provided substantial assistance that included helping to uncover crimes Hicks committed while on supervised release. Based on her guilty plea to bankruptcy fraud, mail fraud, wire fraud, and contempt of court, Hicks was sentenced to 52 months in prison and three years supervised release, ordered to pay restitution of \$58,215, and fined \$7,500. Hicks had defrauded more than 40 victims through various schemes, including a scam under which she instructed persons facing foreclosure to divert their mortgage payments to her company. Hicks advised some clients to delay foreclosure by filing bankruptcy, and in some cases she prepared the petitions although she told the clients an attorney would do so. Hicks also filed

bankruptcy on her own behalf four times between 1993 and 1999, using four different names and Social Security numbers.

- The U.S. Trustee offices in Baltimore, Greenbelt, and Alexandria also assisted in the prosecution of Phillip Pierce of Fairfax, Va., who was sentenced in the District of Maryland to 41 months in prison and ordered to pay almost \$440,000 in restitution. Pierce pleaded guilty to bankruptcy, mail fraud, and failure to file a tax return. Pierce’s companies targeted low-income homeowners in Maryland, Virginia, Florida, and North Carolina.
- Sergio Romero, the landlord whose civil case in the Central District of California was profiled earlier in this chapter, was also criminally prosecuted for his activities. During the U.S. Trustee’s investigation of Romero’s activities, one of the tenants in whose name he filed a bankruptcy case told the U.S. Trustee that he tried to bribe her to change her testimony. Romero pleaded guilty to charges of bribery and of filing three bankruptcy cases in the names of others without their consent.

### MULTI-AGENCY WORKING GROUPS

Many of the successful enforcement actions occurring in FY 2001 resulted from the work of national and regional bankruptcy fraud working groups. The Program is an integral member of several national law enforcement working groups, serving as a resource and providing information and education on the bankruptcy system and specific law enforcement initiatives. In addition, U.S. Trustee field offices in more than 60 judicial districts participate in regional or local bankruptcy fraud working groups, which generally are headed by the local U.S. Attorney and include the FBI and other federal law enforcement agencies.

*“Ms. Hicks was a thorn in the side of the Bankruptcy Court for the District of Maryland for several years. She also succeeded in defrauding a number of law-abiding, trusting couples out of much of their savings. Through the combined efforts of the U.S. Attorney, the U.S. Trustee, and the FBI, we were able to prosecute her for a variety of crimes. This case is an excellent example of what can be accomplished when the U.S. Attorney, U.S. Trustee, and FBI work together to pursue individuals who prey upon the public and disrupt the court system.”*

*Jan Paul Miller  
U.S. Attorney for the  
Central District of Illinois  
and former Assistant U.S.  
Attorney for the District of  
Maryland*



*“The National Bankruptcy Fraud Working Group brings together law enforcement agencies to focus attention on the law enforcement response to significant crime problems relating to bankruptcy. Through the efforts of the working group, attention has been focused on problems such as mortgage foreclosure fraud, equity skims, and identity fraud, all of which use the bankruptcy system as the tool to perpetrate fraud against innocent victims.”*

*Sandra Rasnak  
Assistant U.S. Trustee  
Chicago*

These working groups provide a coordinated mechanism for sharing information and assisting in the investigation and prosecution of bankruptcy crimes. They include:

#### **National Bankruptcy Fraud Working Group**

This working group includes not only members from Justice Department components such as the U.S. Trustee Program, the U.S. Attorneys, the Criminal Division, and the FBI, but also representatives from a variety of federal agencies including the Internal Revenue Service’s Criminal Investigation Division, the Department of Housing and Urban Development’s Office of Inspector General (HUD/OIG), the Treasury Department, the Social Security Administration’s Office of Inspector General, the Postal Inspection Service, the Veterans Administration, the Federal Trade Commission, the Securities and Exchange Commission, and the Commodities Futures Trading Commission. The working group develops a coordinated law enforcement response in emerging areas of bankruptcy fraud such as identity fraud, health care fraud, mortgage fraud, and credit card bustouts.

#### **Internet Fraud Working Group**

This working group serves as a clearinghouse for complaints of Internet fraud and white collar fraud operated through the Internet. The Program provides assistance in investigating and prosecuting bankruptcy-related Internet fraud.

#### **Identity Theft Subcommittee of the Attorney General’s Council on White Collar Crime**

The Program’s work with this subcommittee provides contacts with other law enforcement

groups whose mandate is to investigate and prosecute identity theft cases.

#### **Health Care Fraud Working Group**

Sponsored by the Fraud Section of the Justice Department’s Criminal Division, this working group includes a variety of agencies that deal with health care issues.

#### **TRAINING AND OUTREACH**

Another aspect of the Program’s civil and criminal enforcement role is its commitment to providing bankruptcy-related training, education, and outreach. Each year, the Program presents a variety of educational programs relating to fraud and abuse in the bankruptcy system for its own employees, law enforcement personnel, private trustees, bankruptcy attorneys, and the public. Program officials and staff also speak at conferences, bar association meetings, and community programs.

Examples of the Program’s efforts in FY 2001 to provide information about fraud and abuse in bankruptcy include the following:

- A bankruptcy fraud presentation for new FBI agents at the FBI training academy in Quantico, Va., was planned and presented with the aid of several Assistant U.S. Trustees.
- Program employees helped plan and conduct two week-long bankruptcy fraud courses sponsored by the Executive Office for U.S. Attorneys’ Office of Legal Education (OLE). Attendees included Assistant U.S. Attorneys, Program attorneys and financial analysts, and staff from the FBI, HUD/OIG, and other law enforcement agencies. Other OLE courses on white collar crime



TERRI ANDERSEN

and bankruptcy civil enforcement also included instructors from the Program.

- The Program works closely with the DOJ Criminal Division's Fraud Section to plan the periodic meetings of the National Bankruptcy Fraud Working Group, including developing a newsletter that focuses on "hot topics" in bankruptcy crime.
- Field offices in various cities including Chicago, Los Angeles, Memphis, Sacramento, Des Moines, Houston, Atlanta, Miami, New Haven, Tulsa, and Albany sponsored bankruptcy fraud training and informational sessions for Assistant U.S. Attorneys, staff from other federal agencies,

state and local law enforcement agents, and local practitioners.

- U.S. Trustee Program attorneys and financial analysts participated in several training courses for HUD/OIG agents and auditors, providing instruction on basic bankruptcy law and bankruptcy-related housing fraud.
- In the area of identity theft, U.S. Trustee Program attorneys participated in a Federal Trade Commission forum for victims of identity theft, and a DOJ Criminal Division forum for state and local law enforcement groups.

*"At the FBI training academy, Special Assistant U.S. Attorney Sandy Klein, FBI Special Agent Norma Ballard, and I have provided training on bankruptcy basics as well as specialized training on bankruptcy fraud scams. U.S. Trustee Program staff work closely with the FBI to assist in bankruptcy fraud investigations and prosecutions, and our training sessions help familiarize new agents with this area of law enforcement."*

*Terri Andersen  
Assistant U.S. Trustee  
Los Angeles*

## CHAPTER 4. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

Although the U.S. Trustee participates in bankruptcy cases filed under all chapters, much of the significant case involvement by Program attorneys and analysts occurs in Chapter 11 cases. Absent extraordinary circumstances, a trustee is not appointed in a Chapter 11 case, and the debtor remains in possession of its assets and in control of its business operations. Further, except in the very large reorganization cases, creditor participation is generally limited and therefore the U.S. Trustee closely scrutinizes the debtor's financial condition.

The U.S. Trustee actively monitors the progress of each Chapter 11 case from the day of filing by reviewing pleadings and financial documents, conducting an initial interview with the debtor and the debtor's representatives, evaluating the debtor's financial viability through analysis of the debtor's monthly operating reports, and ensuring compliance with the various requirements of the bankruptcy court and the U.S. Trustee. The U.S. Trustee monitors the debtor's financial transactions while it is in Chapter 11 and ensures that the debtor timely pays its taxes, including Social Security and employment taxes, and retains appropriate insurance on estate assets. To make sure that cases move through the system in a timely and efficient manner, U.S. Trustees promptly file motions to dismiss or convert cases to Chapter 7, appoint a trustee or examiner, or compel the debtor to comply with other requirements of the law, whenever cases appear to be faltering.

Some Chapter 11 business reorganizations are extremely complex, involving a number of related debtors, multiple bankruptcy professionals, significant assets and liabilities, and difficult legal issues. Complex issues often arise in Chapter 11

cases filed by public companies, of which there were more than 250 in calendar year 2001. In addition to the duties performed in all Chapter 11 cases, large complex reorganizations generally require significant involvement by the U.S. Trustee in the early stages of the case. For example, in large cases, motions that may have a significant impact on the case are typically filed on the first day, without advance notice to creditors. The U.S. Trustee closely reviews those motions to ensure that the rights of third parties are not prejudiced merely because those parties lacked the opportunity to appear and be heard. Early duties also including appointing creditors' committees, monitoring the employment of professionals, identifying debtors' banking relationships, clarifying financial reporting requirements, and scheduling and conducting the Section 341 meeting of creditors.

### U.S. TRUSTEE'S DUTIES IN CHAPTER 11 CASES

The U.S. Trustee is directed by statute to engage in a range of duties aimed at supervising Chapter 11 cases and ensuring that they are administered as fairly and efficiently as possible. The U.S. Trustee's duties in Chapter 11 include:

- **Reviewing First Day Orders.** The U.S. Trustee reviews the debtor's requests for emergency orders early in a bankruptcy case, and ensures that the requested relief is tailored to the circumstances. For example, debtors may seek immediate court approval to retain professionals, obtain emergency financing, and pay certain suppliers. These requests may affect the rights of creditors and alter their ability to negotiate the terms of the debtor's reorganization later in the case.
- **Conducting Initial Debtor Interviews.** Immediately after a Chapter 11 case is filed, the

U.S. Trustee contacts the debtor's attorney to schedule an "initial debtor interview." In the interview, the U.S. Trustee meets with representatives of the debtor to discuss the reasons for filing the case, consider the debtor's early plans for reorganization, and assess the debtor's financial viability. At the initial debtor interview, the U. S. Trustee also advises the debtor of its fiduciary obligations and of the U.S. Trustee's role in case administration.

- **Appointing Official Committees.** As soon as possible after a case is filed, the U.S. Trustee appoints a committee of unsecured creditors, determines whether additional official committees should be established, and engages in oversight of committee actions. Each committee upholds the interests of the creditor group it represents.

- **Conducting Meetings of Creditors.** Within a reasonable time, generally between 20 and 40 days after a case is filed, the U.S. Trustee schedules, convenes, and presides at a meeting of creditors. The debtor, or a representative of the debtor in a corporate case, is required to appear at the meeting and submit to examination under oath. The debtor may be examined by certain entities including the U.S. Trustee, a trustee or examiner appointed in the case, an indenture trustee, and creditors.

- **Monitoring Employment and Compensation of Professionals.** The U.S. Trustee reviews and, if appropriate, objects to applications filed by professionals seeking employment in the case, payment of compensation, and/or reimbursement of expenses. Professionals who serve in the case—might include attorneys, accountants, auctioneers, investment advisors, turnaround specialists, and real estate brokers. For example, the U.S. Trustee might object to employment of a law firm on the ground that the firm has a conflict of interest arising from its work for other clients. As another example, the U.S. Trustee might challenge

the reasonableness of professional fees billed in a case, such as charges for drafting a failed reorganization plan after financial information clearly showed that the plan would not be feasible.

- **Reviewing Reorganization Plans and Disclosure Statements.** The U.S. Trustee reviews reorganization plans and disclosure statements filed by parties in the case to make sure they provide adequate and accurate information. During FY 2001, U.S. Trustees filed approximately 1,200 objections to disclosure statements and nearly 500 objections to confirmation of debtors' plans. Objections to disclosure statements were sustained or disclosure statements were voluntarily amended in approximately 1,050 cases, while confirmation was denied or plans voluntarily amended in nearly 370 cases.

- **Ensuring Compliance.** The U.S. Trustee ensures that all required reports, schedules, and fees are timely filed, and that the debtor manages money and assets consistent with the Bankruptcy Code and with its fiduciary duty to creditors. Required documents include the debtor's monthly operating reports, tax returns, schedules of income and expenses, and proof of insurance. These documents allow parties to monitor the debtor's progress toward reorganization.

- **Preventing Delay and Preserving Assets.** The time within which Chapter 11 cases are confirmed, dismissed, or converted has decreased significantly over the past several years. A higher percentage of cases are now completed within one to two years of filing, and the number of cases pending for three years or more has declined from 1,422 in 1994 to 494 in 2001. Approximately 90 percent of all Chapter 11 cases are now completed within two years of filing. The U.S. Trustees take action to prevent undue delay by, for example, filing motions to dismiss the case, to convert the case to a Chapter 7 liquidation, or to appoint a Chapter 11 trustee. During

FY 2001, U.S. Trustees filed more than 3,600 motions to dismiss or convert Chapter 11 cases. During the same period, approximately 1,900 motions to dismiss or convert were granted, and nearly 740 motions were withdrawn prior to hearing because of voluntary debtor compliance. During FY 2001, bankruptcy courts denied fewer than 300 motions to dismiss or convert, while other motions were still pending at the end of the fiscal year.

- **Appointing Chapter 11 Trustees and Examiners.** Although the debtor generally remains in possession of its assets while reorganizing in Chapter 11, the court may order the appointment of a Chapter 11 trustee if it determines that cause exists or that the appointment is in the best interest of creditors, equity holders, and others with an interest in the estate. A trustee “steps into the shoes” of the debtor’s management, and acts as a fiduciary for all interested parties. The court may also decide to leave the debtor’s management in place, but direct the appointment of an examiner to investigate and report on the debtor’s conduct, assets, liabilities, business operations, and financial conditions. If the court orders the appointment of a trustee or examiner, the U.S. Trustee, after consultation with the parties and subject to court approval, appoints a disinterested person to serve in that capacity.
- **Combating Fraud.** The U.S. Trustee investigates criminal, fraudulent, or abusive conduct for possible civil or criminal prosecution. The U.S. Trustee pursues civil penalties, and refers cases of apparent criminal fraud to the U.S. Attorney for investigation and criminal prosecution.

## **EMPLOYMENT AND COMPENSATION OF PROFESSIONALS**

One of the Program’s statutory duties is to monitor the professionals who serve in bankruptcy cases—such as attorneys, accountants, auctioneers, real estate brokers, and financial advisors—to ensure full disclosure of potential conflicts, compliance with the law, and reasonable compensation. This responsibility is carried out daily throughout the country in all cases, both large and small. While all of the Program’s functions collectively contribute to the integrity of the system, its efforts in the area of conflicts and compensation are particularly noteworthy and are credited by many with making the bankruptcy system fairer and more accountable. During FY 2001, formal actions and informal inquiries initiated by U.S. Trustees regarding employment and compensation of professionals in both Chapter 7 and Chapter 11 cases resulted in professional fee reductions or disgorgements totaling more than \$41.5 million.

In past years, most employment and fee requests were from attorneys and accountants, and many of the practices and procedures for examining conflicts and compensation were fairly well established. Recently, however, additional types of “advisory services” have become involved in Chapter 11 reorganizations as cases become more complex and as more sophisticated strategies are employed. Investment bankers, crisis or turnaround specialists, and financial consultants may become involved in all aspects of a troubled company’s operation, both before and after the bankruptcy filing. The Bankruptcy Code, however, limits the retention of any professionals when they have served the debtor, have connections with parties related to the debtor or creditors prior to the commencement of the case, or are part of management.



ROBERTA DEANGELIS

Examples of cases involving professional fees include the following:

- Significant new protocols for the employment of crisis managers in Chapter 11 cases emerged from negotiations in the bankruptcy cases of Harnischfeger Industries Inc. and Safety-Kleen Corp. The U.S. Trustee in the District of Delaware had filed a disgorgement action against a turnaround specialist, and the ensuing settlement discussions led to consideration of the Bankruptcy Code's restrictions on professionals and the role that such specialists play in the management of a troubled company. The turnaround specialist agreed to a settlement under which it would disgorge \$3.25 million in fees and abide by certain guidelines when seeking retention in future Chapter 11 bankruptcy cases. The protocols permit Chapter 11 debtors to employ turnaround specialists as part of their management, but still provide safeguards of notice and opportunity to allow creditors and other parties in interest to object to the employment of the firm and to review its compensation. Among other things, the protocols for future retention limit the turnaround specialist to serving in only one capacity in a Chapter 11 case—for example, as crisis manager, financial advisor, claims agent/claims administrator, or investor/acquirer.
- In the Northern District of California, the U.S. Trustee successfully objected to a financial advisor's conditions of employment by Chapter 11 debtor Komag Inc. An accounting firm sought to be employed by the debtor as special restructuring and financial advisor, under an agreement that any claim relating to its services would be tried in federal court or submitted to mediation and binding arbitration, and that the debtor waived its right to jury trial. The agreement purported to bind all successors, including the Chapter 7 trustee. The U.S. Trustee argued that the firm should not get special protection and

that the dispute resolution clause was not in the best interests of the bankruptcy estate. After the bankruptcy court issued a tentative ruling sustaining the U.S. Trustee's objection, the firm withdrew from the case.

- The Tampa office of the U.S. Trustee filed disgorgement motions against two law firms and an accounting firm in the bankruptcy case of Gulf Coast Orthopedic Center. The motions were based on the failure of all the professionals to disclose their ongoing representation of the debtor's affiliates and insiders, and to disclose the existence of significant inter-company debt. Immediately prior to trial, the parties reached an agreement and the Bankruptcy Court for the Middle District of Florida approved a settlement requiring the disgorgement of attorneys' and accountants' fees totaling \$320,000 and the denial of pending fee applications totaling \$219,409. The aggregate benefit to the estate was nearly \$540,000, or 88 percent of the total fees sought.
- The Newark office of the U.S. Trustee achieved a settlement of an objection to professional fees in the case of Greate Bay Hotel and Casino Inc., which resulted in a disgorgement and voluntary reduction of fees totaling \$475,000. The objection arose from the retention of the accountants/financial advisors for the unsecured creditors' committee. While performing its post-petition duties, the accounting firm's restructuring group broke away and formed a separate entity. In the final applications, the restructuring group sought \$214,081 in fees and expenses and the accounting firm sought \$44,035. The U.S. Trustee objected, and the ensuing discovery revealed both entities' connections with certain creditors and parties in the case. The entities agreed to a consent order stating that the restructuring group was not retained by the estate and would receive no fees, the accounting firm could retain only the \$175,000 in fees and expenses awarded in interim

*“Creditors and interested parties have a right to know if the firms hired to assist a Chapter 11 debtor in its restructuring have another agenda, such as to buy the company for their own account. In one of these matters the turnaround firm and its investment affiliate made a joint presentation to the company two days after it filed its bankruptcy, but this fact was not disclosed. Under the protocols, the turnaround firm will not be permitted to act in such a dual capacity and these activities must be disclosed.”*

*Roberta DeAngelis  
Assistant U.S. Trustee  
Wilmington*



*“On one occasion before the examiner was appointed, the debtor failed to make its payroll and we were faced with the prospect of a crisis: employees for 54 nursing homes walking out if their paychecks bounced. After we obtained appointment of the examiner, however, there were no other defaults relating to payroll. The Texas officials and the examiner worked together to report on patient conditions, and the examiner filed an extensive report recommending that the case proceed as a reorganization. This was fortunate, as liquidation would have involved the closing of the nursing homes, and the transition of almost 4,000 patients to other facilities.”*

Timothy O'Neal  
Assistant U.S. Trustee  
Tyler

applications, and both entities would disgorge \$217,013 to the estate.

- In the Chapter 11 case of Bishop Henry B. Hucles Nursing Home Inc., filed in the Eastern District of New York, the U.S. Trustee's Brooklyn office filed a 39-page fee objection to the fee applications filed by 11 professionals, including counsel, special counsel, accountants, and financial consultants to the debtors. The U.S. Trustee argued, among other things, that the amount of hours spent by the professionals was far out of proportion to the tasks required and the results achieved. After the Bankruptcy Court advised the professionals that it was persuaded by the U.S. Trustee's objections, they agreed to reduce their aggregate fees by \$600,000.

#### **APPOINTMENT OF TRUSTEE OR EXAMINER**

Pursuant to 11 U.S.C. § 1104, the U.S. Trustee or any party in interest may seek the appointment of a Chapter 11 trustee for cause including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case. Further, the U.S. Trustee is authorized to seek appointment of an examiner to investigate the conduct of the debtor and report back to the court. Generally, an examiner is appointed only where there are questionable management activities, unexplained irregularities in the debtor's financial history, or other special factors.

The following are examples of cases in which the U.S. Trustee sought appointment of a trustee or examiner:

- The Bankruptcy Court for the Southern District of Indiana ordered the appointment of a Chapter 11 trustee in DGM Healthcare Inc., d/b/a

Bethany Village, which operated a nursing home in Indianapolis. The Indianapolis office of the U.S. Trustee sought the appointment after the bankruptcy analyst discovered unusual cash withdrawals in the debtor's monthly bank statements that did not match the entries in the debtor's monthly operating reports. Further discovery revealed that the debtor's principal had diverted approximately \$117,000 from the estate since the date of filing. The debtor's principal and the debtor's bookkeeper were ultimately indicted in Marion County on 17 counts including corrupt business influence, theft, and perjury.

- The U.S. Trustee's office in Tyler sought appointment of an examiner in the bankruptcy cases of Texas Healthcare Enterprises Inc., which involved dozens of nursing homes. The examiner's three basic objectives were to monitor the debtor's financial condition; act as a liaison with Texas health officials and report to the Bankruptcy Court for the Eastern District of Texas on any circumstances that might adversely affect patient care; and review and report on the debtor's financial condition and recommend whether reorganization was feasible or the cases should be dismissed.

In addition to obtaining the examiner in the case, the U.S. Trustee coordinated with the Texas Department of Health and Human Services to forestall emergencies relating to patient care. Further, despite opposition from the debtors and the creditors' committee, the U.S. Trustee obtained bankruptcy court approval of a deadline for Chapter 11 plan confirmation, and the cases were ultimately confirmed.

## MAXIMIZING THE RETURN TO CREDITORS

Another critical function of the U.S. Trustee is to ensure that proper procedures are followed to enhance the value of estate assets, so that the sale of those assets brings as much as possible for bankruptcy estate creditors. In these cases the U.S. Trustee's actions helped maximize the return to creditors:

- Shortly after filing for bankruptcy in the District of Delaware, debtor GST Telecom moved to sell substantially all of the estate assets for approximately \$450 million. The Wilmington office of the U.S. Trustee joined creditors in objecting to the debtor's proposed bid procedures, which would have sharply curtailed the time available for competing bidders to conduct due diligence investigations. Consequently, the debtors opted for an auction process, where the

same bidder eventually obtained the estate assets, but for the sum of \$690 million—a \$240 million increase in the return to creditors.

- On the day it filed a Chapter 11 petition, Railcar Specialties Inc. also filed a motion to establish bidding procedures for a sale of all its assets at an auction scheduled to be conducted in three days. The Omaha office of the U.S. Trustee objected to the reduced time period and requested that the court delay the sale to allow the U.S. Trustee to appoint a creditors' committee. The court granted the U.S. Trustee's request and a creditors' committee was appointed immediately. The committee located additional bidders, and the property was ultimately sold at auction for \$5.5 million—\$2.5 million more than the original \$3 million bid.

## CHAPTER 5. TRUSTEE OVERSIGHT

The U.S. Trustees appoint and supervise the private trustees who administer bankruptcy cases under Chapters 7, 12, and 13 in each judicial district. In FY 2001, 1,749 private trustees handled 1,793,218 cases and distributed almost \$5 billion to creditors and professionals.

Private trustees serve as “fiduciaries” for bankruptcy estates. They administer assets for the benefit of creditors and have the legal duty to act in the best interest of creditors and the estate. Fiduciaries are held to strict ethical and legal standards, and the U.S. Trustee Program regulates and monitors the private trustees’ activities to ensure they comply with those standards. The Program administers a formal system for merit selection of trustees; trains trustees and evaluates their performance; regularly reviews their operations; and intervenes to prevent loss of estate assets when embezzlement, egregious mismanagement, or other improper activity is discovered.

## CHAPTER 7 TRUSTEES

Chapter 7 trustees are often referred to as “panel trustees” because they are appointed by the U.S. Trustee to a panel in each judicial district. As Chapter 7 cases are filed, the U.S. Trustee assigns them to the panel trustees through a blind rotation process to prevent the debtor or debtor’s attorney from “trustee shopping”—attempting to have a case assigned to a particular trustee.

The U.S. Trustee appoints panel trustees for a one-year renewable term. The qualifications for appointment are established by the Attorney General under 28 U.S.C. § 586(d) and published at 28 C.F.R. § 58; additional eligibility requirements are set forth in 11 U.S.C. § 321. Panel trustees are not government employees, and most of them have a separate business or profession

such as a law or accounting practice. A trustee’s appointment to the panel is conditioned upon the successful completion of a background investigation, and trustees are subject to re-investigation every five years.

Among the main features of panel trustee oversight are:

- Providing training for newly appointed panel trustees and ongoing training for all panel trustees thereafter.
- Reviewing reports on receipts, disbursements, and other transactions during the case to monitor the progress of case administration, and reviewing final reports to ensure that all assets were properly administered and the proceeds properly distributed.
- Reviewing trustee and professional fees sought in Chapter 7 asset cases.
- Auditing and examining the trustees’ accounting and cash management systems.
- Conducting a biennial written review of every trustee’s performance.
- Seeking civil remedies for trustee impropriety or incompetence.

During FY 2001, the Program contracted with the Department of Justice’s Office of the Inspector General for 166 audits of Chapter 7 panel trustee operations. In addition, Program personnel conducted 106 trustee field examinations and 544 bi-annual trustee performance reviews. As a result of U.S. Trustee oversight activities, 30 panel trustees were suspended from receiving new case assignments due to various performance deficiencies. In addition, U.S. Trustees filed 10 motions to remove Chapter 7 trustees from their bankruptcy cases.

## Streamlining

Over the past several years, the Program has placed a great emphasis on trustee oversight to improve the efficiency and effectiveness of the bankruptcy system. This has resulted in faster administration of Chapter 7 cases and a higher level of performance by Chapter 7 trustees. For example, the number of Chapter 7 cases open longer than three years declined from 22,404 in April 1992 to only 5,430 at the end of FY 2001. The success of the Program's oversight activities has enabled the Program to shift away from comprehensive oversight to focus instead on "high risk" trustees and cases.

In FY 2001, based on recommendations of three teams of U.S. Trustee personnel, the Program simplified the review procedures for both the trustee interim reports, which are semi-annual case progress reports, and the trustee final reports, which are financial accounts submitted when a case is closed. These changes have made the review process more efficient, while maintaining safeguards to detect potential problems. The resulting savings in Program staff resources will be redistributed to other areas, particularly civil enforcement. Streamlining efforts are continuing into FY 2002.

## Other Program Activities

Other activities relating to Chapter 7 trustee oversight in Fiscal Year 2001 included:

- Completing the investigation of a large embezzlement by an employee of a Chapter 7 trustee that resulted in a loss of almost \$907,500. The investigation was performed by a reconstruction team--a group of Program bankruptcy analysts who inspected and reconstructed the trustee's financial records and case files to recov-

er evidence of the embezzlement. The reconstruction team's report was used in the successful criminal prosecution of the former employee, and in a claim filed with the trustee's bonding company to reimburse the bankruptcy estates.

- Developing a proposed national form for final reports and final accounts to improve reporting consistency and accuracy and to streamline review.
- In conjunction with the U.S. Marshals Service, developing guidance on personal security to help trustees deal with threats from debtors and others during the Section 341 meetings, when the trustees attempt to obtain estate property, and at the trustees' places of business.
- Publishing a revised Handbook for Chapter 7 Trustees.

## CHAPTER 12 AND 13 TRUSTEES

Chapter 12 and Chapter 13 cases are filed by debtors who are, respectively, family farmers and individuals with regular income. Chapter 12 and Chapter 13 trustees are called "standing trustees" because they have a standing appointment from the U.S. Trustee to administer cases within a particular geographic area. Standing trustees evaluate the financial affairs of the debtor, make recommendations to the court regarding confirmation of the debtor's repayment plan, and administer the court-approved plan by collecting payments from the debtors and disbursing the funds to creditors.

Because they administer all cases in a given area, Chapter 13 trustees handle significant sums of money. Some trustees manage large office operations that require extensive internal financial controls. Standing trustees are not government employees. The qualifications for appointment

as a standing trustee are established by the Attorney General under 28 U.S.C. § 586(d) and published at 28 C.F.R. § 58. The appointment of a standing trustee is conditioned upon the successful completion of a background investigation, and standing trustees are subject to re-investigations every five years. During FY 2001, U.S. Trustees appointed nine standing trustees, each of whom received a background investigation, and coordinated eight re-investigations.

The Program's oversight of standing trustees includes:

- Providing training for newly appointed standing trustees and ongoing training for all standing trustees thereafter.
- Performing periodic reviews of trustee case administration and financial controls.
- Coordinating the annual audits of trustees to safeguard trust funds and ensure that deficiencies are corrected.
- Conducting annual performance reviews of standing trustees.
- Fixing the percentage fee and compensation of every standing trustee.
- Reviewing and approving projected expenses of operation to ensure they are actual and necessary to administer cases.

During FY 2001, Program personnel conducted 235 standing trustee performance reviews. In addition, third parties performed 188 independent audits of Chapter 13 standing trustee operations and 13 independent audits of Chapter 12 standing trustee operations.

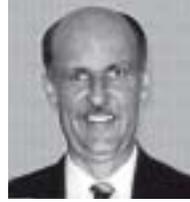
## Computer Security

In FY 2001, one of the Program's top priorities in standing trustee oversight was to improve the security of information technology systems in trustee offices. Although caseloads vary, on average each Chapter 13 trustee may administer around 4,000 cases at a time, with each case continuing for three to five years. The huge number of financial transactions completed by each standing trustee makes it imperative that automation be used effectively. In 2001, a pilot group of 17 standing trustees worked with selected consultants under the Program's direction to determine if their computer operating systems contained appropriate safeguards. The initial assessments addressed the security present in the operating system to protect bankruptcy data from manipulation, corruption, or improper use of personal data.

## Other Program Activities

Other activities related to standing trustee oversight in FY 2001 included:

- Investigating cases involving two embezzlements by employees of Chapter 13 trustees. The reconstruction teams inspected the Chapter 13 trustee operations' financial records and case files to recover evidence of the embezzlements.
- Conducting detailed management reviews of four standing trustee operations. A management review team is a group of experienced Program attorneys and accountants from outside the trustee's region, who examine all aspects of the trust operation including case administration, claims review, and financial controls. The team's report provides a blueprint for improving the trustee operation.



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## CHAPTER 6. RESEARCH, PUBLIC INFORMATION, AND EMPLOYEE TRAINING

### RESEARCH

The Program engages in data collection and analysis for both short- and long-range projects, providing information to measure the effectiveness of Program activities and shed light on the operation of the bankruptcy system. Research results are used for a variety of purposes, including guiding the development of Program practices and initiatives, and assisting and informing policy makers and the public.

#### Chapter 7 No-Asset Cases

One of the Program's first major research projects was to develop a database of Chapter 7 no-asset cases by periodically gathering and entering data from a randomly selected sample of cases collected from every field office. A no-asset case is one in which no property is collected and liquidated by the case trustee, and no funds are distributed to creditors. By FY 2001, this data base contained demographic and financial information from nearly 6,000 no-asset cases, including amounts and sources of income, living expenses, home ownership, employment status, amounts and type of debt, and in some cases, age.

The major use of this database in FY 2001 was to help develop the Program's plan to implement proposed bankruptcy reform legislation. Although the legislation was not enacted in FY 2001, the Program has undertaken a variety of initiatives to achieve the legislation's objective of combating fraud and abuse in the system. The Chapter 7 data and analyses by the research division have been instrumental in developing these new projects.

During FY 2001, Program researchers also used information from the Chapter 7 no-asset data base to produce a monthly series of articles on topics that included Chapter 7 cases with unusually high amounts of credit card debt, the impact of pre-bankruptcy credit counseling, and how a bankruptcy discharge affects a debtor's financial circumstances. These articles were published in the *American Bankruptcy Institute Journal* and posted on the Program's web site.

#### Chapter 7 Asset Cases

Since 1994, the Program has collected "case closing" information or "distribution" statistics from every Chapter 7 asset case closed throughout the United States, except Alabama and North Carolina. An asset case is one in which the trustee liquidates property turned over by the Chapter 7 debtor and distributes the resulting funds to creditors and other parties including professionals and other administrative claimants. Approximately five percent of all cases filed under or converted to Chapter 7 become asset cases. Case closing information includes the total receipts collected and total funds disbursed to parties in each case. The information is used internally to evaluate trustee performance, analyze the distribution of assets, and identify case administration patterns and techniques.

During FY 2001, the Program compiled and published an extensive report analyzing the distributions to creditors from Chapter 7 asset cases closed during the past seven years. The report was published in FY 2001 to educate the bankruptcy community and the public about how Chapter 7 operates within the bankruptcy system and its financial impact on creditors. Key findings of the report are shown in the Appendix.

*In FY 2001, Program researchers were honored by the American Bankruptcy Institute with its Outstanding Contributor Award.*

*Ed Flynn  
Operations Research Analyst  
EOUST*

*Gordon Bermant  
Consultant  
EOUST*

## Chapter 13

In FY 2001, the Program also began formally to examine the range of Chapter 13 case administration practices across the nation. To conduct this research, the Program used annual reports submitted by Chapter 13 trustees, reviews of case files, information provided by field offices, and interviews.

The researchers analyzed issues such as: variations, among districts, in the relative proportion of cases filed under Chapter 7 and Chapter 13; practices relating to bankruptcy court confirmation of Chapter 13 repayment plans; characteristics of repayment plans, such as the amount of money repaid to creditors and the duration of the plan; and the percentage of cases successfully completed by debtors. Preliminary results of these studies have been presented at seminars and workshops attended by Program staff, standing trustees, and bankruptcy judges.

### Significant Accomplishments

Starting in FY 2001, U.S. Trustees were asked to report the significant accomplishments of each of their offices. The purpose of the reporting was to aggregate Program accomplishments, identify trends and best practices, and measure the success of the Program in key areas of civil enforcement, criminal enforcement, case administration, and special litigation activities.

The significant accomplishments project reflects the renewed emphasis by the Department of Justice on performance-based management and budgeting, and helps Program managers allocate resources and devise strategies to address local problems. The significant accomplishments project also stresses the importance of accountability at all levels and provides a vehicle for Program managers to measure and reward success. The

information obtained through the significant accomplishments project enhances the Program's ability to report regularly and accurately to the Department of Justice and Congress.

Based on the reports generated by each field office, an interim summary report of Program accomplishments was drafted for use by the U.S. Trustees in their regional planning and resource management, and for the production of this annual report. Because of the initial reporting process, the annual report is based on both actual and estimated data and reflects a "snapshot" in time, so not all figures may balance. For example, the numbers of motions filed and motions decided in a given period may not match because some cases remain pending.

### PUBLIC INFORMATION AND EDUCATION

The Program also engages in outreach to inform and educate the public about the bankruptcy system, Program activities, and consumer issues.

### Web Site

The Program's web site at [www.usdoj.gov/ust](http://www.usdoj.gov/ust) makes a wealth of information easily accessible to bankruptcy practitioners, consumers, the media, and other site visitors. The site's contents include: contact information for every Program office and every private Chapter 7, 12, and 13 trustee; links to U.S. Trustee regional web sites, which contain information on local procedures and issues; statistical charts on bankruptcy filing trends nationally, by state, and by Program region; a library of bankruptcy-related articles written by Program staff; press releases and fact sheets; Program manuals, handbooks, forms, and similar materials; and regulations promulgated by the Program, as well as administrative rulings issued under those regulations.



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## Articles and Events

U.S. Trustees and Program staff are often invited by bar associations, professional organizations, law schools, other government agencies, and other groups to speak about the bankruptcy system and the Program's activities. U.S. Trustees and Assistant U.S. Trustees routinely participate on local rules committees, court liaison committees, law enforcement committees, and bankruptcy fraud working groups.

To increase public understanding about bankruptcy and the U.S. Trustees' responsibilities and policies, the Program serves as a resource for media inquiries about bankruptcy and publishes regular columns in the *American Bankruptcy Institute Journal* and the two publications of the private trustee organizations, *NABTalk* and the *NACCT Quarterly*.

Program employees attend job fairs to talk about employment opportunities in the bankruptcy system—not only within the Program, but also as private trustees, bankruptcy attorneys, accountants, auctioneers, real estate appraisers, and related professionals.

In addition to engaging in outreach on the job, Program staff across the country donate their time and talents to work with professional organizations and educate the public. For example, in FY 2001:

- The Los Angeles office of the U.S. Trustee participated in the Los Angeles Black Business Expo and Trade show, where approximately 700 exhibitors attracted more than 70,000 consumers over a three-day weekend. The U.S. Trustee distributed free educational brochures on credit, insurance, identity theft, consumer scams, and similar topics from government agencies and non-profit organizations such as the Federal

Reserve Bank, the Labor Department's Pension and Welfare Benefits Administration, the Federal Trade Commission, the California Department of Insurance, and the Lawyer Referral Service of the L.A. County Bar Association.

- The Assistant U.S. Trustee from the Honolulu office, who is a Captain in the U.S. Navy Reserve, provided training on basic bankruptcy law and procedure to financial counselors employed by the Pearl Harbor Navy Fleet and Family Support Center. Via teleconference, the presentation was broadcast live to other Family Support Centers across the country. The Family Support Centers provide support services, including advice on personal financial management, to Navy, Marine Corps, and Coast Guard personnel, retirees, and family members.

- Employees from several Program offices volunteered to teach basic money-management skills to high school students, using free lesson plans and materials developed by the National Endowment for Financial Education.

- The Assistant U.S. Trustee from the Alexandria, Va., office participated in a seminar sponsored by the D.C. Bar Association for pro bono attorneys. The attorneys who attended were primarily non-bankruptcy lawyers interested in providing bankruptcy representation for indigent individuals located in the District of Columbia.

- The U.S. Trustee and several Program attorneys from the Chicago office worked with Chapter 7 panel trustees and the Chicago Bar Association to develop and present to various senior citizen groups a program on credit and credit repair. Topics of the program included establishing credit, choosing a credit card, understanding a credit report, and protecting against credit card fraud.

*"The training I provide to financial counselors helps them advise young military families on how to manage their money wisely."*

*Gayle Lau  
Assistant U.S. Trustee  
Honolulu*



*“During FY 2001, we provided U.S. Trustee employees with a wide variety of training opportunities, from support staff development courses to management training. For the first time, we offered accounting skills classes for experienced accountants as well as for non-financial professionals. We also provided attorneys with intensive training in legal writing and appellate advocacy. During the latter part of the year, we focused on preparing Program personnel to implement the Civil Enforcement Initiative.”*

*Stephen Goldring  
National Bankruptcy  
Training Institute*

## EMPLOYEE TRAINING

Training sessions for Program personnel are held at the National Bankruptcy Training Institute, where the Program offers a full range of professional development courses. The Institute, which opened in February 1999, is located within the National Advocacy Center on the campus of the University of South Carolina in Columbia, S.C. The NAC also hosts the national training programs of the U.S. Attorneys and the nation’s District Attorneys, with courses designed and developed by the staff of the Office of Legal Education in the Justice Department’s Executive Office for U.S. Attorneys. The NAC’s state-of-the-art training site includes mock court rooms and built-in electronic facilities for videotaping and projection.

The Institute provides a variety of courses to enhance the professional and management skills of all U.S. Trustee Program employees, including secretaries, legal clerks, legal data technicians, case management specialists, computer specialists, standing trustee coordinators, paralegals, administrative assistants, financial analysts, and attorneys. During FY 2001, the Institute presented 11 courses ranging in duration from one and one-half to five days, and trained more than half of all Program employees. The courses covered a variety of topics from appellate advocacy for experienced U.S. Trustee trial attorneys to information systems training for computer specialists and case management specialists.

In FY 2001, the Institute began to focus attention on civil enforcement so that virtually all Program employees will receive training on this top priority by the end of FY 2002. Courses also were offered on emerging bankruptcy issues such as health care fraud and the failure of high technology companies. In addition, under the auspices of the NAC, three sessions providing an overview of the Program’s proposed new duties

under pending bankruptcy legislation were held in Columbia, Dallas, and Los Angeles.

Courses offered in FY 2001 included:

- Civil Enforcement (two sessions)
- Bankruptcy Fraud
- Management Training
- Support Staff Training
- Effective Legal Writing
- Analyzing Financial Documents
- Financial Analysis for Non-Accountants
- Chapter 11–Health Care, Dot.Com, and High Tech Companies
- Appellate Advocacy
- Computer Specialist/Case Manager Training

The Institute is headed by Stephen Goldring, who was appointed to the post in 1998 after serving for 10 years as the Assistant U.S. Trustee in Pittsburgh. Before joining the Program, Goldring worked for 12 years as an Assistant U.S. Attorney in Pittsburgh, including seven years as First Assistant U.S. Attorney.



PHYLLIS SHAW

## CHAPTER 7. INFORMATION TECHNOLOGY

The significant increases in bankruptcy case filings over the past few years have placed new demands upon the bankruptcy system, requiring the development of more efficient and integrated information technology systems. The Program relies upon several automated systems to perform core functions such as effectively managing more than 1 million cases, supervising private trustees, appearing as a party in court, and collecting statutorily imposed fees.

### AUTOMATED CASE MANAGEMENT SYSTEM

The work of the U.S. Trustee Program is supported by a decentralized case management system. The Automated Case Management System (ACMS) was designed to support the unique role of U.S. Trustees in managing bankruptcy cases and monitoring the work of private trustees, and has been an integral part of the Program's operations for over 14 years. To keep up with changes in technology and increased Program needs, ACMS is being updated to improve user access and provide multi-system integration.

During FY 2001, the Program's technical staff devoted significant resources to a project designed to increase the flexibility of ACMS by allowing case management data to be combined with information contained in other data bases and applications. The first step of the project involves rewriting the original code in which ACMS was written, and is referred to as "migrating to the native environment." The migration project is scheduled for completion by the end of FY 2002.

## ELECTRONIC CASE FILING

The Judicial Conference of the United States is developing an electronic case filing system (ECF or e-filing) for the electronic submission of documents to, from, and within the court via the Internet. This initiative also calls for instant electronic retrieval of case documents. Although still in its early phases, ECF is expanding rapidly in the bankruptcy courts, which are at the forefront of the federal courts' move to this new technology.

ECF offers many advantages, including the ability of parties to file pleadings and retrieve electronically filed documents from any location at any time. Further, ECF eliminates the delay between the time a document is electronically filed with the court and the time it is available to the public for review.

Nevertheless, ECF also creates some difficulties that are currently being addressed by Department and Program officials. For example, because of the sheer volume of bankruptcy filings, one of the first issues that arose for the Program was the need to manage the thousands of e-mail messages received by Program offices as a result of electronic service. Other issues include the use of electronic signatures and authentication of documents, e-fraud, privacy concerns, and new case management and archiving techniques. The Program also faces new costs for its basic operations, including court-imposed access fees, and costs for required software and hardware such as scanners, personal computers, and printers. Senior Program officials are working with representatives of the Judiciary to address some of these matters, while technical Program personnel meet regularly with an ECF technical group from the Administrative Office of the U.S. Courts and participate in an ECF working group within the Department of Justice.

*The team members who are rewriting the original ACMS code to increase the software program's flexibility include:*

*Phyllis Shaw  
Computer Specialist  
EOUST*

*Dave Matras  
Case Management  
Specialist  
Cleveland*

*Keith Manikowski  
Information Technology  
Specialist  
Chicago*

*Terri Bevan  
Case Management  
Specialist  
Minneapolis*

*Becky Smiley  
Legal Data Technician  
Cedar Rapids*

*Kathy Wieland  
Information Technology  
Specialist  
Wichita*

*Deb Malik  
Case Management  
Specialist  
Phoenix*



In FY 2001, the Program continued its ECF pilot project launched in the Southern District of New York in September 2000. In addition, the Program's regional and field offices in Atlanta worked closely with the court in the Northern District of Georgia to implement ECF in that district. Currently, there are 18 ECF production sites. During FY 2001, new servers were installed in every regional office of the Program, and all regional and district offices were equipped with the scanners and supporting personal computers needed to facilitate the implementation of ECF.

### **FEE INFORMATION AND COLLECTION SYSTEM**

An important component of the Program's information technology program is the Fee Information and Collection System (FICS)—an automated accounts receivable system that, in conjunction with data entered by field offices in

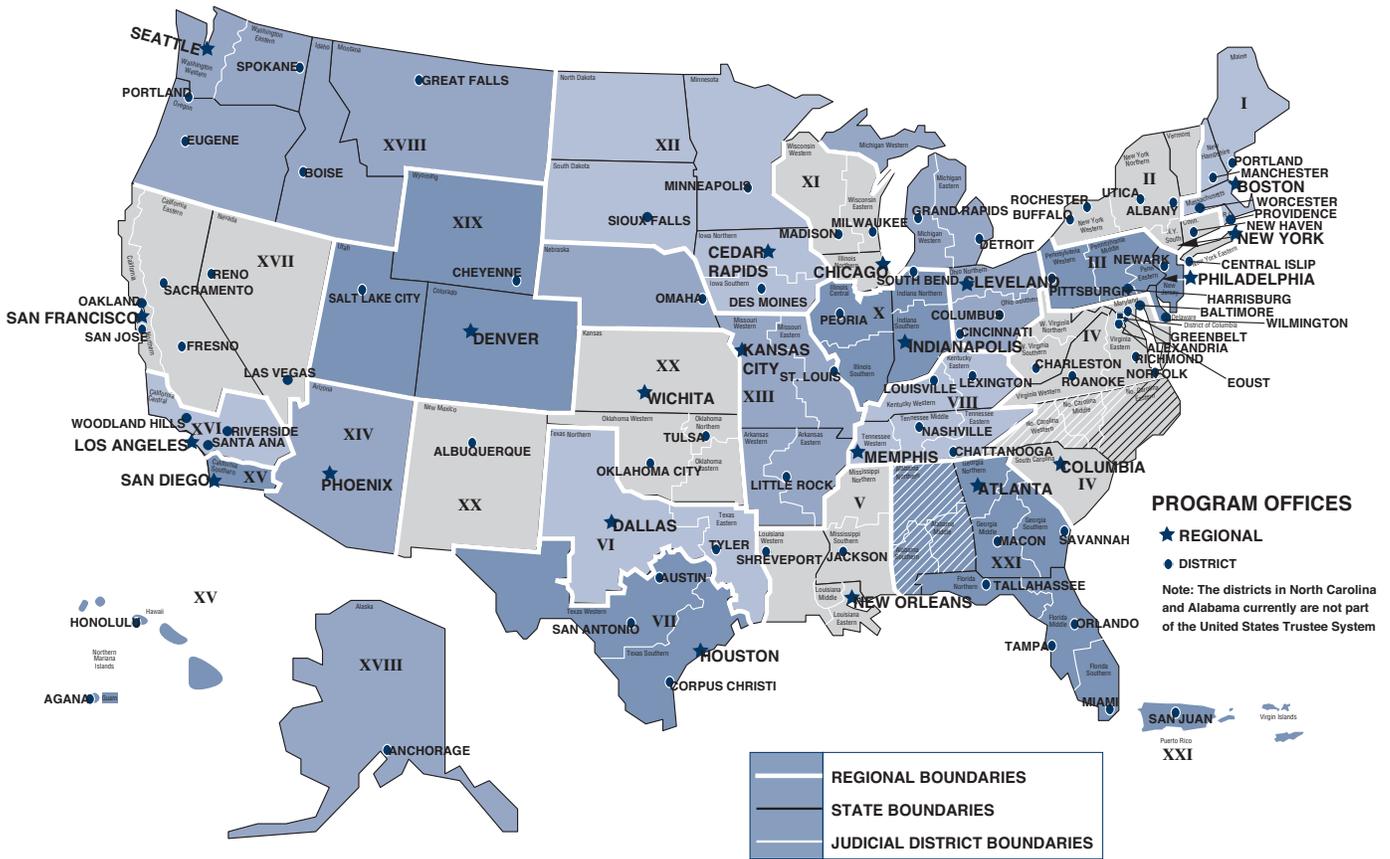
ACMS, assists the Program in billing and collecting fees from Chapter 11 debtors. A Chapter 11 debtor is required by statute to pay quarterly fees during the pendency of the bankruptcy case. FICS issues quarterly billing and delinquency statements, processes daily electronic transmissions of payments, and produces accounting and management reports. It is also used to determine the amount of quarterly fees owed by each debtor, track the fee payments, and record adjustments and payments to each receivable.

During FY 2001, the Program added a link from its Intranet to the FICS database for easier access to the EOUST from the field offices. A user can now query the database for cases within the office or region by using case number, debtor name, professional, or case status within a specified number of days; by specifying amount due or time period within which payments are made; or through any combination of these criteria.

# APPENDIX



# UNITED STATES TRUSTEE PROGRAM MAP OF REGIONS AND OFFICES

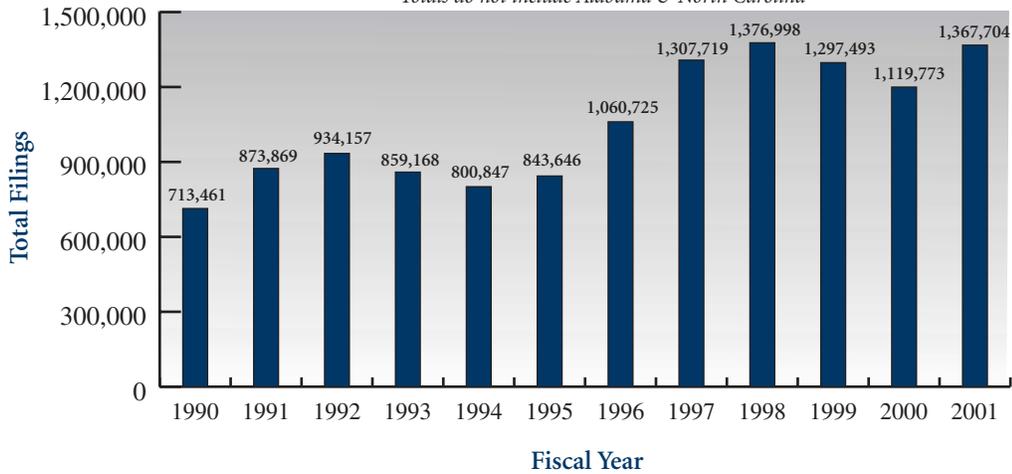


Please visit our web site at  
<http://www.usdoj.gov/ust>  
for office phone numbers  
and addresses.

U.S. TRUSTEE PROGRAM NATIONWIDE OFFICE LOCATOR			
<b>Executive Office for U.S. Trustees</b> Washington, D.C.	<b>HAWAII</b> Honolulu	<b>MISSOURI</b> Kansas City St. Louis	<b>PUERTO RICO</b> San Juan
<b><u>Regional and Field Offices (BY STATE)</u></b>	<b>IDAHO</b> Boise	<b>MONTANA</b> Great Falls	<b>RHODE ISLAND</b> Providence
<b>ALASKA</b> Anchorage	<b>ILLINOIS</b> Chicago Peoria	<b>NEBRASKA</b> Omaha	<b>SOUTH CAROLINA</b> Columbia
<b>ARIZONA</b> Phoenix	<b>INDIANA</b> Indianapolis South Bend	<b>NEVADA</b> Las Vegas Reno	<b>SOUTH DAKOTA</b> Sioux Falls
<b>ARKANSAS</b> Little Rock	<b>IOWA</b> Cedar Rapids Des Moines	<b>NEW HAMPSHIRE</b> Manchester	<b>TENNESSEE</b> Chattanooga Memphis Nashville
<b>CALIFORNIA</b> Fresno Los Angeles Oakland Riverside Sacramento San Diego San Francisco San Jose Santa Ana Woodland Hills	<b>KANSAS</b> Wichita	<b>NEW JERSEY</b> Newark	<b>TEXAS</b> Austin Corpus Christi Dallas Houston San Antonio Tyler
<b>COLORADO</b> Denver	<b>KENTUCKY</b> Lexington Louisville	<b>NEW MEXICO</b> Albuquerque	<b>UTAH</b> Salt Lake City
<b>CONNECTICUT</b> New Haven	<b>LOUISIANA</b> New Orleans Shreveport	<b>NEW YORK</b> Albany Brooklyn Buffalo Central Islip New York City Rochester Utica	<b>VIRGINIA</b> Alexandria Norfolk Richmond Roanoke
<b>DELAWARE</b> Wilmington	<b>MAINE</b> Portland	<b>OHIO</b> Cincinnati Cleveland Columbus	<b>WASHINGTON</b> Seattle Spokane
<b>FLORIDA</b> Miami Orlando Tallahassee Tampa	<b>MARYLAND</b> Baltimore Greenbelt	<b>OKLAHOMA</b> Oklahoma City Tulsa	<b>WEST VIRGINIA</b> Charleston
<b>GEORGIA</b> Atlanta Macon Savannah	<b>MASSACHUSETTS</b> Boston Worcester	<b>OREGON</b> Eugene Portland	<b>WISCONSIN</b> Madison Milwaukee
	<b>MICHIGAN</b> Detroit Grand Rapids	<b>PENNSYLVANIA</b> Harrisburg Philadelphia Pittsburgh	<b>WYOMING</b> Cheyenne

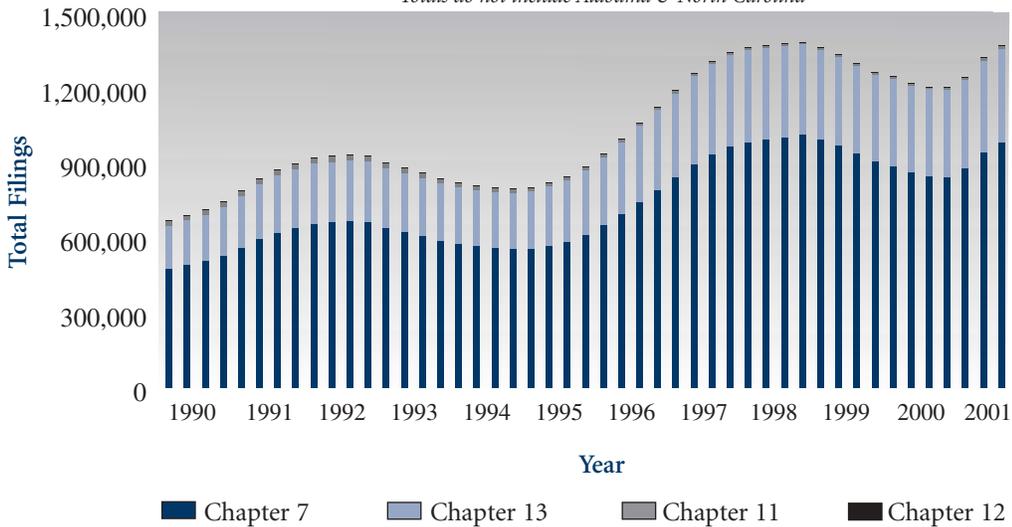
## TOTAL BANKRUPTCY FILINGS NATIONWIDE Fiscal Years 1990-2001

*Totals do not include Alabama & North Carolina*



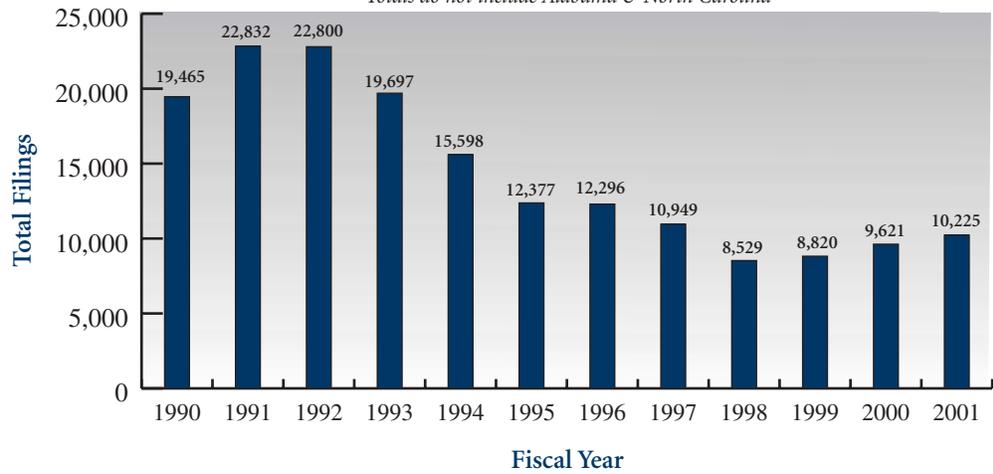
## TOTAL BANKRUPTCY FILINGS ANNUAL TOTALS—UPDATED EACH 3 MONTHS

*Totals do not include Alabama & North Carolina*



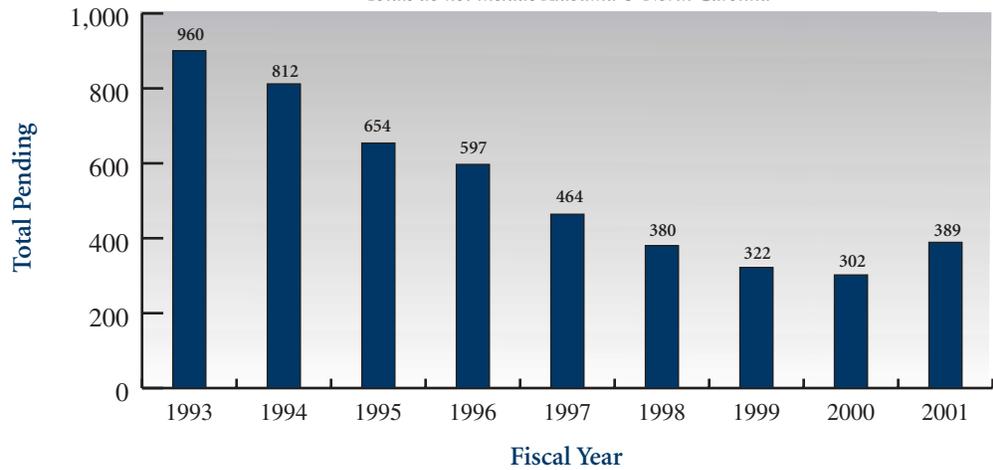
## CHAPTER 11 FILINGS NATIONWIDE Fiscal Years 1990-2001

*Totals do not include Alabama & North Carolina*



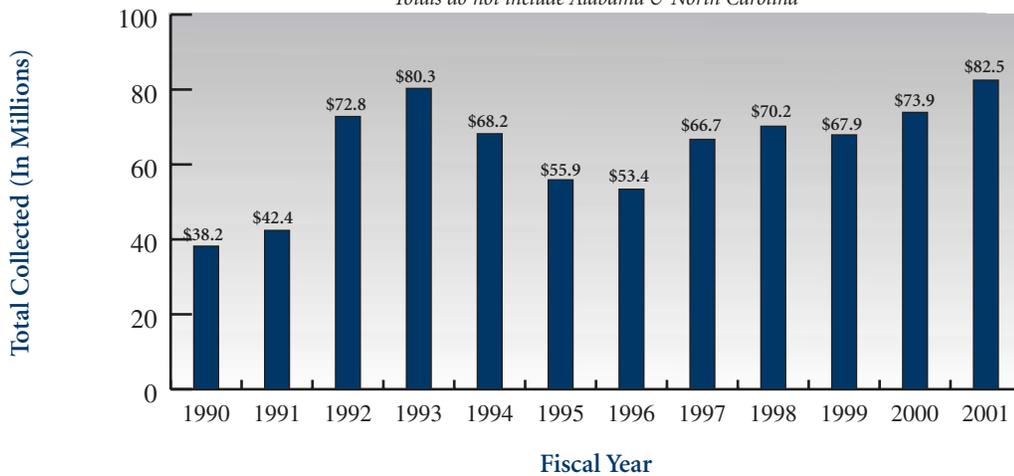
## CHAPTER 11 CASES PENDING 3+ YEARS\* October 1, 1993–October 1, 2001

*\*Chapter 11 cases at least 3 years old, which have not been confirmed, converted, or dismissed  
Totals do not include Alabama & North Carolina*



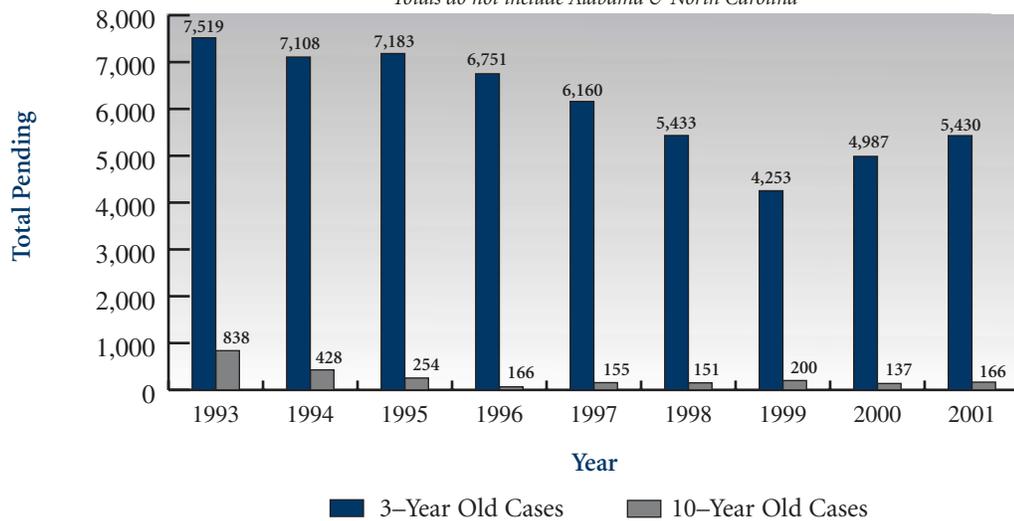
### CHAPTER 11 QUARTERLY FEE COLLECTIONS TOTAL COLLECTED Fiscal Years 1990-2001

Totals do not include Alabama & North Carolina



### CHAPTER 7 PENDING 3+ OR 10+ YEARS (As of October 1, 1993-2001)

Totals do not include Alabama & North Carolina



## KEY FINDINGS OF CHAPTER 7 ASSET CASE REPORT

The “Preliminary Report on Chapter 7 Asset Cases 1994-2000” included more than 200,000 Chapter 7 asset cases closed between January 1, 1994, and December 31, 2000. The data in the report showed total receipts generated over the seven-year period and clearly depicted how the funds were distributed. The distribution statistics were analyzed by size of case, age of case, and chapter under which the case was originally filed.

Key findings of the report include the following:

- The number of Chapter 7 asset cases increased each year beginning with 1996.
- More than \$10.5 billion was collected by Chapter 7 trustees in asset cases closed from 1994 through 2000.
- Of the \$10.5 billion collected, \$3 billion was disbursed to secured creditors; \$767 million was disbursed to priority creditors such as child support and tax claimants; \$2.5 billion was disbursed to unsecured creditors; and \$3.4 billion was distributed to trustees and professionals as fees and expenses.
- More than 50 percent of all asset cases involved total receipts of less than \$5,000. In the aggregate, these cases generated receipts totaling \$241 million.
- Each year there were 400 to 500 cases with receipts in excess of \$500,000. These large cases accounted for more than 50 percent of the receipts in all of the asset cases. Between January 1, 1994, and December 31, 2000, 3,179 large cases accounted for receipts totaling \$5.91 billion.
- Approximately 8 percent of the asset cases were first filed under another chapter of the Bankruptcy Code, such as Chapter 11 or Chapter 13, and were later converted to Chapter 7. These cases accounted for a disproportionate share of total receipts in all of the asset cases.

## KEY FINDINGS OF DEBTOR IDENTIFICATION PILOT PROGRAM

The Debtor Identification Pilot Program involved 127,590 consumer Chapter 7 and Chapter 13 cases filed in 18 judicial districts from January 1, 2001, through June 30, 2001—accounting for about 17 percent of cases filed nationwide during that period.

The pilot program found 1,229 debtor identification and Social Security number problems in 1,225 cases, or about 1 percent of the pilot cases filed.

Of the 1,229 problems:

- 1006 (81.9 percent) were due to typographical errors such as transposition of digits in a Social Security number.
- 191 (15.5 percent) involved questionable names or identity documents.
- 32 (2.6 percent) involved possible misuse or falsification of Social Security numbers.

The participating U.S. Trustee offices took action in 1,122 cases and achieved 1,039 favorable outcomes, including:

- 875 amended bankruptcy petitions filed by debtors or their counsel.
- 22 bankruptcy cases dismissed.



