



United States Trustee Program Annual Report, FY 2013



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Message from the Director

Fiscal Year 2013 marked the conclusion of the United States Trustee Program's 25th year as the Justice Department component charged with protecting the integrity of the bankruptcy system. From our nationwide expansion in 1988 through today, the United States Trustee Program (USTP or Program) has met many challenges and has grown and adapted to changes in bankruptcy laws, filing trends, and legal practices. We are extremely proud of our significant record of accomplishment and look forward to continuing that good work in the coming 25 years.

The USTP vigorously pursues its mission to ensure that the rights of all stakeholders—debtors, creditors, and the general public—are protected in accordance with the law. Bankruptcy involves a multiplicity of interests that are balanced in the Bankruptcy Code. Through faithful adherence to the Code and with independence from the parties, the USTP identifies and prosecutes important matters for judicial resolution. Our role as watchdog of the bankruptcy system is more relevant than ever.

Even while reducing our budget in Fiscal Year 2013, the USTP continued to leverage its resources effectively. We brought concerted enforcement actions and entered into national settlements to address issues such as misconduct by professional firms, breaches of consumer privacy protections, and multi-jurisdictional fraud schemes. We also worked to bring accountability to the bankruptcy compensation process and police improper conduct by debtors and by creditors, particularly mortgage servicers.


Foremost among our accomplishments was the issuance of the USTP's updated guidelines for reviewing attorneys' fees in larger chapter 11 cases, which went into effect shortly after the close of FY 2013. The guidelines were promulgated after two public comment periods, a public meeting, and many helpful discussions with leading practitioners from across the country. We believe these guidelines will benefit all participants in the bankruptcy system by helping to ensure compliance with statutory criteria for the award of fees and by providing additional disclosures so that the courts, parties, and the public can have confidence that the fees sought are justified, reflect market rates, and are properly documented.

Also of significant note are our continuing efforts in the critical area of mortgage servicer enforcement. Ensuring that homeowners who are entitled to bankruptcy relief are treated fairly and in accordance with the Bankruptcy Code has been one of our top priorities for the past several years. Though progress has been made, there is still more to do and the USTP remains vigilant in its oversight.

As we move forward in FY 2014, we will continue to prudently and professionally enforce the means test, police debtor abuse, protect consumers from creditor violations, stop management of debtor companies from self-dealing and overreaching on executive bonuses, and address other matters to advance the work of the Program in protecting the integrity of the bankruptcy system.

Message from the Director

I am extremely grateful to USTP staff, including the approximately 220 employees who have been with us since our nationwide expansion in 1988 (some of whom share their thoughts, observations, and reflections throughout these pages), and to our alumni who have done so much to build the USTP into the consequential and effective organization that it has become. The talented and dedicated employees of the USTP continue to achieve the Program's goals with distinction, and I look forward to our future accomplishments. Please accept my invitation to read more about the USTP's activities in our *Fiscal Year 2013 Annual Report*.

A handwritten signature in black ink, appearing to read "Clifford J. White III", followed by a horizontal line.

Clifford J. White III
Director

Chapter 1. Mission, Organization, and Administration

Mission

The mission of the United States Trustee Program (USTP or Program) is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public. By statute, the Program has standing to participate in every bankruptcy case within its jurisdiction. The Program oversees the administration of all bankruptcy cases filed by individual and business debtors in every federal judicial district except for those in Alabama and North Carolina. In FY 2013, the Program oversaw slightly more than 1 million bankruptcy cases in 88 judicial districts.

To ensure the integrity of the bankruptcy system, the Program employs a broad range of enforcement and oversight activities. These activities include:

- Conducting tens of thousands of civil enforcement actions and inquiries each year to enforce the Bankruptcy Code, including many resolved consensually without intervention by the court, for a monetary impact of more than \$1 billion.
- Protecting thousands of distressed homeowners victimized by improper mortgage servicer practices that may cause unnecessary loss of the family home.
- Protecting consumer debtors from being victims of unscrupulous creditors, bankruptcy petition preparers, or attorneys, and those who use the bankruptcy system to perpetrate fraud.
- Providing oversight of chapter 11 cases, taking actions that range from objecting to excessive professional fees and improper management bonuses that diminish distributions to creditors, to reviewing disclosure statements to ensure the adequacy of information, to objecting to proposed reorganization plans that fail to comply with the Bankruptcy Code.
- Promulgating and enforcing guidelines for reviewing professional fees paid from the bankruptcy estate, including attorneys' fees in larger chapter 11 cases to ensure transparency and limit fees to market rates.
- Supervising private trustees who administer bankruptcy cases under chapters 7, 12, and 13 and distribute over \$10 billion in assets each year. This duty involves reviewing more than 140,000 case reports per year, reviewing hundreds of trustee operations, and performing other trustee oversight and auditing tasks.
- Participating in approximately 120 appeals annually to the bankruptcy appellate panels, district courts, circuit courts of appeals, and the U.S. Supreme Court. The USTP works closely with the Office of the Solicitor General in the Department of Justice on Supreme Court cases involving bankruptcy.
- Identifying and referring cases of potential criminal wrongdoing to law enforcement, including the U.S. Attorneys and other federal agencies, and assisting in the investigation and prosecution of criminal cases.
- Training law enforcement who investigate bankruptcy crimes, and communicating with the bankruptcy bench and bar throughout the 88 judicial districts in which the USTP litigates.

Chapter 1. Mission, Organization, and Administration

- Annually approving and monitoring over 400 credit counseling agencies and debtor education providers that provide mandatory pre-filing counseling and post-filing financial education for hundreds of thousands of individual debtors each year.

Organization

The Program is led by a Director in the headquarters office, the Executive Office for U.S. Trustees, in Washington D.C. The Program's 21 regions are managed by U.S. Trustees and include 95¹ field office locations supervised by Assistant U.S. Trustees. At the conclusion of FY 2013, the Program employed 1,166 staff consisting of attorneys, financial analysts, paralegals, and support staff. More than 90 percent of the Program's employees are located in its field offices.

Spotlight – Program Employees Receive Attorney General's Awards

Two Program employees were selected to receive the Department's Attorney General's awards this year. Gale Wright, Administrative Officer for Regions 6 and 8, received the award for Excellence in Administrative Support. Lisa Tracy, Deputy General Counsel, received the Distinguished Service award.

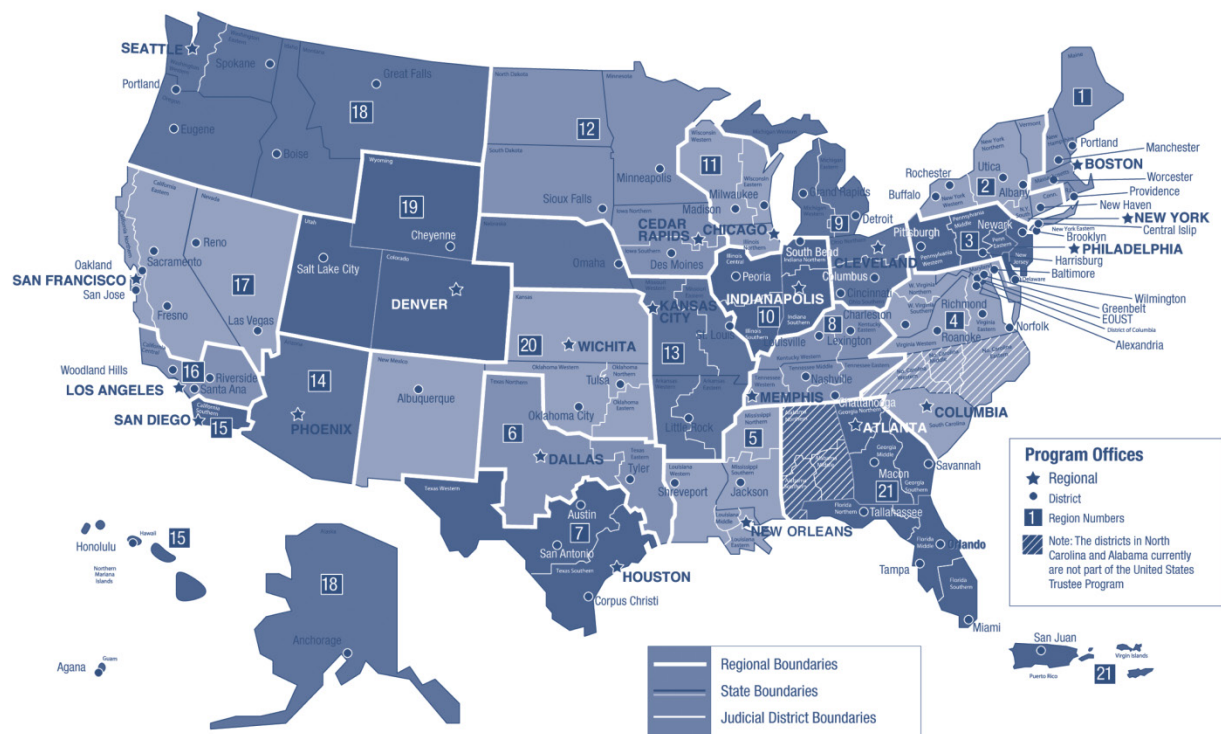
Gale has served the Program for 25 years in multiple regions, at one time providing administrative support to three regions with 12 field offices spread over seven states. She has worked on several special projects including supporting the National Bankruptcy Training Institute and training staff.

As Deputy General Counsel, Lisa is one of the leaders in overseeing the Program's legal activities and supervising the Office of the General Counsel. She was recognized along with other Department employees from the offices of the Deputy Attorney General, Legal Counsel, and the Solicitor General, as well as the Civil Division, for their work in support of the Department's litigation relating to the Defense of Marriage Act.

¹ The Program will complete the co-location of three offices during FY 2014 and FY 2015: Brooklyn with Manhattan, Woodland Hills with Los Angeles, and Oakland with San Francisco. This will reduce the number of field office locations to 92.

Chapter 1. Mission, Organization, and Administration

U.S. Trustee Program Map of Regions and Offices



Chapter 1. Mission, Organization, and Administration

U.S. TRUSTEE PROGRAM NATIONWIDE OFFICE LOCATOR

**Executive Office
for U.S. Trustees**
Washington, D.C.

REGIONAL AND FIELD
OFFICES (BY STATE)

Alaska
Anchorage

Arizona
Phoenix

Arkansas
Little Rock

California
Fresno
Los Angeles
Oakland
Riverside
Sacramento
San Diego
San Francisco
San Jose
Santa Ana
Woodland Hills

Colorado
Denver

Connecticut
New Haven

Delaware
Wilmington

Florida
Miami
Orlando
Tallahassee
Tampa

Georgia
Atlanta
Macon
Savannah

Hawaii
Honolulu

Idaho
Boise

Illinois
Chicago
Peoria

Indiana
Indianapolis
South Bend

Iowa
Cedar Rapids
Des Moines

Kansas
Wichita

Kentucky
Lexington
Louisville

Louisiana
New Orleans
Shreveport

Maine
Portland

Maryland
Baltimore
Greenbelt

Massachusetts
Boston
Worcester

Michigan
Detroit
Grand Rapids

Minnesota
Minneapolis

Mississippi
Jackson

Missouri
Kansas City
St. Louis

Montana
Great Falls

Nebraska
Omaha

Nevada
Las Vegas
Reno

New Hampshire
Manchester

New Jersey
Newark

New Mexico
Albuquerque

New York
Albany
Brooklyn
Buffalo
Central Islip
New York City
Rochester
Utica

Ohio
Cincinnati
Cleveland
Columbus

Oklahoma
Oklahoma City
Tulsa

Oregon
Eugene
Portland

Pennsylvania
Harrisburg
Philadelphia
Pittsburgh

Puerto Rico
San Juan

Rhode Island
Providence

South Carolina
Columbia

South Dakota
Sioux Falls

Tennessee
Chattanooga
Memphis
Nashville

Texas
Austin
Corpus Christi
Dallas
Houston
San Antonio
Tyler

Utah
Salt Lake City

Virginia
Alexandria
Norfolk
Richmond
Roanoke

Washington
Seattle
Spokane

West Virginia
Charleston

Wisconsin
Madison
Milwaukee

Wyoming
Cheyenne

Please visit our Web site
at www.justice.gov/ust for
office phone numbers
and addresses.

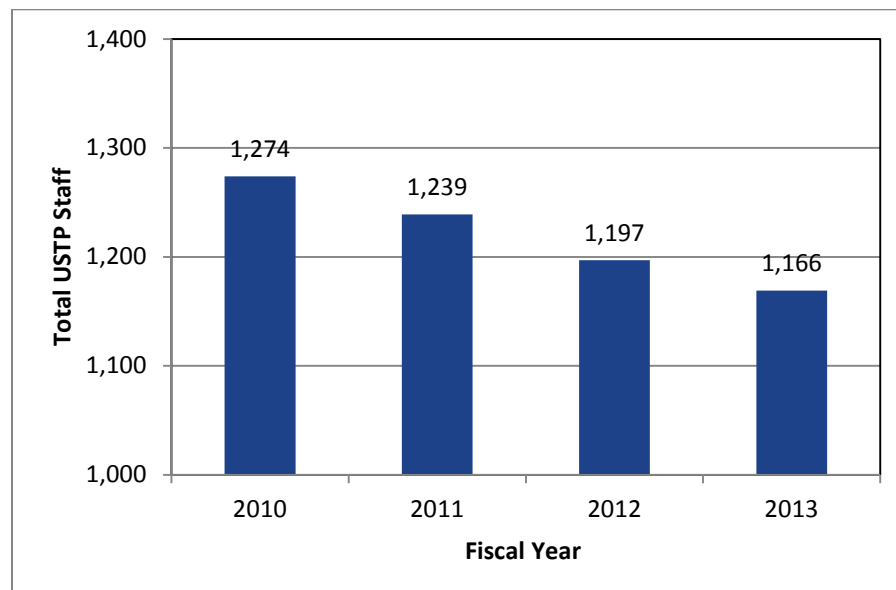
Chapter 1. Mission, Organization, and Administration

Administration

As the Program's headquarters office, the Executive Office for U.S. Trustees in Washington, D.C., sets policy, directs legal matters, and provides management direction to the U.S. Trustees and their staff. The Office of the Director directly supervises the U.S. Trustees and the operations of the Executive Office and has the primary responsibility for liaison with stakeholders in the bankruptcy system including government agencies, professional associations, debtors, and creditors. The Executive Office also includes the Office of the General Counsel, the Office of Oversight, the Office of Criminal Enforcement, the Office of Planning and Evaluation, the Office of Administration, and the Office of Information Technology.

In the face of budgetary challenges, the Program continued to pursue activities critical to its mission, while prudently undertaking cost-cutting measures. The USTP addressed significant budget reductions in FY 2013 by further reducing the number of staff through attrition and by paring virtually every non-personnel category of expenditure, such as facilities, information technology, equipment, and debtor audits.

Figure 1.1 – USTP Staff Levels, FY 2010-2013



Source: Executive Office for U.S. Trustees

The Program's agility in accomplishing its mission despite decreased funding was also due to the continued implementation of innovations that were developed to enhance operational effectiveness while achieving cost savings. For example, in FY 2012 the USTP upgraded its video conferencing equipment in field offices nationwide. This investment has been a key

Chapter 1. Mission, Organization, and Administration

Twenty-Five Year Employee



"I chose to spend my career with the USTP because there are so many bright, dedicated professionals in our ranks and because I have always been impressed by the integrity of the Program. I am proud of the work we do and I know that we are making a difference in the bankruptcy system."
— Mary Ostman,
Special Assistant to
the Deputy Director
for Management,
Washington, D.C.

cost savings initiative by allowing the Program to avoid additional travel costs by increasing the use of video teleconferences for meetings and training programs. The Program has utilized LiveMeetings to provide low-cost distance training on a broad range of topics to Program staff and managers. Over the past two years the Program has also functionally consolidated numerous duties related to trustee oversight and Program data collection systems on a regional basis, thereby increasing efficiency and improving accuracy in USTP operations.

The Program is funded through user fees paid by bankruptcy debtors. All revenues are deposited into the United States Trustee System Fund and remain available for expenditure, as specified in appropriations acts. Deposits to the United States Trustee System Fund consist of filing fees, chapter 11 quarterly fees, and interest on investments and other miscellaneous revenue.

Chapter 2. Bankruptcy Code and Bankruptcy Filings

Bankruptcy Code

A bankruptcy case is a proceeding brought under federal law to discharge or reorganize the financial obligations of an individual or an entity. The federal Bankruptcy Code appears in title 11 of the United States Code. Most bankruptcy cases are filed under chapter 7, 11, or 13.

- Chapter 7 bankruptcy is a liquidation proceeding available to individual consumers and businesses. The assets of a debtor that are not exempt from the reach of creditors are collected and reduced to money, and the proceeds are distributed to creditors in accordance with a priority scheme established by the Bankruptcy Code. A consumer debtor receives a release from debt, except for certain debts that are excepted from discharge by the Bankruptcy Code.
- Chapter 11 provides a procedure by which an individual or a business can reorganize debts while continuing to operate. The vast majority of chapter 11 cases are filed by businesses. The debtor, often with participation from creditors, creates a plan of reorganization under which it proposes to repay part or all of its debts.
- Chapter 13 is used by individual consumers to reorganize their financial affairs under a repayment plan that must be completed within three to five years. To be eligible for chapter 13 relief, a consumer must have regular income and may not have more than a specified amount of debt.

Bankruptcy Filings

Following three years of substantial increases, bankruptcy filings declined for the third consecutive year in FY 2013. A total of 1,060,583 bankruptcy cases were filed in the 88 judicial districts covered by the Program, representing a 12 percent decrease from FY 2012.

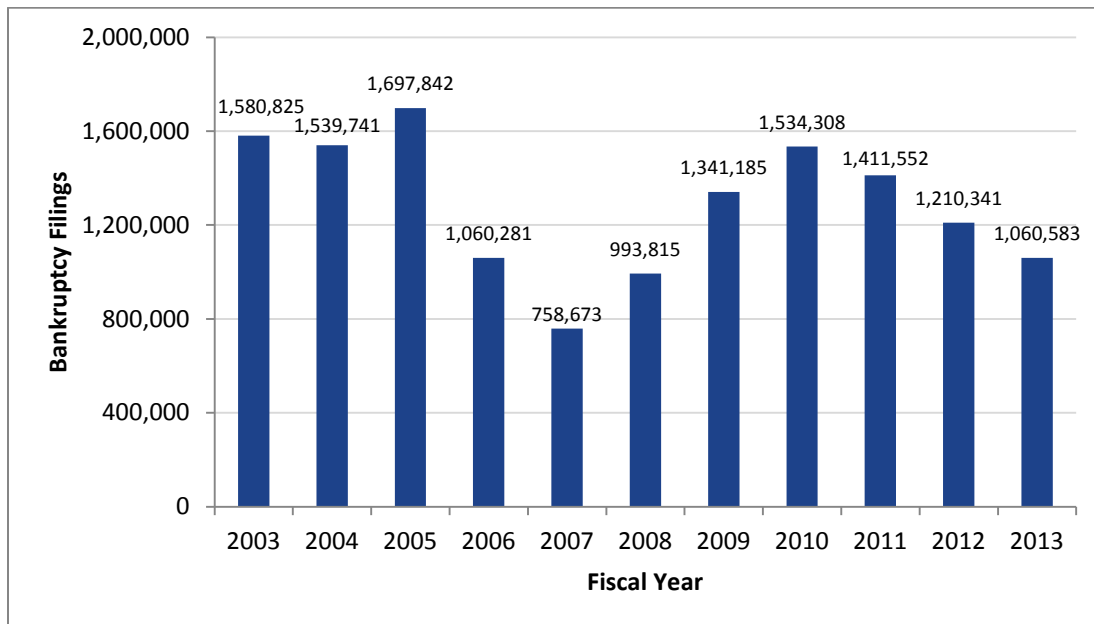
Chapter 2. Bankruptcy Code and Bankruptcy Filings

Table 2.1. Bankruptcy Filings by Chapter, FY 2013

Bankruptcy Chapter	Filings in USTP Districts
All Chapters	1,060,583
Chapter 7	735,524
Chapter 11	9,249
Chapter 12 and Other Cases	476
Chapter 13	315,334

Source: Administrative Office of the U.S. Courts

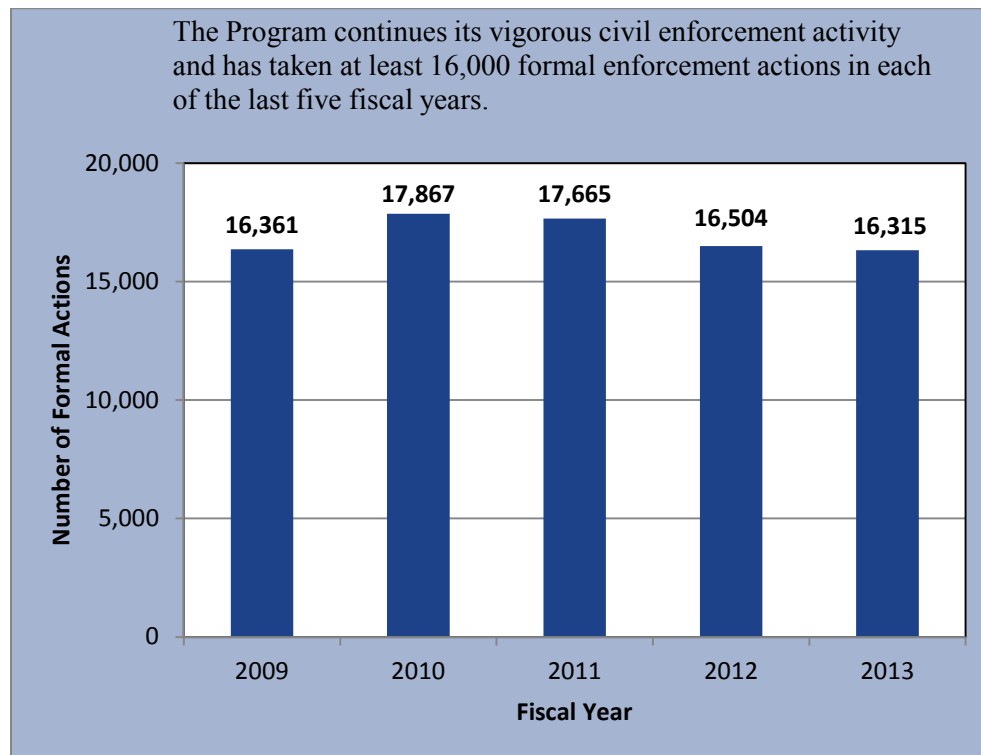
Figure 2.1 – Total Bankruptcy Filings in USTP Districts, FY 2003-2013



Source: Administrative Office of the U.S. Courts

Chapter 2. Bankruptcy Code and Bankruptcy Filings

Figure 2.2. Trends—USTP Formal Civil Enforcement Actions,² FY 2009-2013



Source: Executive Office for U.S. Trustees

² Throughout this report, “actions” means motions, complaints, objections, and other matters formally brought before a court or other tribunal for resolution; “inquiries” means enforcement activities that do not require resolution by a court or other tribunal, such as written and verbal inquiries made to creditors and their counsel; and “problems identified” means debtor identification issues addressed in partnership with the private trustees. In tables describing U.S. Trustee actions, the numbers of actions filed and actions decided during FY 2013 are not identical because some of the actions decided were filed before the reporting period, some of the actions filed were decided afterward, and some actions were withdrawn by the U.S. Trustee.

Chapter 3. Civil Enforcement

A core function of the USTP is to combat bankruptcy fraud and abuse. It carries out this responsibility in two ways.

First, the U.S. Trustees are active in the Department's efforts to protect consumers from financial fraud and abuse. In FY 2013, U.S. Trustees initiated more than 8,500 civil enforcement actions and inquiries against creditors, lawyers, and other parties who acted improperly towards debtors. More than 3,700 of these actions and inquiries related to abusive conduct by creditors, including more than 2,300 that involved mortgage fraud and abuse.

In recent years, the USTP has addressed multi-jurisdictional violations of the Bankruptcy Code and Bankruptcy Rules with a coordinated nationwide enforcement approach. As a result, the Program has entered into eight nationwide settlements, including five settlements to protect consumer debtors against national creditors. These national settlements provide relief for victimized debtors, require systemic corrective actions so such violations do not recur, and uphold the integrity of the bankruptcy system. In several of these settlements, the Program insisted upon an independent review to verify compliance.³

Second, the USTP combats fraud and abuse committed by debtors by seeking denial of discharge for the concealment of assets and other violations of the Bankruptcy Code and Bankruptcy Rules, by seeking case conversion or dismissal if a debtor has an ability to repay debts, and by taking other enforcement actions. In FY 2013, the Program took more than 44,000 civil enforcement actions and inquiries with a potential monetary impact of \$1.66 billion in debts not discharged, fines, penalties, and other relief. Since the Program began tracking results in 2003, it has taken more than 619,000 actions and inquiries, with a monetary impact in excess of \$14 billion.

Creditor Abuse Enforcement

Addressing violations of the Bankruptcy Code and Bankruptcy Rules by creditors, including national mortgage servicers, remains a top priority of the Program. The USTP investigates and takes civil enforcement action to ensure the accuracy and completeness of creditor claims, protection of consumers' personal information, and compliance with the Code and Rules.

Twenty-Five Year Employee



"When I began my career at the USTP in my 20s, I knew I was in a place where I could use my skills and talents. The position of Assistant U.S. Trustee is, for me, the perfect blend of legal, administrative, and managerial work in the field of bankruptcy. I can't think of another legal or government position I would want more." – Debera Conlon, Assistant U.S. Trustee, Norfolk, VA

³ One of the national settlements was announced in February 2013 and involved a major law firm that the USTP alleged violated disclosure rules pertaining to conflicts of interest. The settlement provided, among other things, for an independent expert to review and approve the firm's relevant internal policies and practices.

Chapter 3. Civil Enforcement

A centerpiece of the USTP's consumer protection efforts has been vigorous enforcement of the Bankruptcy Code and Bankruptcy Rules against mortgage servicers who inflate their claims or otherwise fail to comply with bankruptcy requirements of accuracy, disclosure, and notice to their customers in bankruptcy. The USTP was a major participant in the historic \$25 billion National Mortgage Settlement (NMS) reached in FY 2012 by federal and state regulators with the country's five largest mortgage servicers, and it continues its active involvement in the settlement's implementation and compliance monitoring. Serving as the Justice Department's representative, an employee from the USTP is the co-chair of the NMS Monitoring Committee, which also includes representatives from the Department of Housing and Urban Development, state attorneys general, and state mortgage regulatory agencies.

In this role, the USTP has been instrumental in ensuring that the settling banks satisfy their obligations under the NMS, including compliance with the comprehensive mortgage servicing standards that are specific to the servicing of loans of borrowers in bankruptcy. And the Program has remained vigilant, raising issues with the settling servicers' management-level contacts established under the settlement for resolution and bringing enforcement actions for violations of the Code and Rules in particular cases that cannot be resolved informally.

The USTP's mortgage servicing enforcement strategy extends to other national servicers, including the newer entrants into the mortgage servicing industry. In recent years, specialty servicers have created or greatly expanded their operations by purchasing the servicing rights to billions of dollars of mortgages, including those of distressed homeowners in and outside of bankruptcy. The USTP's investigations and enforcement actions strongly suggest that at least some of these servicers exhibit the same kinds of flawed servicing systems that the Program uncovered within the largest banks prior to the NMS.

In addition to these mortgage servicing enforcement efforts, in FY 2013 the Program tackled other violations by creditors against consumer debtors. For example, the Program undertook a review of claims filed in bankruptcy by holders of credit card and other unsecured revolving debt to enforce compliance with new requirements effective on December 1, 2012. New Bankruptcy Rule 3001(c)(3) sets forth required disclosures in proofs of claim, and is designed to assist debtors and their case trustees in associating a claim with a known account and to provide a basis for assessing the accuracy of the claim. Thus, debtors and trustees are better able to determine if claims objections are warranted, including with respect to stale or previously discharged debts. The USTP successfully worked with one large debt buyer to voluntarily bring its seriously deficient practices into compliance with the Rules, and the project led to significant improvement in the disclosures by others, thereby better equipping practitioners and trustees to do their jobs.

In July 2013 the Program announced the unsealing of a settlement with Citigroup Inc. (Citi) to protect the personally identifiable information (PII) of nearly 150,000 consumers in 85 jurisdictions around the country. Citi agreed to redact claims filed in bankruptcy cases in which

Chapter 3. Civil Enforcement

the PII of consumer debtors and third parties, including Social Security numbers and birthdates, had not been properly redacted as required by the Bankruptcy Rules. Citi also agreed to notify all affected consumers and offer them one year of free credit monitoring. Pursuant to the settlement, the USTP worked with courts across the country and with Citi to ensure the disclosures were corrected. An independent auditor appointed under the settlement is reviewing Citi's redaction and replacement process.

The USTP also announced in FY 2013 the successful conclusion of its 2008 settlement with Capital One Bank (USA) N.A. resolving allegations that the bank improperly filed claims in bankruptcy cases for previously discharged debts. Under the settlement, Capital One agreed to an audit overseen by an independent auditor. The auditor revealed that the bank had filed more than 15,500 erroneous claims with a total face value of approximately \$25 million. The bank refunded to affected debtors approximately \$2.35 million it received after filing the erroneous claims, seven times more than initially alleged. The report also confirmed that Capital One corrected the flawed process that led to the filing of the erroneous claims, filing fewer than 150 erroneous claims out of more than 250,000 claims filed during the two years following the settlement.

Table 3.1. Abusive Conduct by Mortgage Servicers and Other Creditors

Actions & Inquiries	FY 2013
Actions Filed	640
Actions Decided	613
Actions Success Rate	100.0%
Inquiries	3,089

Source: Executive Office for U.S. Trustees

Additional Consumer Protection Activities

The USTP's consumer protection activities include enforcement to combat improper conduct by non-attorney petition preparers, including foreclosure rescue scheme operators, attorneys, and individuals or entities that misuse identifying information such as Social Security numbers.

In FY 2013 the Program's total civil enforcement consumer protection activity, including creditor abuse enforcement, encompassed over 1,800 actions and 6,700 inquiries and problems identified.

Chapter 3. Civil Enforcement

Table 3.2. Total Consumer Protection Activity

Actions & Inquiries	FY 2013
Actions Filed	1,813
Actions Decided	1,670
Actions Success Rate	98.4%
Inquiries and Problems Identified	6,700

Source: Executive Office for U.S. Trustees

Violations by Bankruptcy Petition Preparers

A bankruptcy petition preparer is a non-attorney who prepares debtors' bankruptcy documents for a fee. To protect consumers, petition preparers are governed by 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 by barring them from activities such as offering legal advice, using the word "legal" or similar terms in advertisements, charging excessive fees, collecting clients' payments for court filing fees, or engaging in unfair, deceptive, or fraudulent conduct.

Nonetheless, some petition preparers charge excessive fees, fail to make necessary disclosures, and engage in other prohibited conduct including schemes to defraud consumers who seek home loan modification or face foreclosure or eviction. To curb such conduct, U.S. Trustees bring civil actions to obtain orders to disgorge document preparation fees, impose fines, and enjoin prohibited conduct by petition preparers.

Chapter 3. Civil Enforcement

Table 3.3. Bankruptcy Petition Preparer Violations under § 110

Actions & Inquiries	FY 2013
Actions Filed	448
Actions Decided	415
Actions Success Rate	98.1%
Inquiries	604
Fines Imposed	\$2,319,802
Fees Recovered	\$468,410
Injunctions	117

Source: Executive Office for U.S. Trustees

In one such case decided in FY 2013, the Bankruptcy Court for the District of Utah ruled in favor of the U.S. Trustee and imposed sanctions totaling \$41,400 against a bankruptcy petition preparer. The U.S. Trustee's Salt Lake City office alleged that the petition preparer violated section 110 by providing legal advice, failing to disclose his role as a petition preparer on documents filed with the court, and collecting and paying the filing fee on the debtors' behalf. The court ordered the petition preparer to pay fines totaling \$39,000, to forfeit the \$400 in fees he received from the debtors, and to pay the debtors \$2,000 in damages.

Improper Conduct by Attorneys

U.S. Trustees take action against attorneys who engage in unethical conduct or provide substandard representation. For example, the U.S. Trustee may seek a court order requiring an attorney to disgorge fees under 11 U.S.C. § 329 or imposing other appropriate sanctions, or refer a matter to a state court disciplinary board or other regulatory body. U.S. Trustees also enforce sections 526, 527, and 528 of the Bankruptcy Code, which govern debt relief agencies. Among other things, those provisions preclude attorneys and others who are debt relief agencies from failing to provide promised services and making or counseling untrue or misleading statements in documents filed in a bankruptcy case; petition preparers are also required to make certain disclosures to clients who are consumer debtors.

Chapter 3. Civil Enforcement

Twenty-Five Year Employee



“During my 26 years with the Program, we have developed a clearer sense of who we are, what we do, and how we get things done. What has not changed is the commitment and quality of my colleagues across the country. We all seek to do meaningful work in public service, looking out for each other as members of the same team.” – Donna Tamanaha, Assistant U.S. Trustee, San Francisco, CA

Table 3.4. Attorney Fee Disgorgements under § 329

Actions & Inquiries	FY 2013
Actions Filed	579
Actions Decided	546
Actions Success Rate	96.9%
Inquiries	1,237
Amount Disgorged	\$3,747,942

Source: Executive Office for U.S. Trustees

Table 3.5. Other Attorney Misconduct

Actions & Inquiries	FY 2013
Motions for Sanctions Filed	84
Motions for Sanctions Decided	50
Motions for Sanctions Success Rate	96.0%
Inquiries	239
Sanctions	\$208,320
Referrals to State Bar	28
Disciplinary Rulings Issued	15

Source: Executive Office for U.S. Trustees

For example, the Bankruptcy Court for the District of Colorado granted a motion by the U.S. Trustee’s Denver office and ordered an attorney and the attorney’s Internet-based foreclosure rescue group to pay a total of \$86,446 in disgorged fees, fines, and sanctions for their actions in one case. The U.S. Trustee’s investigation revealed that the attorney and the foreclosure rescue group charged the debtor almost \$4,000 for a loan modification but failed to provide any service. The defendants agreed to a nationwide permanent injunction against advertising, participating in, and providing services related to mortgage loan workouts and bankruptcy.

Chapter 3. Civil Enforcement

Debtor Identification Issues

U.S. Trustees take action against debtors and others who intentionally use false names or Social Security numbers on bankruptcy documents. For instance, false filings may occur in an effort to avoid Bankruptcy Code restrictions on refiling bankruptcy within a particular time period, to discharge debts that were fraudulently incurred using the identity of another individual, or as part of a foreclosure rescue or other fraudulent scheme. In some circumstances, U.S. Trustees also assist innocent victims who have had bankruptcy cases falsely filed in their names or using their Social Security numbers.

Table 3.6. Debtor Identification Issues

Actions & Inquiries	FY 2013
Actions Filed	32
Actions Decided	15
Actions Success Rate	100.0%
Problems Identified	1,486
Petitions Amended or Form B21 (Statement of Social Security Number) Amendments Filed	1,285

Source: Executive Office for U.S. Trustees

After a debtor violated an injunction obtained by the U.S. Trustee's Baltimore office, the Bankruptcy Court for the District of Maryland found the debtor in civil contempt and ordered her to pay a \$5,000 fine. Since 1998, the debtor filed at least 20 bankruptcy cases, using false Social Security numbers in many of them, and failed to pursue any of the cases beyond the initial filing. The injunction obtained by the U.S. Trustee precluded the debtor from filing bankruptcy again without prior court approval.

Enforcement Against Abusive Conduct by Debtors

The Program investigates and takes action against debtors who have a demonstrated ability to pay a portion of their debts out of disposable income or who conceal their assets, file incomplete or inaccurate financial information, or otherwise fail to satisfy their obligations under the Bankruptcy Code or abuse the bankruptcy system. The most common of these actions are objections to an individual debtor's bankruptcy discharge and motions to dismiss a debtor's bankruptcy case.

Chapter 3. Civil Enforcement

Denial of Individual Debtor's Discharge

U.S. Trustees may file complaints to deny or revoke a bankruptcy discharge under 11 U.S.C. § 727 if the debtor engaged in improper conduct such as transferring, concealing, or destroying property to hinder or defraud a creditor or the trustee; knowingly making a false oath; refusing to obey a court order; or failing to keep or preserve financial records. The debtor may voluntarily waive discharge under the same statutory section.

Table 3.7. Denial or Revocation of Discharge under § 727

Actions & Inquiries	FY 2013
Actions Filed	1,627
Actions Decided	1,431
Actions Success Rate	98.7%
Inquiries	1,921
Amount Not Discharged (General Unsecured Debt Listed by Debtor on Schedule F)	\$1,128,813,858

Source: Executive Office for U.S. Trustees

After a trial on a complaint to deny discharge filed by the U.S. Trustee's Boise office, the Bankruptcy Court for the District of Idaho denied a debtor's discharge of over \$10.4 million in unsecured debt. The debtor was the principal of a limited liability company that operated three assisted living centers. He filed chapter 11 cases for his company and himself. After his individual chapter 11 case was converted to chapter 7, the U.S. Trustee objected to his discharge, alleging he fraudulently transferred funds to himself from the debtor company's chapter 11 bankruptcy estate by, among other things, converting payments for patient care to his personal use.

In another case, after a trial the Bankruptcy Court for the Western District of Missouri ruled for the U.S. Trustee's Kansas City office and revoked the debtor's chapter 7 discharge of \$2.9 million in unsecured debt. The court agreed with the U.S. Trustee that the debtor obtained his discharge by fraud when he failed to disclose he was holding inventory and equipment subject to a secured creditor's lien after his business failed.

Chapter 3. Civil Enforcement

Dismissal of Individual Debtor's Case for Abuse

The U.S. Trustee may file a motion to dismiss under 11 U.S.C. § 707(b) if the debtor's chapter 7 filing is presumed abusive under a statutorily defined means test measuring the debtor's ability to make payments to creditors, and the debtor fails to demonstrate special circumstances to rebut the presumption. In some cases where abuse is presumed under the statute, the U.S. Trustee may decline to seek dismissal if the debtor demonstrates that dismissal is not appropriate due to factors such as a recent job loss that justified an adjustment to the current monthly income calculation.

In FY 2013, approximately 12 percent of chapter 7 debtors had income above their state median. Of those cases filed by above-median income debtors, about 6 percent were "presumed abusive" under the means test. Of those presumed abusive cases that did not voluntarily convert or dismiss, however, the Program exercised its statutory discretion to decline to seek dismissal in about 63 percent of the cases after consideration of the debtor's circumstances.

Even if a filing is not presumed abusive, the U.S. Trustee may seek dismissal under section 707(b) if it appears that the case was filed in bad faith or the totality of the circumstances of the debtor's financial situation, including the debtor's ability to repay, demonstrates abuse.

Table 3.8. Dismissal for Abuse under § 707(b)

Actions & Inquiries	FY 2013
Actions Filed	2,354
Actions Decided	1,826
Actions Success Rate	98.9%
Inquiries	13,658
Amount Not Discharged (General Unsecured Debt Listed by Debtor on Schedule F)	\$306,319,055

Source: Executive Office for U.S. Trustees

After an evidentiary hearing, the Bankruptcy Court for the Middle District of Florida granted a motion by the U.S. Trustee's Orlando office to dismiss a debtor couple's case as an abusive filing, preventing the chapter 7 discharge of \$514,250 in unsecured debt. At the hearing, the debtors admitted that they under-reported their income and overstated their expenses. They also conceded that, after making adjustments to the means test calculations, the presumption of

Chapter 3. Civil Enforcement

abuse arose under section 707(b)(2) and there were no special circumstances to overcome the presumption.

Debtor Audits

The Program is authorized by law to contract with independent firms to perform audits of consumer chapter 7 and chapter 13 cases. The audits are designed to provide baseline data to gauge the magnitude of fraud, abuse, and error in the bankruptcy system; to assist the Program in identifying cases of fraud, abuse, and error; and to enhance deterrence.

The Program designates for random audit a percentage of consumer bankruptcy cases within each judicial district, and designates for exception audit additional cases in which the debtor's income or expenses deviate from a statistical norm of the district where the case is filed. In a case designated for audit, the debtor is required to cooperate with the audit firm, and a debtor's discharge may be revoked for failure to explain either a lack of cooperation with the audit firm or a material misstatement reported by the audit firm.

In FY 2013, 25 percent of consumer cases with completed audits contained material misstatements. The rate of material misstatements has not changed appreciably in the past six years. In cases selected for exception audit, the rate of material misstatements is 10 percent to 15 percent higher than in random audits. For budgetary reasons, the USTP suspended the designation of cases for audit effective March 19, 2013.

Annually, the Attorney General is required to make a public report of the audit results, including the number of material misstatements in each judicial district. More information regarding debtor audits can be found in the report, which is posted on the Program's Internet site at www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm.

In FY 2013, a debtor audit report that stated the debtors under-reported their income by over \$9,500 per month led to a successful objection to chapter 7 discharge filed by the U.S. Trustee's Columbus office. The U.S. Trustee's investigation confirmed the undisclosed income and revealed undisclosed assets including an operating business and at least one bank account. The Bankruptcy Court for the Southern District of Ohio granted the U.S. Trustee's objection and denied the debtors' discharge of \$399,006 in unsecured debt.

Twenty-Five Year Employee



"It has been an honor to work with the UST Program since May 1988. I will always cherish the opportunities I've had to work and grow with such wonderful colleagues. We are not just co-workers, we are family." – Debbie Chase, Administrative Officer, Region 5

Chapter 4. Criminal Enforcement

Pursuing Bankruptcy-Related Crimes

Criminal enforcement is another key component of the Program's efforts to uphold the integrity of the bankruptcy system. By law, the Program is required to refer suspected crimes to the U.S. Attorneys' offices and, if requested, to assist the U.S. Attorneys in carrying out prosecutions of such cases. The Program also makes criminal referrals to other law enforcement agencies such as the Federal Bureau of Investigation, United States Secret Service, United States Postal Inspection Service, Internal Revenue Service-Criminal Investigation, Office of the Inspector General for the Department of Housing and Urban Development, and Office of the Inspector General for the Social Security Administration. In addition, Program employees—including attorneys, bankruptcy analysts, and paralegals—are frequently called upon to assist with investigations and to provide expert testimony or fact testimony at criminal trials.

The Program is an active member of the President's Financial Fraud Enforcement Task Force, a coalition of federal, state, and local law enforcement, investigatory, and regulatory agencies working together to combat financial crimes. The Program also participates in more than 90 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country with federal, state, and local agencies that focus on investigating and prosecuting suspected bankruptcy fraud and related crimes. The Program provides extensive training to staff, chapter 7 and chapter 13 trustees, and federal, state, and local law enforcement personnel, with more than 2,500 trained in FY 2013.

The Program reviews all citizen reports of suspected criminal bankruptcy fraud and maintains an Internet-based email "hotline" for reporting suspected bankruptcy fraud at USTP.Bankruptcy.Fraud@usdoj.gov.

Criminal Referrals

In FY 2013 the Program made 2,074 bankruptcy and bankruptcy-related criminal referrals. One referral often contains more than one allegation. The five most common allegations in referrals made during FY 2013 were tax fraud (37.9 percent), false oath/false statement (31.7 percent), concealment of assets (25.8 percent), bankruptcy fraud scheme (21.5 percent), and identity theft or use of false/multiple Social Security numbers (16.6 percent).

Annually, the USTP is required to make a public report on the Program's criminal referrals, outcomes of referrals, and efforts to prevent bankruptcy fraud and abuse. The report is posted on the Program's Internet site at www.justice.gov/ust/ea/public_affairs/reports_studies/index.htm.

Chapter 4. Criminal Enforcement

Twenty-Five Year Employee



*"Applying for a job with the Program was the best career move I could have made. I feel that our work serves a very useful purpose in the bankruptcy community." –
Helayne Loeb,
Paralegal
Specialist,
Cleveland, OH*

USTP Participation in Criminal Cases

The following examples demonstrate the wide array of prosecutions in FY 2013 that resulted from USTP referrals, as well as the Program's commitment to addressing both debtor fraud and criminal violations by those who seek to exploit debtors.

The USTP identified, referred to the U.S. Attorney, and assisted in the criminal prosecution of a major mortgage fraud case. After a seven-day trial, a jury in the Northern District of Illinois found the defendant guilty on all counts for operating two rescue fraud schemes. He was sentenced to six and a half years of incarceration and ordered to pay restitution of more than \$1.5 million. The defendant first operated a scheme that persuaded financially distressed homeowners to sell their homes to investors. He arranged for the purchase of the houses by the investors through fraudulent loan applications and filed false mortgages in his company's name to skim all the equity created during these sales. In a second scheme, the defendant promised distressed homeowners he could delay and stop foreclosures by filing bankruptcy cases in their names. He failed to reveal his role as a petition preparer on the bankruptcy petitions, used forged credit counseling certificates in filing the cases and on at least one occasion forged the debtor's signature on the petition. The U.S. Trustee's Chicago office referred the case to law enforcement, a Regional Coordinator from the USTP's Office of Criminal Enforcement investigated and charged the case as a Special Assistant U.S. Attorney, and a Trial Attorney from the Chicago office testified at trial.

A Trial Attorney from the U.S. Trustee's Detroit office served as a Special Assistant U.S. Attorney in successfully prosecuting a criminal contempt case against a bankruptcy petition preparer. The jury convicted the defendant after the evidence presented at trial showed that the preparer knowingly disobeyed five bankruptcy court orders permanently enjoining his activities, that he continued to act as a petition preparer, and that he manipulated some debtors into signing false documents and lying under oath about his involvement with their cases. Many of the defendant's victims either did not receive a bankruptcy discharge or had their cases dismissed as a result of the preparer's actions. Another Trial Attorney and a Paralegal from the Detroit office testified at trial.

In the Western District of Pennsylvania, a chapter 7 debtor was sentenced to six and a half years in prison and ordered to pay more than \$3 million in restitution after pleading guilty to one count of conspiracy to commit mail fraud, wire fraud, and bank fraud and one count of money laundering in connection with his role in a mortgage fraud scheme. The defendant's mortgage broker business defrauded lenders by submitting settlement statements falsely representing that the lenders' funds were used to pay liens on the property. Instead, the defendant and a co-

Chapter 4. Criminal Enforcement

conspirator used the funds for their personal benefit and to invest in another of the defendant's business ventures. The defendants also provided a fraudulent bank statement to a title insurance company to conceal their fraudulent use of the funds. The U.S. Trustee's Pittsburgh office referred the criminal matter and assisted with the investigation.

In the District of Puerto Rico, a surgeon who filed chapter 7 bankruptcy and his sister, who served as his bankruptcy attorney, were sentenced after being convicted of conspiracy, making false statements in bankruptcy documents to conceal assets, money laundering, and making fraudulent transfers relating to his bankruptcy case. Approximately nine months before filing bankruptcy, the debtor transferred his \$1.7 million residence to a corporation through his sister. He failed to disclose the transfer and his sole ownership of the corporation. During the bankruptcy case, the defendants engaged in fraudulent transfers by using the undisclosed corporation to purchase three properties. The debtor was sentenced to six years in prison, three years of supervised release, and a \$20,000 fine. The attorney was sentenced to three years in prison, three years of supervised release, 250 hours of community service, and restitution to be determined. The U.S. Trustee's San Juan office referred the matter to the U.S. Attorney and assisted in the investigation and prosecution.

Chapter 5. Litigation in Chapter 11 Reorganizations

Chapter 11 Priorities

The USTP has important statutory obligations in business reorganization cases to ensure accountability by the debtor's management so the interests of all stakeholders are protected. Among the USTP's top priorities in chapter 11 are reviewing requests to retain and pay from the estate professionals such as attorneys, accountants, and turnaround specialists; appointing chapter 11 trustees and examiners; appointing unsecured creditors' committees and other official committees; and enforcing the statutory limits on bonuses requested for chapter 11 debtor company executives.

Employment and Compensation of Professionals

U.S. Trustees monitor and, when appropriate, object to the employment of chapter 11 case professionals such as attorneys, accountants, turnaround specialists, and others who are paid from bankruptcy estate funds. U.S. Trustees review these professionals' applications for employment to ensure compliance with the Bankruptcy Code, including the prohibitions on disqualifying conflicts of interest.

U.S. Trustees have an express statutory responsibility to review applications for professional compensation in bankruptcy cases. In 1994, Congress directed the USTP to establish uniform guidelines for reviewing fee applications to provide consistency in the fee application preparation and review process. In early 1996, the Program published fee guidelines that include disclosure requirements, task-based billing requirements, and standards for reimbursement for certain expenses to assist the court, the U.S. Trustees, and interested parties in evaluating the reasonableness of fee requests.

In FY 2013, the USTP issued revised and updated guidelines that apply to the USTP's review of applications for attorney compensation in the largest chapter 11 cases with at least \$50 million in assets and \$50 million in liabilities. These guidelines take into account changes in law firm billing practices, law office technology, and other aspects of bankruptcy practice, and are the first phase of a comprehensive revision of the original guidelines.

The new guidelines, which are effective for cases filed on or after November 1, 2013, seek to enhance meaningful disclosure and transparency and to ensure that the rates charged reflect market rates outside of bankruptcy, as required by the Bankruptcy Code. The guidelines provide for the following:

- Use of budgets and staffing plans;
- Disclosure of blended billing rates outside of bankruptcy for comparison;

Twenty-Five Year Employee



"I enjoy the work that I do for the USTP. The legal work is diverse and the impact we have on the integrity of the bankruptcy system is large. Our role in cases big and small is an important one." – Leonora Long, Trial Attorney, St. Louis, MO, and Acting Assistant U.S. Trustee, Wichita, KS

Chapter 5. Litigation in Chapter 11 Reorganizations

- Disclosure of rate increases that occur during the representation;
- Use of rates that are based on the attorney's home office location;
- Submission of billing records in an open, searchable electronic format; and
- Use of independent fee examiners and fee review committees.

The new guidelines reflect almost two years of consultation and review, and incorporate input from judges, professional organizations, practitioners, academics, and the public. The USTP believes strongly that the guidelines can make the fee review process more efficient in the larger and more complex cases and increase public confidence in the integrity and soundness of the bankruptcy compensation process.

Table 5.1.⁴ Matters Involving Employment of Professionals under §§ 327 and 1103

Actions & Inquiries	FY 2013
Actions Filed	898
Actions Decided	739
Actions Success Rate	91.7%
Inquiries	1,172

Source: Executive Office for U.S. Trustees

Note: The database includes all actions and inquiries relating to employment of professionals paid from the bankruptcy estate. Most section 327 activity is in chapter 11 cases; all section 1103 activity is in chapter 11.

⁴ Throughout this chapter, “actions” means formal motions, complaints, objections, and other matters brought before a court or other tribunal and “inquiries” means enforcement activities that do not require resolution by a court or other tribunal, such as written and verbal inquiries made to creditors and their counsel. In tables describing actions by the U.S. Trustee, the numbers of actions filed and actions decided during FY 2013 are not identical because some of the actions decided were filed before the reporting period, some of the actions filed were decided afterward, and some actions were withdrawn by the U.S. Trustee.

Chapter 5. Litigation in Chapter 11 Reorganizations

Twenty-Five Year Employee



"In my almost 26 years with the Program, I've been able to help make Congress' vision of a better bankruptcy system a reality. I feel fortunate and thankful for the opportunity to grow this agency and to grow with the agency. The experience has been similar to raising children and being very proud of them, after watching them grow from birth to adulthood." – Joe Mack, Assistant U.S. Trustee, Detroit, MI

Table 5.2. Matters Involving Professional Fee Requests under § 330

Actions & Inquiries	FY 2013
Actions Filed	680
Actions Decided	600
Actions Success Rate	96.7%
Inquiries	1,002
Fees Reduced/Withdrawn	\$48,376,031

Source: Executive Office for U.S. Trustees

Note: The database includes all actions and inquiries relating to professional fee requests, with the majority in chapter 11 cases.

Ruling for the U.S. Trustee's Woodland Hills office, the Bankruptcy Court for the Central District of California denied an attorney's application for employment as chapter 11 bankruptcy counsel. The U.S. Trustee demonstrated that of the 21 chapter 11 cases the attorney had previously filed, many for real estate holding entities, none resulted in a confirmed plan and 16 were dismissed, including seven that were dismissed with bars to refile. In addition, the attorney was employed properly in only five of them and never obtained approval of his fees in any of the cases. The bankruptcy court previously denied the attorney's appointment in two other cases on the U.S. Trustee's objections. The court also had sanctioned the attorney after the U.S. Trustee showed that he abused the bankruptcy process by filing a second chapter 11 case for a real estate company he knew was a suspended corporation and ineligible to file.

The Bankruptcy Court for the Eastern District of Michigan approved the settlement between the U.S. Trustee's Detroit office and an investment banker seeking payment of fees and expenses for its services in a chapter 11 case. The settlement for \$2.6 million resolved the U.S. Trustee's objection alleging that the terms of the professional's engagement letter did not authorize certain fees totaling \$9.9 million, including a restructuring transaction fee, a capital transaction fee, and a sale transaction fee.

Trustees, Examiners, and Sound Corporate Governance

Under the Bankruptcy Code, the Program has responsibilities for promoting accountability by companies' management in chapter 11. Although the Code generally allows company management to retain control during the chapter 11 process, that right is conditioned upon a faithful discharge of fiduciary responsibilities and compliance with statutory requirements. The Code requires the U.S. Trustee to seek the appointment of an independent chapter 11 trustee if the

Chapter 5. Litigation in Chapter 11 Reorganizations

U.S. Trustee has reasonable grounds to suspect that the debtor or its management participated in fraud, dishonesty, or other criminal acts in the debtor's management or public financial reporting.

Alternatively, the Program may seek the appointment of an examiner to investigate allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the debtor's affairs and file a report of the investigation with the court. Unlike a trustee, an examiner does not displace the debtor's management.

Congress conferred upon the USTP the power to appoint trustees with court approval so the interests of all stakeholders are protected. The Program strongly emphasizes the importance of independent fiduciaries in bankruptcy cases in place of incumbent or substitute management installed by the board of directors.

Table 5.3. Motions to Appoint Trustee or Examiner under § 1104

Actions	FY 2013
Filed	86
Decided	73
Success Rate	94.5%

Source: Executive Office for U.S. Trustees

Granting a motion filed by the U.S. Trustee's Chicago office, the Bankruptcy Court for the Northern District of Illinois ordered the appointment of a chapter 11 trustee after finding that the debtor's management was tainted. Prior to the bankruptcy, a creditor obtained a state court judgment against the debtor for \$8,259,250. The debtor's principal was later indicted by a grand jury for allegedly trying to arrange the murder of the creditor's representative. Following the principal's indictment, the debtor's management installed a long-time employee to run the company and filed a bankruptcy petition. The U.S. Trustee successfully argued that, under these circumstances, cause existed for the appointment of a chapter 11 trustee and that the appointment of a trustee was in the creditors' best interests.

Executive Bonuses—KERPs and KEIPs

In another important area of management accountability, the USTP enforces the statutory restrictions on executive compensation. The Bankruptcy Code imposes strict limits on chapter 11 debtors' payment of bonuses to retain key employees (Key Employee Retention Plan bonuses, or KERPs). If the key employee is an insider, the debtor may not pay a retention bonus unless the

Chapter 5. Litigation in Chapter 11 Reorganizations

employee has a *bona fide* job offer at the same or greater compensation and, even then, the bonus amount is limited.

On the other hand, key employees who are insiders may be paid incentive bonuses based upon future performance (Key Employee Incentive Program bonuses, or KEIPs). These KEIPs, as well as bonuses paid to non-insiders, may be justified in light of the facts and circumstances of the case. In some jurisdictions, the debtor may justify the KEIP under the “business judgment” standard—a much easier test than the Bankruptcy Code’s test for KERPs.

Twenty-Five Year Employee



“Like the information technology industry, my job in the USTP has been ever-evolving. Participating in the Department of Justice’s Leadership Excellence and Achievement Program (LEAP) has been the most exciting professional development experience of my career, and I look forward to using the skills I acquired in that program.” – Renee Young, Information Technology Specialist, Washington, DC

Because the KEIP standard is easier to meet, debtors rarely request bankruptcy court permission to pay a KERP to insiders. Instead, they seek to justify the bonus as an incentive payment.

The U.S. Trustee vigorously enforces the statutory limitations on KERPs and KEIPs, and is often the only party objecting to the bonus plan. Frequently, the U.S. Trustee argues the plans are merely disguised KERPs. Among the touchstones for distinguishing a prohibited KERP from a permissible KEIP are measurable milestones that are difficult to achieve, such as selling assets for more than an existing arm’s-length bid, confirming a reorganization plan within a tight time frame with a resulting benefit to the estate, or meeting tough financial performance standards. Most KERP and KEIP disputes are fact-sensitive, and they are often resolved only when the debtor modifies the bonus plan voluntarily or upon court order.

In rulings during FY 2013, the Bankruptcy Court for the Southern District of New York confirmed American Airlines’ chapter 11 reorganization plan, but sustained the objections by the U.S. Trustee’s Manhattan office to a severance payment of nearly \$20 million for the departing chief executive officer. In its initial ruling, the bankruptcy court held that 11 U.S.C. § 503(c) prohibited the severance payment. The debtor later included the same severance bonus in its reorganization plan.

In a significant ruling sustaining the U.S. Trustee’s objection and striking the bonus from the plan, the court held that the debtor could not confirm a reorganization plan with a severance payment that violated the statutory bonus restrictions in section 503(c).

Chapter 5. Litigation in Chapter 11 Reorganizations

Table 5.4. Matters Involving Key Employee Retention Plans under § 503(c)

Actions & Inquiries	FY 2013
Actions Filed	43
Actions Decided	42
Actions Success Rate	78.6%
Inquiries	30

Source: Executive Office for U.S. Trustees

Other Chapter 11 Enforcement

Motions to Convert or Dismiss

When there appears to be little likelihood of a successful reorganization or the debtor fails to exercise its fiduciary obligations or comply with the law—for example, by failing to file required monthly financial operating reports or diminishing bankruptcy estate assets—U.S. Trustees seek to have the chapter 11 case converted to a chapter 7 liquidation case or dismissed. Each year the USTP moves to dismiss or convert about one-third of chapter 11 cases because they are not progressing toward financial rehabilitation.

Table 5.5. Case Conversion or Dismissal under § 1112

Actions & Inquiries	FY 2013
Actions Filed	3,813
Actions Decided	3,599
Actions Success Rate	98.7%
Inquiries	1,859

Source: Executive Office for U.S. Trustees

Objections to Disclosure Statements and to Plan Confirmation

Chapter 11 debtors, and in some circumstances other parties, may propose a plan of reorganization in compliance with the requirements of 11 U.S.C. § 1123. Generally, creditors and interest holders whose rights are altered by the plan may vote to accept or reject the plan. Before

Chapter 5. Litigation in Chapter 11 Reorganizations

soliciting acceptances of the plan, the proponent must obtain court approval of a disclosure statement. The disclosure statement must provide sufficient information about the debtor, the proposed plan of reorganization, and future operations to allow creditors to make an informed decision on whether to vote in favor of the plan. U.S. Trustees object to the approval of disclosure statements that do not provide adequate information or do not meet the statutory requirements.

Table 5.6. Matters Involving Disclosure Statements under § 1125

Actions & Inquiries	FY 2013
Actions Filed	963
Actions Decided	766
Actions Success Rate	99.2%
Inquiries	520

Source: Executive Office for U.S. Trustees

The court must also confirm—or approve—a plan of reorganization. To obtain confirmation, the plan and the proponent must comply with the specific requirements of 11 U.S.C. § 1129. U.S. Trustees object to the confirmation of proposed plans of reorganization that do not meet the statutory requirements.

Table 5.7. Matters Involving Plan Confirmations under § 1129

Actions & Inquiries	FY 2013
Actions Filed	409
Actions Decided	301
Actions Success Rate	92.4%
Inquiries	301

Source: Executive Office for U.S. Trustees

Chapter 6. Appellate Activities

Bankruptcy-Related Appeals

The USTP participates in appeals of bankruptcy-related legal matters to help clarify the law, produce consistency within the bankruptcy system, and preserve the integrity of the bankruptcy process. Through its appellate practice, the Program strives to ensure that the system works fairly for all stakeholders—debtors, creditors, trustees, and professionals—and that all stakeholders fulfill their responsibilities.

The USTP identifies important emerging issues, develops uniform legal positions, and advocates them as a party and as *amicus curiae* (friend of the court). The Program's appellate practice benefits from a nationwide team of attorneys in the Executive Office for U.S. Trustees in Washington, D.C., and the Program's 95 field offices who brief, argue, and help litigate at every appellate level, including bankruptcy appellate panels, district courts, courts of appeals, and the U.S. Supreme Court. The USTP also assists the Department of Justice's Civil Appellate Division and the Office of the Solicitor General in other bankruptcy-related matters in which the USTP is not directly involved, including appeals that the U.S. Supreme Court has accepted for review.

The Program participated in 119 appeals during FY 2013. The Program received written decisions in 46 appeals, winning 44 of them.

Appellate Rulings

In FY 2013, the USTP was involved in appeals that covered a broad range of issues, many of which addressed challenges to the integrity of the Bankruptcy Code. For example, the following court of appeals decisions addressed abusive conduct by debtors and violations by bankruptcy petition preparers.

In *Hills v. McDermott (In re Wicker)*, 702 F.3d 874 (6th Cir. 2012), the United States Court of Appeals for the Sixth Circuit agreed with the position of the U.S. Trustee and affirmed a bankruptcy court order against a bankruptcy petition preparer imposing penalties under 11 U.S.C. §§ 110(i), 110(l), and 526(c)(5)(B). The preparer had been permanently enjoined from providing any bankruptcy services because of prior misconduct. The bankruptcy court sanctioned the preparer when, two years later, he unlawfully advised a debtor about her rights under the Bankruptcy Code and instructed her to lie under oath on numerous occasions in order to obfuscate his role in the case. The circuit court held that the bankruptcy court correctly calculated the \$6,500 penalty under section 110 and, in the first decision from a court of appeals on section 526(c)(5)(B), agreed that the \$5,000 penalty under that section was an "appropriate civil penalty."

In another case, *Piazza v. Nueterra Healthcare Physical Therapy, LLC (In re Piazza)*, 719 F.3d 1253 (11th Cir. 2013), the United States Court of Appeals for the Eleventh Circuit agreed with the position of the U.S. Trustee as *amicus curiae* and affirmed a bankruptcy court order dismissing a chapter 7 debtor's case for bad faith under 11 U.S.C. § 707(a). The Eleventh Circuit

Chapter 6. Appellate Activities

held that pre-petition bad faith may constitute cause for dismissal under section 707(a) and that a “totality-of-the-circumstances approach is the correct legal standard for determining bad faith under § 707(a).” Accordingly, the court of appeals found that the debtor’s attempt to escape a single large judgment creditor and his payments to relatives supported the bankruptcy court’s finding of bad faith.

Chapter 7. Trustee Oversight

Private Trustees

One of the USTP's core functions is to appoint and supervise private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12, and 13. At the end of FY 2013, the Program supervised the activities of 1,066 chapter 7 trustees, 42 chapter 12 trustees, and 180 chapter 13 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. Once the trustees are appointed to the panel, chapter 7 cases generally are assigned through a blind rotation process. The chapter 7 trustee collects the debtor's assets that are not exempt from creditors, liquidates the assets, and distributes the proceeds to creditors.

Chapter 12 and chapter 13 trustees are called “standing trustees” because, pursuant to statute, 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 debtor and disbursing the funds to creditors.

The Program provides policy guidance to the trustees concerning their duties to debtors, creditors, other parties in interest, and the U.S. Trustee; trains trustees and evaluates their performance; reviews their financial operations; ensures the effective administration of estate assets; and intervenes to investigate and recover the loss of estate assets when embezzlement, mismanagement, or other improper activity is suspected or alleged.

In FY 2013, the Program issued new handbooks for chapter 7 trustees, chapter 12 standing trustees, and chapter 13 standing trustees (*Handbooks*). These *Handbooks* are the primary sources of policy guidance for the trustees and had not been significantly updated in a number of years. The new *Handbooks* incorporated existing policy but also implemented changes to improve case administration and financial oversight. The *Handbooks* are available on the Program's Internet site at http://www.justice.gov/ust/eo/private_trustee/library/index.htm.

Twenty-Five Year Employee



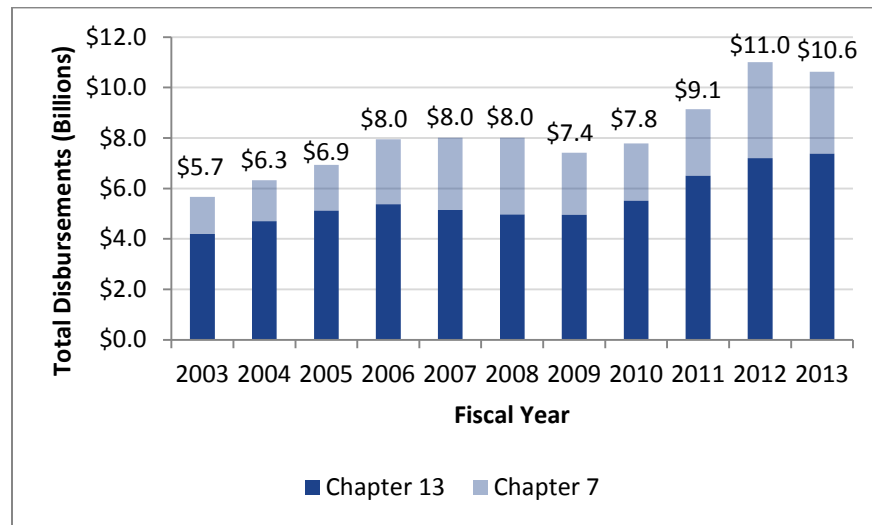
“There's never been a dull day with the Program, from working with my colleagues to get our region ready for certification in 1988 through all the various initiatives and challenges we addressed over the years. In addition to working with fellow USTP personnel, it's been a great experience interacting with our case trustees, debtors, creditors, judges, clerks, and the bankruptcy bar.”
— Risa Sheeler,
Regional Bankruptcy Analyst, Cleveland, OH

Chapter 7. Trustee Oversight

Distributions by Trustees

During FY 2013, chapter 7 trustees administered about 70,700 asset cases that generated \$3.2 billion in funds, while chapter 12 and chapter 13 trustees administered almost 1.3 million cases and disbursed over \$7.4 billion.

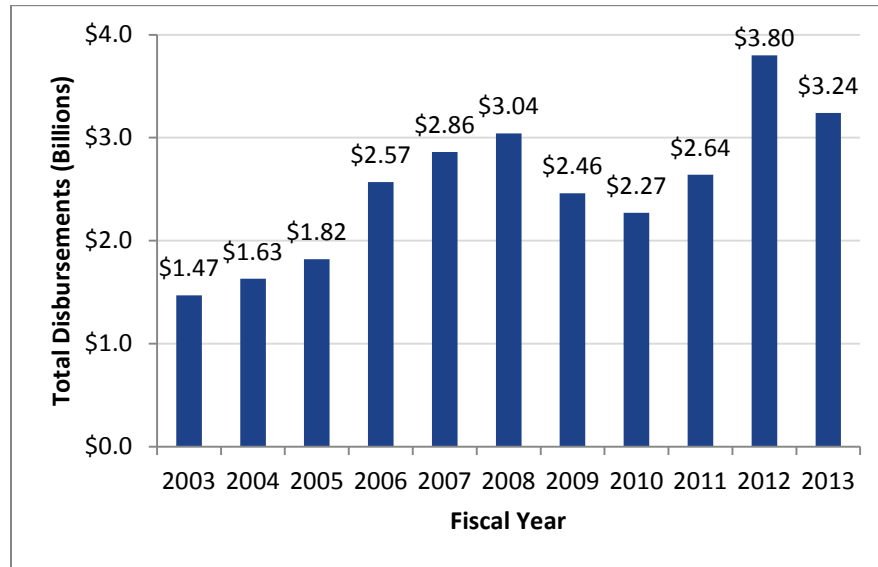
Figure 7.1. Total Disbursements in Chapter 7 and 13 Cases, FY 2003-2013



Source: Executive Office for U.S. Trustees

Chapter 7. Trustee Oversight

Figure 7.2. Total Disbursements in Chapter 7 Cases, FY 2003-2013

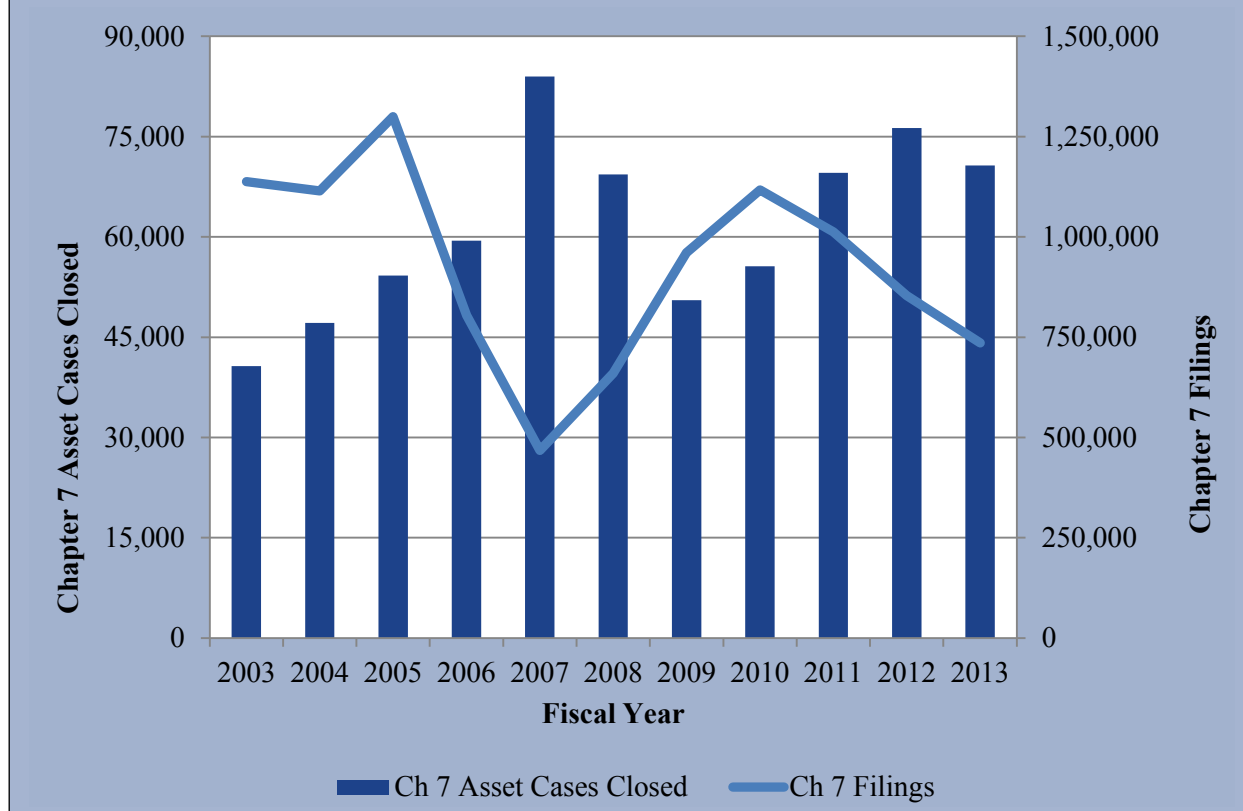


Source: Executive Office for U.S. Trustees

Chapter 7. Trustee Oversight

Figure 7.3. Trends—Chapter 7 Asset Cases Closed, FY 2003-2013

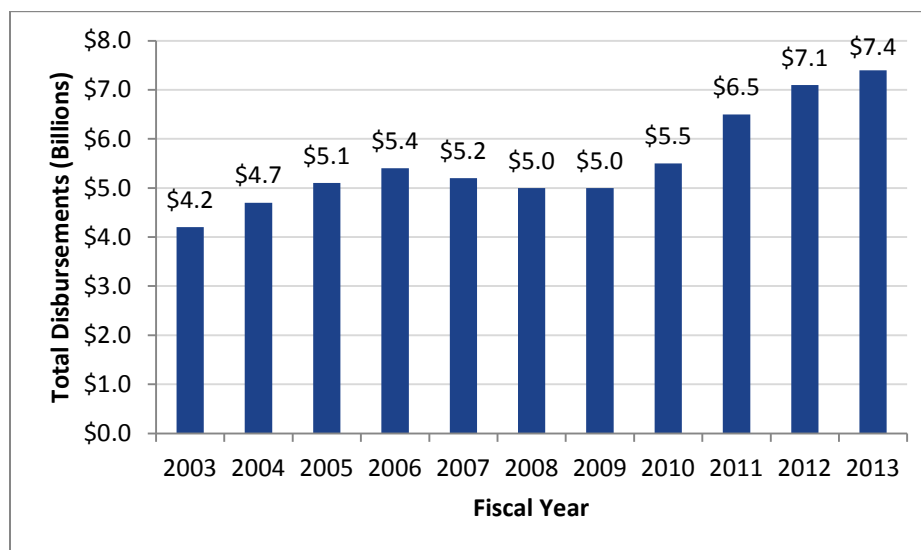
Chapter 7 asset case closings generally lag behind case filing trends. For example, the number of chapter 7 asset cases closed rose dramatically in FY 2007, two years after the unprecedented surge in filings associated with the October 2005 effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act. More recently, filings have decreased for the past three fiscal years, followed by a corresponding decrease in chapter 7 asset cases closed starting FY 2013.



Source: Executive Office for U.S. Trustees

Chapter 7. Trustee Oversight

Figure 7.4. Total Disbursements in Chapter 13 Cases, FY 2003-2013



Source: Executive Office for U.S. Trustees

Chapter 7, chapter 12, and chapter 13 distribution statistics are available on the Program's Internet site at:

- http://www.justice.gov/ust/eo/public_affairs/data_files/ch7_asset/index.htm;
- http://www.justice.gov/ust/eo/private_trustee/data_statistics/ch12.htm; and
- http://www.justice.gov/ust/eo/private_trustee/data_statistics/ch13.htm, respectively.

In addition, raw data on chapter 7 trustee distributions are posted on the USTP's Internet site at http://www.justice.gov/ust/eo/public_affairs/data_files/ch7_asset/index.htm and on www.data.gov.

Language Assistance Plan

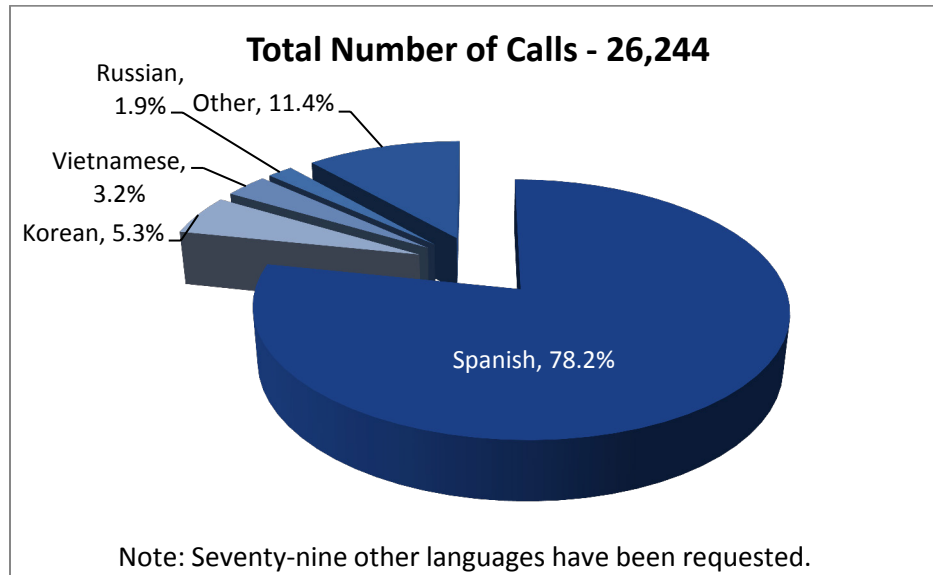
For individuals with limited English proficiency, the Program offers telephonic interpreter services at the section 341 meetings of creditors, at no charge to debtors. At the section 341 meeting, the debtor is questioned under oath by the trustee, U.S. Trustee, and creditors about his or her financial affairs.

The USTP collects data from the interpreter services regarding the languages interpreted and the locations where services are provided. The USTP uses the data for oversight, billing, and statistical purposes. The data are posted by state, city, and language on the USTP's "interactive dashboard" at http://www.justice.gov/ust/eo/public_affairs/data_files/lap/lap_statistics/index.htm and in delimited text files at http://www.justice.gov/ust/eo/public_affairs/data_files/lap/index.htm and www.data.gov.

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The interpreter services' data show that in FY 2013 interpreters were used 26,244 times; the three most commonly requested languages were Spanish, Korean, and Vietnamese; and interpreters were used most often in Los Angeles, Riverside, Newark, Chicago, Sacramento, Santa Ana, Fresno, Brooklyn, New York, and Orlando.

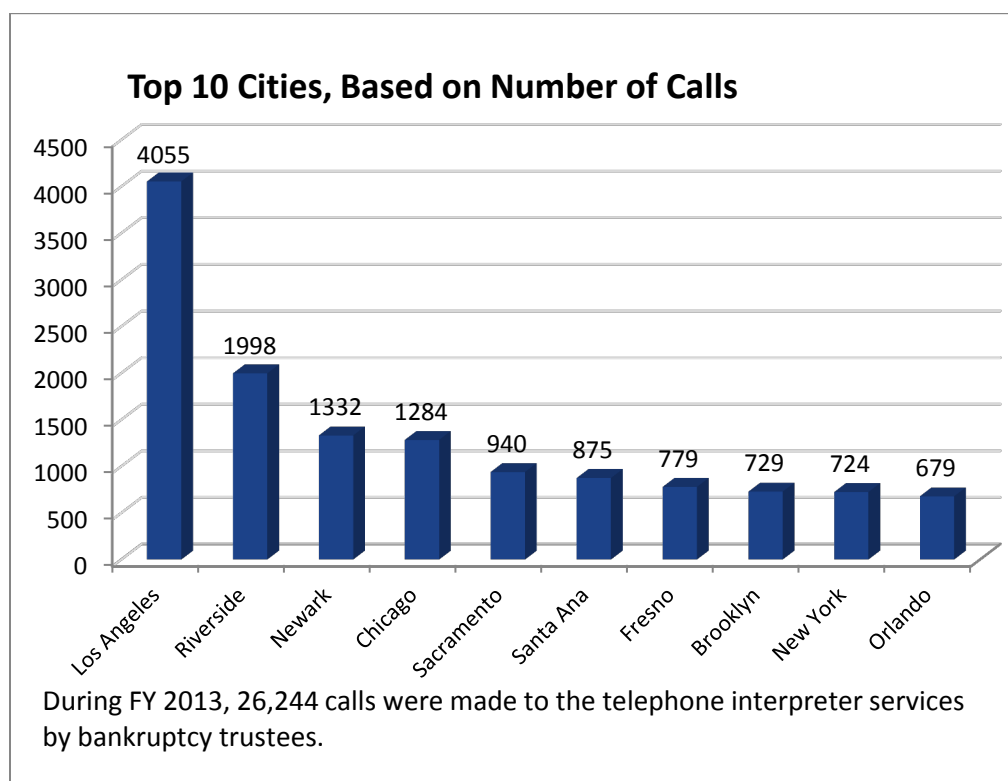
Figure 7.5. Telephone Interpreter Usage by Language, FY 2013



Source: Executive Office for U.S. Trustees

Chapter 7. Trustee Oversight

Figure 7.6. Telephone Interpreter Usage by City, FY 2013



Source: Executive Office for U.S. Trustees

Supervision of Case Administration

USTP staff monitor trustee case administration to ensure that cases are handled efficiently, effectively, and in accordance with applicable law and Program policy.

In chapter 7 cases, Program staff review trustees' final reports before funds are distributed to creditors, and review final accounts after distribution is complete. Program staff reviewed approximately 141,000 such reports in FY 2013. In addition, chapter 7 trustees receive performance reviews at least every other year. These reviews focus on numerous facets of a trustee's work, including the conduct of section 341 meetings of creditors, the pursuit of assets, case administration, and the supervision of professionals. In FY 2013, the Program implemented a new performance review instrument as part of its continuing effort to promote efficiency and streamline trustee oversight processes. The new performance review is more comprehensive, yet easier and more straightforward to prepare. Program staff prepared about 530 performance reviews of chapter 7 trustees in FY 2013.

Chapter 7. Trustee Oversight

Twenty-Five Year Employee



"The people I work with in the Program are high quality individuals with integrity. I've had the opportunity to work on unique projects that challenge me to continue expanding my skills." – Michael Sorgaard, Regional Bankruptcy Analyst, San Francisco, CA

In chapter 13 cases, Program staff review monthly reports, as well as specialized reports received from trustees, to determine if cases in the aggregate are being administered efficiently and effectively. Program staff also may periodically visit trustees to review procedures in more detail. Chapter 12 and chapter 13 trustees receive performance evaluations at least every other year. These reviews focus on matters such as the conduct of section 341 meetings of creditors, case administration, public complaints, and reporting of information. Program staff prepared 62 performance reviews of chapter 12 and chapter 13 trustees in FY 2013.

Supervision of Financial Operations

Program staff engage in oversight of trustees' financial operations to ensure compliance with mandatory safeguards of bankruptcy estate funds.

Chapter 7 trustee operations are either audited by independent certified public accountants or reviewed by Program staff every four years. During FY 2013, about 225 audits and field reviews were conducted. In addition, each trustee submits an annual report covering all open asset cases. The annual reports are reviewed by Program staff to assure that cases are progressing toward closure and that the trustee has properly accounted for bankruptcy estate funds. About 1,060 annual reports were reviewed during FY 2013.

Chapter 13 trustees are audited by independent certified public accountants every year. Chapter 12 trustees are either audited by independent certified public accountants or reviewed by Program staff every three years. During FY 2013, 184 chapter 13 trustees were audited. Program staff review the audit reports and work with the trustees to resolve any identified deficiencies. They also review the monthly reports in which trustees describe financial activity within the trust operation.

Chapter 8. Credit Counseling and Debtor Education

Approval of Providers

Consumer debtors generally must receive credit counseling before filing for bankruptcy relief and personal financial management instruction before receiving a discharge of debts. These requirements are intended to ensure individuals make informed financial decisions before filing for bankruptcy relief, and to provide debtors the tools to avoid future financial catastrophe when they exit bankruptcy.

The primary responsibility of the U.S. Trustees is to approve eligible agencies and providers who meet statutory qualifications to offer pre-bankruptcy credit counseling and post-bankruptcy debtor education services to debtors. An entity seeking approval as a credit counseling agency or debtor education provider must apply for approval by the Program, pursuant to criteria set forth in the Bankruptcy Code. Application information and materials are posted on the Program's Internet site at www.justice.gov/ust/eo/bapcpa/ccde/index.htm.

In March 2013 the Program published final rules for the approval of credit counseling agencies and debtor education providers that became effective on April 15, 2013. The final rules contain new provisions that enable the Executive Office for U.S. Trustees to enforce more stringent standards regarding the quality of credit counseling provided via the Internet; ensure disinterestedness of the board of directors and bar transactions between an agency and relatives of its officers, as well as transactions posing a conflict of interest; prohibit the payment of direct or indirect compensation for client referrals; require stronger identity verification procedures; and require agencies and providers to evaluate fee waiver eligibility based on objective criteria, without a specific request by the client.

Table 8.1. Approved Providers at Year-End, FY 2013

Type of Provider	Number Approved
Credit Counseling Agencies	166
Debtor Education Providers	252

Source: Executive Office for U.S. Trustees

Fees and Delivery of Services

While the Bankruptcy Code permits credit counseling agencies and debtor education providers to charge a reasonable fee for services, it also requires them to provide services without regard to the consumer's ability to pay. The maximum presumptively reasonable fee an agency or provider may charge per person is \$50. Agencies and providers must offer a full or partial waiver upon a debtor's showing of inability to pay. More than 50 chapter 13 trustees provide free debtor education to the chapter 13 debtors whose cases they administer.

Chapter 8. Credit Counseling and Debtor Education

Table 8.2. Median Fee for Services, of Providers Who Charge a Fee

Type of Service	Cost for Individuals	Cost for Couples
Credit Counseling	\$50	\$50
Debtor Education	\$49	\$55

Source: Executive Office for U.S. Trustees

The Bankruptcy Code allows approved credit counseling agencies and debtor education providers to offer services in person or via the Internet or telephone.

Table 8.3. Delivery Method for Services Received

Type of Service	In-Person	Internet	Telephone	Internet/ Telephone
Credit Counseling	2%	69%	16%	13%
Debtor Education	4%	87%	9%	0%

Source: Executive Office for U.S. Trustees

Quality of Service Reviews

In addition to the annual application screening process, the Program conducts quality of service reviews of approved credit counseling agencies and debtor education providers. In FY 2013, the Program undertook 11 quality of service reviews, as well as 12 additional reviews specifically evaluating the quality of Internet-based credit counseling. These reviews allow the Program to corroborate the information submitted in the application for approval; observe credit counseling and debtor education sessions; and evaluate the operations of the credit counseling agency or debtor education provider to ensure the safekeeping of client funds, confirm the agency's operation as a nonprofit entity, and protect consumers. After the reviews, the USTP removed one agency from the list of approved credit counseling agencies and one provider from the list of approved debtor education providers. Final agency decisions on appeals of removals are posted at http://www.justice.gov/ust/eo/foia/foia_err.htm.

In addition, the Program investigated complaints against approved agencies and providers. The most common complaints involved authenticity of credit counseling certificates, timely issuance of credit counseling certificates, and bankruptcy court inquiries regarding certificate validity and/or credit counseling agency approval to provide services.



<http://www.justice.gov/ust>