



UNITED STATES TRUSTEE PROGRAM

Annual Report
Fiscal Year 2014

TABLE OF CONTENTS

Message from the Director	1
Chapter 1. About the U.S. Trustee Program	3
Mission.....	3
Organization and Staffing	3
<i>Figure 1.1. USTP Map of Regions and Offices</i>	<i>4</i>
<i>Figure 1.2. USTP Staff Levels, 2011-2014</i>	<i>5</i>
Budget and Funding.....	5
Caseload.....	5
<i>Figure 1.3. Total Bankruptcy Filings in USTP Districts, FY 2005-2014.....</i>	<i>6</i>
<i>Figure 1.4. Bankruptcy Filings by Chapter, FY 2014</i>	<i>7</i>
Outreach.....	7
<i>Figure 1.5. International Association of Insolvency Regulators Meeting, FY 2014</i>	<i>8</i>
Chapter 2. Civil Enforcement	9
Combating Fraud and Abuse	9
<i>Figure 2.1. Civil Enforcement Activity in Consumer Cases, FY 2014.....</i>	<i>9</i>
Consumer Protection Activity.....	10
Enforcement Against Mortgage Servicers	10
Enforcement Against Unsecured Creditors	11
Enforcement Against Bankruptcy Petition Preparers under 11 U.S.C. § 110.....	12
Enforcement Against Attorneys under 11 U.S.C. § 329 and Other Provisions.....	12
Enforcement Actions Against Debtors	13
Dismissal of Case for Abuse under 11 U.S.C. § 707(b)	13
Denial of Discharge under 11 U.S.C. § 727	14
Debtor Audits.....	14
Chapter 3. Criminal Enforcement.....	15
Trends: Criminal Referrals, by Fiscal Year	15
Chapter 4. Litigation in Chapter 11 Reorganizations	17
Duties in Chapter 11 Cases	17
<i>Figure 4.1. Chapter 11 Case Administration and Oversight Activity, FY 2014.....</i>	<i>17</i>
Fees of Attorneys and Other Professionals	18

TABLE OF CONTENTS

Executive Bonuses	18
Independent Trustees and Examiners	19
Other Chapter 11 Enforcement	19
Motions to Convert or Dismiss	19
Trends: Section 1112(b) Motions to Dismiss, by Fiscal Year	20
Objections to Disclosure Statements and to Plan Confirmation	20
Chapter 5. Appellate Activities	22
Bankruptcy-Related Appeals	22
Appellate Rulings.....	22
Chapter 6. Trustee Oversight.....	24
Private Trustees.....	24
Trustee Distributions.....	24
<i>Figure 6.1. Total Disbursements in Chapter 7 and</i> <i>13 Cases, FY 2005-2014.....</i>	<i>24</i>
Trends: Chapter 13 Disbursements and Filings, by Fiscal Year	25
Language Assistance for Individuals with Limited English Proficiency	26
<i>Figure 6.2. Telephone Interpreter Usage by Language,</i> <i>FY 2014.....</i>	<i>26</i>
Chapter 7. Credit Counseling and Debtor Education	27
Approval of Agencies and Providers	27
Fees and Delivery of Services.....	27
<i>Figure 7.1. Median Fee for Services, of Agencies and</i> <i>Providers That Charge a Fee, FY 2014.....</i>	<i>27</i>
<i>Figure 7.2. Delivery Method for Services Received,</i> <i>FY 2014.....</i>	<i>28</i>
Quality of Service Reviews	28
U.S. Trustee Program Nationwide Office Locator	29

MESSAGE FROM THE DIRECTOR

When the U.S. Trustee Program (USTP or Program) was created, it was described by Congress as the “watchdog” of the bankruptcy system. That is a role that the USTP has worked diligently to fulfill in its more than 25 years as a nationwide program, and Fiscal Year (FY) 2014 was no exception. The USTP not only steadfastly carried out its core statutory responsibilities of policing debtor abuse and ensuring that private trustees effectively administer estate assets, but we also demonstrated great agility and responsiveness in protecting consumer debtors from fraud and abuse and enhancing accountability and transparency in chapter 11 business cases.

To provide you with some sense of the breadth of our work, the USTP:

- Took more than 35,000 formal and informal civil enforcement actions with a potential monetary impact of more than \$1 billion in debts not discharged, fines, penalties, and other relief;
- Made 2,080 bankruptcy and bankruptcy-related criminal referrals to our law enforcement partners;
- Oversaw the activities of nearly 1,250 private trustees who distributed approximately \$10.1 billion and administered more than 900,000 consumer bankruptcy cases;
- Participated in 110 appeals to bankruptcy appellate panels, district courts, circuit courts of appeal, and the U.S. Supreme Court;
- Approved and monitored approximately 150 credit counseling agencies and 230 debtor education providers that offer statutorily required services to individual debtors; and
- Designated 1,627 individual chapter 7 and chapter 13 cases for audit.

Importantly, in FY 2014, the USTP continued its focus on vigorously enforcing the Bankruptcy Code and Rules against mortgage servicers who inflate their claims or otherwise fail to comply with the requirements of accuracy, disclosure, and notice to their customers in bankruptcy. Among other results, those efforts culminated in a settlement, announced in March 2015, requiring JPMorgan Chase Bank, N.A. (Chase) to pay more than \$50 million. Cash payments, credits, and loan forgiveness of \$43.5 million will be provided to more than 25,000 homeowners in bankruptcy, and the bank will pay an additional \$7.5 million to support financial education. The settlement addressed issues uncovered by the USTP involving the robo-signing of more than 50,000 payment change notices filed by Chase in bankruptcy court, as well as Chase’s failure to timely and accurately provide payment change notices and escrow statements to customers in bankruptcy. In addition to the monetary compensation, the settlement required Chase to change internal operations and to submit to oversight by an independent reviewer who will file public reports on the bank’s compliance. The Chase settlement was the 10th nationwide settlement involving the Program in the past seven years, and is yet another example of how the USTP has enhanced its enforcement efforts by effectively leveraging resources to maximize its impact through national investigations that address systemic misconduct.

In the chapter 11 area, the USTP has worked conscientiously to bring accountability and transparency to the chapter 11 process. In addition to policing professional fees, conflicts of interest, impermissible executive bonuses, and many other aspects of business bankruptcy

MESSAGE FROM THE DIRECTOR

reorganizations, our role as watchdog allows us to present issues for judicial decision even where parties either will not, or lack the financial wherewithal to, litigate matters. This was particularly evident in the bankruptcy case of Lehman Brothers Holdings, Inc., where the USTP won an appeal vindicating the Program's position that the purported consent of parties to a chapter 11 reorganization plan cannot circumvent the Bankruptcy Code. In that case, individual members of the unsecured creditors' committee attempted to have \$26 million in personal attorneys' fees associated with their committee work paid by the bankruptcy estate, in direct contravention of section 503 of the Bankruptcy Code. The ruling is significant and has implications beyond the issue of fees because it reaffirms—in the words of the district court—that “interested parties and bankruptcy courts” cannot “tweak the law to fit their preferences.” This and other cases illustrate the Program's commitment to protecting the statutory rights of all stakeholders, including smaller creditors.

I am extremely proud of the USTP's substantial record of accomplishment in carrying out our statutory duties, responding to emerging issues, and addressing threats to the integrity of the bankruptcy system. Employees at all levels throughout the Program—in headquarters and in our field offices around the country—uphold the highest standards of the Department of Justice for professionalism and dedication to duty. I am honored to work alongside them. I invite you to learn more about our activities in the *FY 2014 Annual Report of the United States Trustee Program*.

A handwritten signature in black ink, reading "Clifford J. White III". The signature is stylized with a large, sweeping initial 'C' and a horizontal line at the end.

Clifford J. White III
Director

CHAPTER 1. ABOUT THE U.S. TRUSTEE PROGRAM

Mission

The mission of the United States Trustee Program is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public.

The Program oversees the administration of and has standing to participate in every individual and business bankruptcy case filed in the 88 federal judicial districts under its jurisdiction.¹

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 that are resolved consensually without intervention by the court, for a monetary impact of hundreds of millions of dollars each year.
- 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, as well as others who attempt to use the bankruptcy system to perpetrate fraud.
- Providing oversight of chapter 11 business reorganization cases to ensure adequacy of information, management accountability, appropriateness of professional fees, and progression toward financial rehabilitation.
- Supervising private trustees who administer bankruptcy cases under chapters 7, 12, and 13 and distribute billions of dollars in assets each year.
- Participating in appeals to the bankruptcy appellate panels, district courts, circuit courts of appeals, and the U.S. Supreme Court to ensure the law is shaped, interpreted, and applied evenly in all judicial districts.
- 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.
- Annually approving and monitoring 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 and Staffing

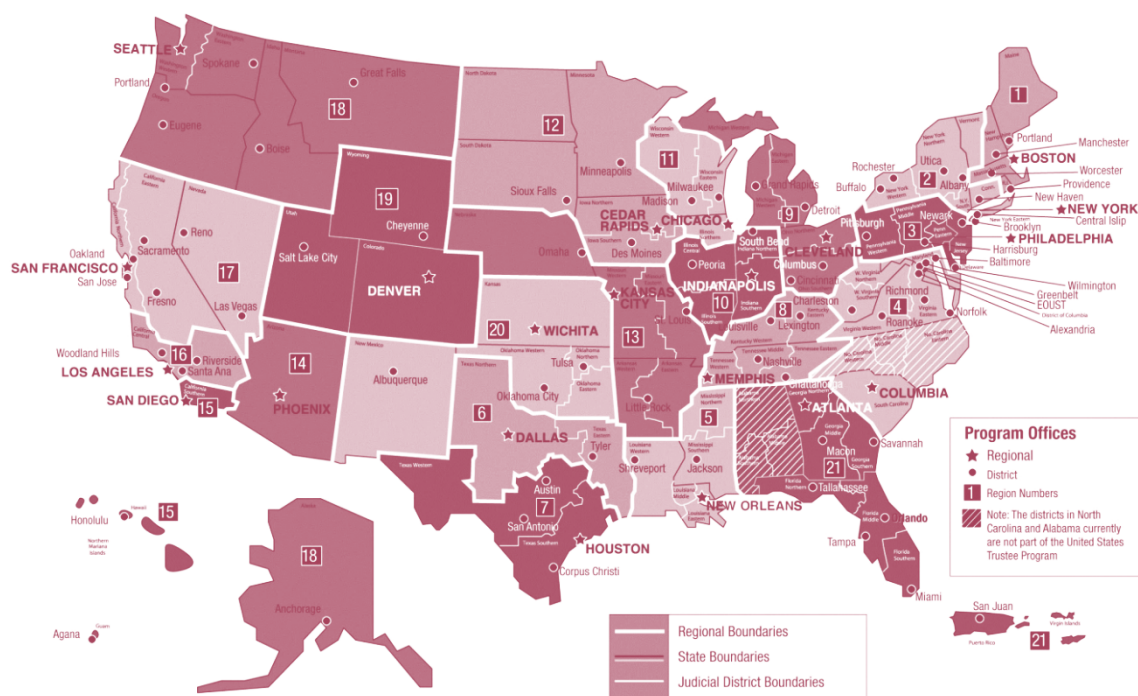
The USTP is led by a Director headquartered in the Executive Office for U.S. Trustees located in Washington, DC. The Executive Office oversees the Program by providing leadership, central policy and management direction, and administrative and information technology

¹ The USTP has jurisdiction in all judicial districts except those in Alabama and North Carolina.

CHAPTER 1. ABOUT THE U.S. TRUSTEE PROGRAM

services to the field offices. The Program's 21 regions are managed by U.S. Trustees appointed by the Attorney General and include 93 field office locations supervised by Assistant U.S. Trustees.

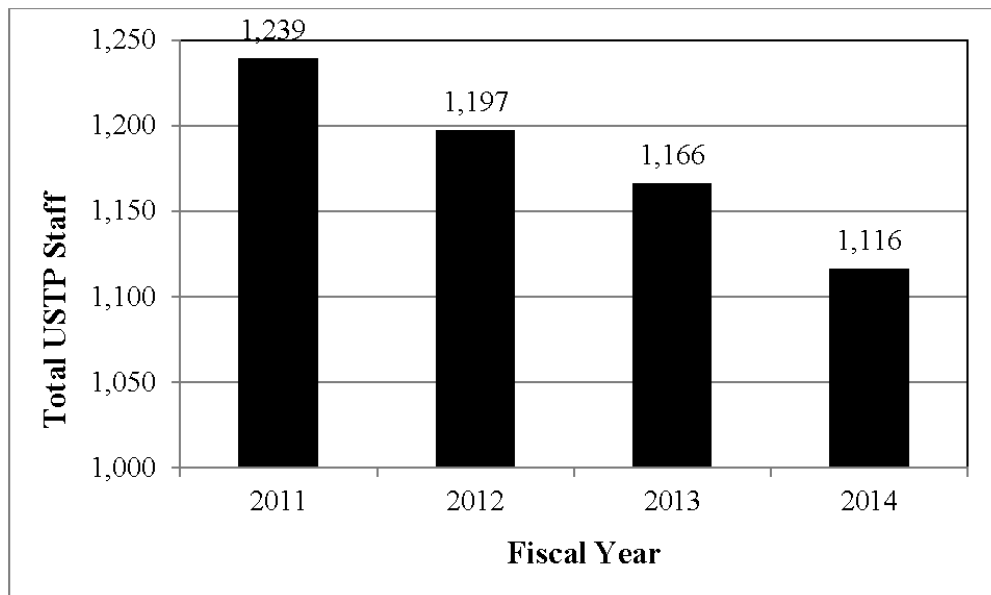
Figure 1.1. USTP Map of Regions and Offices



At the conclusion of FY 2014, the Program employed 1,116 staff members consisting of attorneys, financial analysts, paralegals, and support staff. The majority of field offices have 12 or fewer employees, and more than 90 percent of the Program's employees are located in its field offices.

CHAPTER 1. ABOUT THE U.S. TRUSTEE PROGRAM

Figure 1.2. USTP Staff Levels, FY 2011-2014



Source: Executive Office for U.S. Trustees

Budget and Funding

The USTP is funded through appropriations made by Congress. The Program receives filing fees from consumer and business debtors, quarterly fees based on disbursements from chapter 11 debtors, and interest on investments and other miscellaneous revenue. These funds are placed in the United States Trustee System Fund and are used to offset amounts expended by the USTP pursuant to Congressional appropriations.

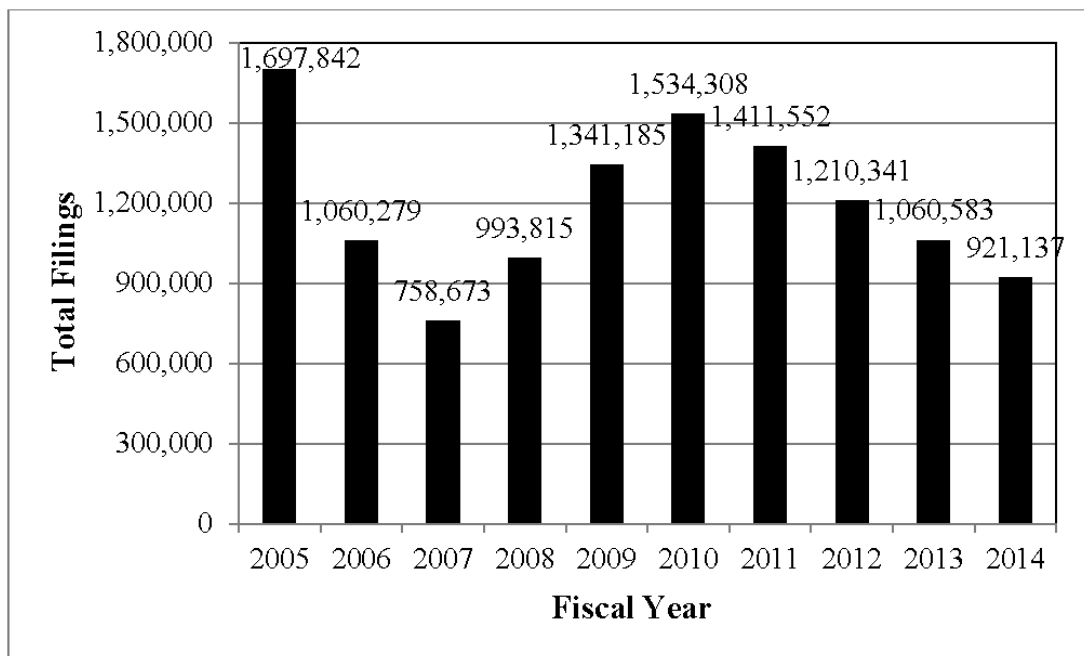
The USTP continually examines internal operations to increase cost-efficiency. For example, in 2014 a Legal Assistant in the Program's Madison office received an Attorney General's Award for Excellence in Legal Support for spearheading the USTP's use of a less expensive online resource for bankruptcy court documents, providing invaluable training, resource materials, and outreach to Program personnel. Her efforts, along with the launch of a computer application that provides docket-like views of data from USTP databases, resulted in savings of more than \$800,000 in FY 2014.

Caseload

After a historic rise in the number of bankruptcy filings from FY 2007 to FY 2010, filing rates have declined for the past four years and have not followed traditional patterns. In FY 2014, 921,137 bankruptcy cases were filed in the districts covered by the Program.

CHAPTER 1. ABOUT THE U.S. TRUSTEE PROGRAM

Figure 1.3. Total Bankruptcy Filings in USTP Districts, FY 2005-2014



Source: Administrative Office of the U.S. Courts

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.

CHAPTER 1. ABOUT THE U.S. TRUSTEE PROGRAM

Figure 1.4. Bankruptcy Filings by Chapter, FY 2014

Bankruptcy Chapter	Filings in USTP Districts
All Chapters	921,137
Chapter 7	625,892
Chapter 11	7,392
Chapter 13	287,408
Other Chapters*	445

Source: Administrative Office of the U.S. Courts

*Other chapters include chapters 9 (municipalities), 12 (family farmers), and 15 (cross-border).

Outreach

The USTP engages in significant outreach and training with bankruptcy system stakeholders throughout the year to address Program priorities and issues of mutual concern. USTP representatives also regularly appear before local bar associations and other groups to provide training and information about bankruptcy law and the bankruptcy system. In particular, during FY 2014, USTP representatives undertook a concerted effort to speak with bankruptcy practitioners and bankruptcy judges around the country regarding the updated fee guidelines for attorneys in large chapter 11 cases, which took effect on November 1, 2013.

The Program serves as a consultant to the Judicial Conference of the United States' Advisory Committee on Rules of Bankruptcy Procedure, and has been a member of the President's Financial Fraud Enforcement Task Force since 2009. Program offices participate in more than 80 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized law enforcement task forces throughout the country. Program employees also conduct extensive training for federal, state, and local law enforcement personnel, USTP staff, and private bankruptcy trustees.

From 2011 through 2014, Director White served as an *ex officio*, non-voting member of the Commission to Study the Reform of Chapter 11 created by the American Bankruptcy Institute, the nation's largest organization of bankruptcy professionals. The Director provided institutional perspectives and technical assistance on issues considered by the commission. The commission issued its report making far-reaching recommendations on chapter 11 practice. These recommendations include several that would strengthen the role of the USTP in carrying out its duties and clarify the law to support long-standing positions the USTP has asserted in bankruptcy litigation on issues relating to corporate governance and integrity of the bankruptcy system.

CHAPTER 1. ABOUT THE U.S. TRUSTEE PROGRAM

Finally, FY 2014 marked the Program's first involvement with the International Association of Insolvency Regulators (IAIR), an international organization that brings together the collective experiences and expertise of government insolvency regulators from jurisdictions around the world. The IAIR hosted its annual meeting in Washington, DC, at the World Bank in September 2014. Representatives from the USTP made presentations on numerous topics, including on United States bankruptcy developments, efforts to achieve cost controls, and consumer issues, and provided a hands-on demonstration of the use of technology in overseeing private trustees.

Figure 1.5. International Association of Insolvency Regulators Meeting, FY 2014



Source: Photo courtesy of IAIR; www.insolvencyreg.org

CHAPTER 2. CIVIL ENFORCEMENT

Combating Fraud and Abuse

A core function of the USTP is to combat bankruptcy fraud and abuse through civil enforcement. The Program pursues a variety of remedies, including fee disgorgement, fines, injunctive relief, and civil penalties, to address fraud and abuse committed against consumer debtors by attorneys, bankruptcy petition preparers, creditors, and others. Similarly, the Program combats fraud and abuse committed by debtors by seeking denial of discharge for the concealment of assets and other violations, seeking case conversion or dismissal if a debtor's case is deemed abusive, and taking other civil enforcement actions.

During FY 2014, USTP offices reported taking more than 35,000 formal and informal civil enforcement actions in consumer and non-consumer cases, resulting in more than \$1 billion in debts not discharged in chapter 7, fines, and other remedies. USTP attorneys prevailed in 98.4 percent of the actions resolved by judicial decision or consent in the fundamental areas of dismissal for abuse under 11 U.S.C. § 707(b), denial of discharge under 11 U.S.C. § 727, fines and injunctions against bankruptcy petition preparers under 11 U.S.C. § 110, and disgorgements of attorneys' fees under 11 U.S.C. § 329. Since the USTP began tracking its civil enforcement and related actions in 2003, it has taken more than 654,000 actions with a monetary impact in excess of \$15.1 billion.

Figure 2.1. Civil Enforcement Activity in Consumer Cases, FY 2014

Type of Activity	Actions	Inquiries	Action Success Rate	Financial Impact (1,000s)
Enforcement Activity Against Debtors				
§ 707(a) Dismissal for Cause	2,262	1,337	98.5%	\$66,357
§ 707(b) Dismissal for Abuse	1,745	10,867	98.7%	\$206,162
§ 727 Denial of Discharge	994	1,617	98.8%	\$737,585
§ 1328(f) Denial of Discharge	55	231	100.0%	\$7,232
§ 1307(c) Dismissal or Conversion	98	96	95.2%	N/A
Consumer Protection Activity				
§ 110 Bankruptcy Petition Preparers	488	612	99.1%	\$2,226
§ 526 Debt Relief Agencies	47	70	100.0%	\$70
§ 329 Attorney Fee Disgorgement	495	1,023	96.1%	\$4,611
Other Attorney Misconduct	70	342	97.3%	\$81
Abusive Conduct by Creditors	161	1,929	98.0%	\$7,637

Source: Executive Office for U.S. Trustees

CHAPTER 2. CIVIL ENFORCEMENT

Consumer Protection Activity

The USTP plays an active part in the Justice Department's efforts to protect Americans from financial fraud and abuse, including investigating and pursuing fraudulent and abusive conduct by those who seek to take advantage of individuals in financial distress.

Enforcement Against Mortgage Servicers

A primary focus of the USTP's consumer protection efforts has been enforcement of the Bankruptcy Code and Rules against mortgage servicers that inflate their claims or otherwise fail to comply with bankruptcy requirements of accuracy, disclosure, and notice to their customers in bankruptcy.

The USTP employs a multi-pronged enforcement strategy. First, the USTP continues close oversight of the mortgage servicers that entered into the historic 2012 National Mortgage Settlement (NMS). The USTP was a major participant in the \$25 billion settlement reached by the federal government, 49 state attorneys general, and the nation's five largest mortgage servicers to address mortgage servicing, foreclosure, and bankruptcy abuses. In addition to providing financial relief to homeowners, the NMS requires the servicers to adhere to a uniform and comprehensive set of mortgage servicing standards, including provisions specific to bankruptcy, and to subject themselves to three and a half years of compliance review by an independent monitor. The Program serves as the federal co-chair of the NMS Monitoring Committee and, in that capacity, works with federal and state agencies to ensure that the settling servicers satisfy their obligations under the settlement. The committee also oversees the independent monitor established by the NMS, who verifies compliance by the settling servicers.

In addition, the USTP conducted an investigation and enforcement action against JPMorgan Chase based on violations of the Bankruptcy Code and Rules. This activity culminated in a nationwide settlement, announced in March 2015, requiring the bank to pay more than \$50 million including cash payments, mortgage loan credits, and loan forgiveness to more than 25,000 homeowners who are or were in bankruptcy, and a contribution to a financial education program. Chase acknowledged that it filed in bankruptcy courts around the country more than 50,000 payment change notices that were improperly signed, under penalty of perjury, by persons who had not reviewed the accuracy of the notices. Chase also acknowledged that it failed to file timely, accurate notices of mortgage payment changes and escrow statements. In addition to the monetary compensation, the settlement required Chase to change internal operations and to submit to oversight by an independent reviewer who will file public reports on the bank's compliance.

The second prong of the USTP's mortgage servicer enforcement efforts is aimed at addressing the conduct of servicers that are not a party to the NMS. In FY 2014, the USTP assisted in the settlement involving Ocwen Financial Corporation and its subsidiary, Ocwen Loan Servicing, and the Consumer Financial Protection Bureau, state attorneys general, and state

CHAPTER 2. CIVIL ENFORCEMENT

banking regulators to address systemic misconduct by Ocwen with respect to its mortgage servicing practices. Under the settlement, Ocwen must pay \$125 million to borrowers who lost their homes to foreclosure and provide \$2 billion in first lien principal reductions. In addition, Ocwen must implement new servicing standards similar to those required under the NMS, with compliance overseen by the NMS monitor. Although not a party to the settlement, the USTP developed servicing standards to address bankruptcy specific issues that were incorporated into the settlement.

Also in FY 2014, the Attorney General announced a federal-state agreement with SunTrust Mortgage Inc. to settle allegations of wrongdoing in mortgage origination and servicing practices. Under the agreement, SunTrust will pay nearly \$1 billion, including \$40 million to borrowers and homeowners and \$500 million in principal and interest rate reductions. It will also adopt the servicing standards imposed under the NMS, which include standards that address servicing issues involving customers in bankruptcy. The USTP was a critical player in the SunTrust investigation and negotiations on mortgage servicing. The Program amassed evidence of SunTrust's servicing practices, helped develop an additional metric to ensure customers' privacy protected information was not disclosed in bankruptcy filings, and will monitor SunTrust's implementation of the bankruptcy specific servicing standards.

The third prong of the USTP's enforcement strategy is to focus additional attention on 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 and practices that the Program uncovered within the largest banks prior to the NMS. The USTP seeks remedies for case-specific violations and systemic deficiencies. The Program has established special teams to handle litigation against these servicers. This ensures a coordinated approach, allows the USTP to more effectively identify patterns of noncompliance, and provides field offices with the expertise required to investigate and litigate as needed against this growing segment of the mortgage servicing industry.

Enforcement Against Unsecured Creditors

The USTP polices the conduct of unsecured creditors to ensure against improper disclosure of consumers' personal information, unlawful attempts to collect on debt discharged in bankruptcy, and other conduct prohibited by the Bankruptcy Code and Rules. The USTP has focused on the review of claims filed by unsecured creditors to collect consumer debt in bankruptcy, including an examination of bank practices in selling unsecured debt, as well as possible robo-signing of bankruptcy proofs of claim by some claims traders. The USTP has produced a presentation for trustees and counsel that suggests effective means of evaluating claims for compliance.

CHAPTER 2. CIVIL ENFORCEMENT

Enforcement Against Bankruptcy Petition Preparers under 11 U.S.C. § 110

U.S. Trustees file actions against bankruptcy petition preparers who violate the consumer protection provisions of 11 U.S.C. § 110. A bankruptcy petition preparer is a non-attorney who prepares debtors' bankruptcy documents for a fee. Section 110 requires bankruptcy petition preparers to disclose in court filings their identities and the fees they receive, and bars them from activities such as offering legal advice, using the word "legal" or similar terms in advertisements, charging excessive fees, collecting clients' 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.

After an evidentiary hearing on a complaint filed by the Sacramento office, the Bankruptcy Court for the Eastern District of California ordered a bankruptcy petition preparer to pay the debtors \$10,000 in statutory damages for violations of section 110, disgorge fees of \$5,000, and pay \$42,600 in fines to the USTP. The petition preparer marketed himself as a "foreclosure/eviction consultant" to the local Russian community. When a couple asked the petition preparer to help them stay in their home, which had already been foreclosed upon, he told the couple he could keep them in the home for up to two years. The preparer then directed his staff to prepare bankruptcy documents for the debtors to file, to delay an unlawful detainer action filed by their home mortgage lender. In violation of section 110, the preparer failed to provide his identifying information in the bankruptcy documents, disclose that he was not an attorney, and disclose the \$5,000 fee he received from the debtors. As authorized by the statute, fines were tripled because the court found that the preparer intentionally hid his participation in the preparation of the bankruptcy documents.

Enforcement Against Attorneys under 11 U.S.C. § 329 and Other Provisions

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 may refer a matter to a state court disciplinary board or other regulatory body. U.S. Trustees also enforce 11 U.S.C. §§ 526-528, 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 the debtors to make untrue or misleading statements in documents filed in a bankruptcy case.

CHAPTER 2. CIVIL ENFORCEMENT

After an investigation by the Chattanooga office, the Bankruptcy Court for the Eastern District of Tennessee barred an attorney from representing new bankruptcy clients in the judicial district for five years and required him to repay fees of up to \$3,000 in six different cases. The attorney filed bankruptcy cases with numerous errors and omissions; failed to file documents on time; and placed a debtor's electronic signature on a document that he filed on the debtor's behalf, although the debtor had not physically signed the document. The attorney consented to the entry of the bankruptcy court's order.

Enforcement Actions Against Debtors

U.S. Trustees also combat fraud and abuse committed by debtors, primarily by seeking denial of discharge for the concealment of assets and other violations, and by moving for case conversion or dismissal if a debtor's case is deemed abusive.

Dismissal of Case for Abuse under 11 U.S.C. § 707(b)

The U.S. Trustee may file a motion to dismiss under 11 U.S.C. § 707(b) if, among other things, 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 many chapter 7 cases where abuse is presumed under the statute, the U.S. Trustee exercises his or her statutory discretion to decline to seek dismissal if the debtor demonstrates that dismissal is not appropriate due to factors such as a recent job loss that justifies an adjustment to the current monthly income calculation. Even if a case is presumed not to be abusive under the means test, the law does not preclude the USTP from taking action when it finds the filing to be abusive under a bad faith or a totality of the circumstances analysis.

The Bankruptcy Court for the Eastern District of Louisiana ruled for the New Orleans office after a contested hearing and prevented the discharge of nearly \$1 million in unsecured debt by dismissing the debtor's chapter 7 case. The U.S. Trustee successfully argued that the debtor, a highly compensated attorney, under-reported his income and over-reported his expenses, and that his filing was abusive under the totality of the circumstances because he had the ability to repay creditors. Although the court did not reach the issue, the U.S. Trustee also argued that a number of factors demonstrated the debtor's bad faith, including the retention of luxury items, the timing of the bankruptcy filing just prior to a state court contempt hearing, and the debtor's failure to provide notice of the filing to most of his creditors.

CHAPTER 2. CIVIL ENFORCEMENT

Denial of Discharge under 11 U.S.C. § 727

The U.S. Trustee may file a complaint 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.

The Bankruptcy Court for the District of Hawaii ruled in favor of the Honolulu office to deny a chapter 7 debtor's discharge of \$7,876,114 in unsecured debt. The debtor failed to disclose his interests in real property located in Hawaii and Australia. He also failed to disclose five financial accounts, including an account that was held in another person's name and was used to deposit rental income from the debtor's vacation properties. Further, the debtor violated a court order restricting his use of bankruptcy estate funds and sold bankruptcy estate property without informing the bankruptcy trustee or obtaining the bankruptcy court's approval. In addition to obtaining the denial of the debtor's discharge, the U.S. Trustee referred the matter for criminal prosecution. The debtor was ultimately sentenced to 30 months in prison and required to pay more than \$700,000 in restitution.

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. More information may be found in *Public Report: Debtor Audits by the United States Trustee Program, Fiscal Year 2014*, posted on the Program's Internet site at <http://www.justice.gov/ust/bankruptcy-data-statistics/reports-studies>.

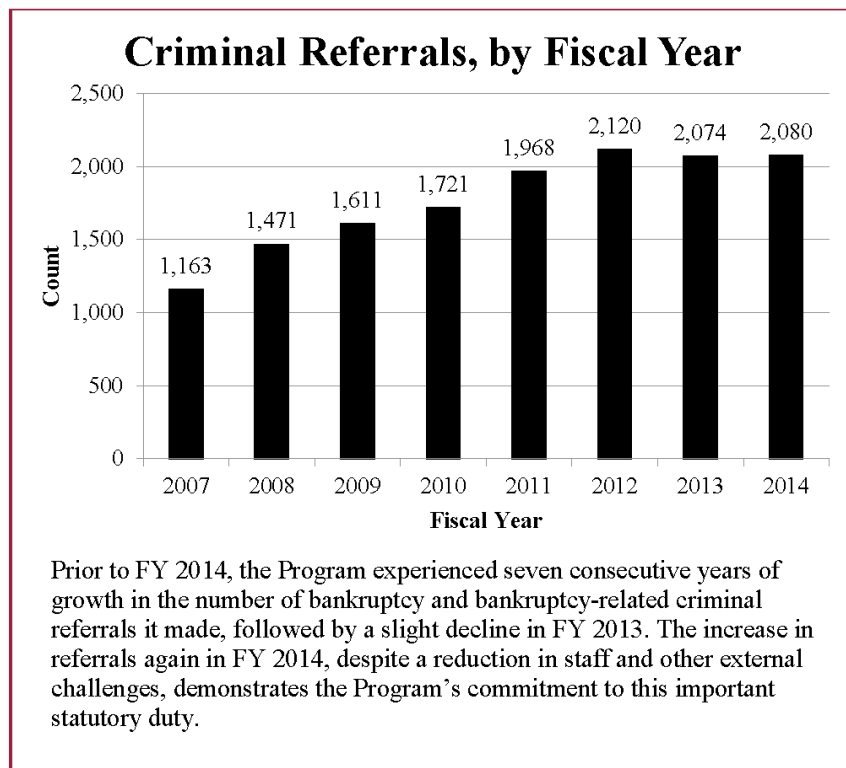
CHAPTER 3. CRIMINAL ENFORCEMENT

Criminal enforcement is another key component of the Program's efforts to uphold the integrity of the bankruptcy system. The Program has a statutory duty to refer matters to the U.S. Attorneys' offices for investigation and prosecution that relate to "the occurrence of any action which may constitute a crime." The statute also requires each U.S. Trustee to assist the U.S. Attorney in carrying out prosecutions. Assistance may include providing technical bankruptcy-related information during the investigation, providing expert or fact testimony at criminal trials, or serving as a Special Assistant U.S. Attorney to prosecute the case.

In FY 2014, the Program made 2,080 bankruptcy and bankruptcy-related criminal referrals. One referral often contains more than one allegation. The five most common allegations in referrals made during FY 2014 involved tax fraud, false oath or statement, concealment of assets, bankruptcy fraud scheme, and identity theft or use of false/multiple Social Security numbers.

The USTP submits an annual report to Congress detailing the number and types of its criminal referrals. More information may be found in *Criminal Referrals by the United States Trustee Program, Fiscal Year 2014*, posted on the Program's Internet site at <http://www.justice.gov/ust/bankruptcy-data-statistics/reports-studies>.

TRENDS



Source: Executive Office for U.S. Trustees

CHAPTER 3. CRIMINAL ENFORCEMENT

The following criminal prosecutions demonstrate the USTP's commitment to addressing criminal violations by debtors and by those who seek to exploit debtors.

In the District of New Jersey, a husband and wife each pleaded guilty to bankruptcy fraud by concealment of assets, false oaths, and false declarations, and conspiracy to commit mail and wire fraud. The husband also pleaded guilty to failure to file a tax return. The couple submitted fraudulent applications and supporting documents to lenders to obtain mortgages and other loans, falsely representing that they were employed and/or receiving substantial salaries. When they filed a chapter 7 petition, they intentionally concealed and made false oaths and declarations about businesses they owned; income they received from a rental property; and the wife's true income from a television show, Web site sales, and personal and magazine appearances. The husband also admitted failing to report nearly \$1 million in individual income, for tax purposes. The husband and wife were ultimately sentenced to 41 months and 15 months in prison, respectively, along with forfeitures and fines. The U.S. Trustee's Newark office referred the criminal matter and assisted in the investigation. The office also filed a civil enforcement action in the bankruptcy case seeking to prevent the couple from discharging debts exceeding \$7.1 million. Prior to trial, the couple agreed to waive their discharge.

In the Eastern District of Michigan, a bankruptcy petition preparer was sentenced to 46 months in prison on five counts of criminal contempt and fined \$25,000. The preparer had been convicted after a jury trial. The evidence presented at trial showed that the preparer knowingly disobeyed five bankruptcy court orders permanently enjoining his activities, continued to act as a petition preparer, and manipulated debtors into signing false documents and lying under oath about his involvement in 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. A Trial Attorney from the U.S. Trustee's Detroit office prosecuted the case as a Special Assistant U.S. Attorney, and another Trial Attorney and a Paralegal from the office testified at trial.

CHAPTER 4. LITIGATION IN CHAPTER 11 REORGANIZATIONS

Duties in Chapter 11 Cases

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 and, where appropriate, objecting to requests to retain professionals such as attorneys, accountants, and turnaround specialists, and to pay them from the bankruptcy estate; seeking to appoint chapter 11 trustees and examiners when necessary; fulfilling its statutory obligations by appointing unsecured creditors' committees and other official committees; enforcing the statutory limits on bonuses requested for chapter 11 debtor company executives; and ensuring that management satisfies basic operating requirements designed to protect creditor recoveries.

As the USTP has stepped up enforcement in the chapter 11 arena, it has become increasingly clear that its watchdog role is essential to vindicate congressional mandates in the Bankruptcy Code. Even when debtor companies and some of their major creditors agree on a course of action, the interests of other stakeholders often are implicated. The USTP's role as the watchdog of the bankruptcy system allows it to enforce the Bankruptcy Code and present issues for judicial decision even where parties either will not litigate or lack the financial ability to do so.

Although the USTP should never substitute its business judgment for that of economic stakeholders, it is the Program's job to ensure that the Bankruptcy Code and Rules are followed by all participants in the bankruptcy system. This view has led the USTP to oppose both debtors and creditors on issues such as payment of attorneys' fees, executive bonuses, and other matters of corporate governance.

Figure 4.1. Chapter 11 Case Administration and Oversight Activity, FY 2014

Type of Activity	Actions	Inquiries	Action Success Rate
§ 1112(b) Conversion or Dismissal	3,379	1,736	98.2%
§ 1125 Disclosure Statements	823	446	98.9%
§ 1129 Plan Confirmation	394	277	91.8%
§ 1104 Appointment of Trustee or Examiner	73	33	87.3%
§ 330 Professional Fee Requests*	629	928	95.6%
§ 503(c) Key Employee Retention Plans	40	22	86.5%

Source: Executive Office for U.S. Trustees

*Professional fee requests under 11 U.S.C. § 330 arise primarily in chapter 11 cases, but also in cases filed under other chapters.

CHAPTER 4. LITIGATION IN CHAPTER 11 REORGANIZATIONS

Fees of Attorneys and Other Professionals

U.S. Trustees monitor and, when appropriate, object to the employment and compensation 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 and compensation to ensure compliance with the Bankruptcy Code.

An objection by the Wilmington office resulted in a reduction of more than \$4.3 million in compensation awarded by the Bankruptcy Court for the District of Delaware to a real estate consultant. The consultant initially requested nearly \$8 million in compensation from the bankruptcy estate of a hardware retailer. The U.S. Trustee argued that the compensation requested was excessive and unreasonable and was not supported by the terms of the consultant's retention agreement. After discovery, the consultant agreed to reduce its request by more than half.

The USTP has advanced major reforms in attorney billing practices in large chapter 11 cases by issuing new guidelines that require greater transparency. Beyond the public benefits of increased transparency, the guidelines are designed to ensure that the rates charged by bankruptcy attorneys are market-driven and satisfy existing statutory requirements.

The guidelines took effect for large cases with assets and liabilities each of \$50 million or more filed on or after November 1, 2013. They provide for the following: the use of budgets and staffing plans; disclosure of blended billing rates outside of bankruptcy for comparison; 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. Generally, counsel have agreed to abide by the guidelines, large firms have improved internal billing practices and processes, and firms are providing greater discounts and taking cost-cutting measures that heretofore were rarely provided in bankruptcy cases.

Executive Bonuses

The USTP reviews requests for executive bonuses and other compensation for compliance with 11 U.S.C. § 503(c), and is often the only participant in the bankruptcy case that seeks enforcement of that section. In the 2005 bankruptcy reform law, Congress sought to curtail the practice of chapter 11 debtors' executives awarding themselves lavish bonuses during the bankruptcy case to the detriment of creditors and other employees.

In many cases, the U.S. Trustee's informal objections have resulted in substantial voluntary changes to the debtor's proposed executive compensation programs in order to comply with the statute. Other cases have required formal court action.

CHAPTER 4. LITIGATION IN CHAPTER 11 REORGANIZATIONS

In the Southern District of New York, the bankruptcy court agreed with the Manhattan office that the chapter 11 debtors' bonus plan was a disguised key employee retention plan that violated the Bankruptcy Code rather than a permissible key employee incentive plan. As a result, the court denied the debtors' request to pay bonuses totaling up to \$655,250 to the debtors' chief operating officer and general counsel based on results achieved from the sale of assets. The U.S. Trustee argued that the debtors failed to establish that the yardstick by which the bonuses would be paid represented challenging results. The U.S. Trustee also asserted that the level of proceeds from the asset sale already guaranteed the insiders would receive substantial bonuses without taking action to find other bidders.

Independent Trustees and Examiners

The Program's responsibilities in business reorganization cases also include the appointment of trustees when there are grounds to suspect that current management has participated in gross mismanagement, fraud, dishonesty, or other improper activity. In addition, the U.S. Trustee seeks the appointment of examiners when independent investigations are needed.

In the District of Massachusetts, the Worcester office obtained the appointment of a trustee in a chapter 11 case filed by a company that purported to provide inexpensive Internet phone service worldwide. The case was transferred from the District of Nevada, where it was originally filed amid allegations of a massive cross-border pyramid scheme. The U.S. Trustee appointed the chapter 11 trustee after federal authorities seized substantially all of the debtor's assets and records. The debtor's two principals in the United States were later charged with criminal fraud, and one has fled the country. The trustee's tasks have included reconstructing the debtors' books and records, identifying assets and liabilities, and developing an electronic process for the submission and allowance of creditors' claims. Based on his preliminary investigation, the trustee has estimated potential losses for the nearly two million creditors at approximately \$1.8 billion.

Other Chapter 11 Enforcement

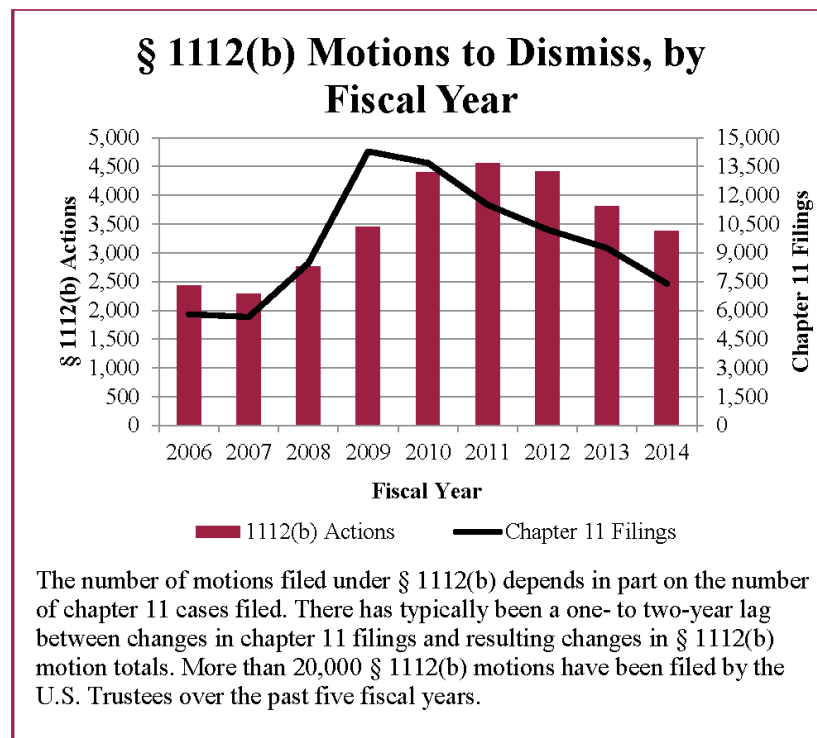
Motions to Convert or Dismiss

When there appears to be little likelihood of a successful reorganization or the debtor fails to satisfy its fiduciary obligations or comply with the law—for example, by failing to file required monthly financial operating reports or by dissipating the assets of the bankruptcy estate—U.S. Trustees seek to have the chapter 11 case converted to a chapter 7 liquidation case or dismissed under 11 U.S.C. § 1112(b). Each year the USTP moves to dismiss or convert about one-third of chapter 11 cases because they are not progressing toward financial rehabilitation.

CHAPTER 4. LITIGATION IN CHAPTER 11 REORGANIZATIONS

After a trial, the Bankruptcy Court for the District of Colorado granted the Denver office's motion to dismiss the chapter 11 case of a business operating a wedding event venue for, among other things, gross mismanagement of the bankruptcy estate. The debtor company did not pay approximately \$177,000 in state and federal taxes that accrued after the bankruptcy filing, and failed to disclose \$158,000 in transfers to company insiders as well as hundreds of contracts for future events. The debtor also used inter-company transfers to overstate its cash receipts by more than \$437,000 on original and amended monthly operating reports filed shortly before trial on the motion to dismiss.

TRENDS



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. Generally, creditors and interest holders whose rights are altered by the plan may vote to accept or reject the plan. Before soliciting acceptances of the plan, the proponent must obtain court approval of a disclosure statement that provides enough information about the debtor, the proposed plan of reorganization, and future operations to allow creditors and interest holders to make an informed decision on whether to vote in favor of the plan.

CHAPTER 4. LITIGATION IN CHAPTER 11 REORGANIZATIONS

The court must also confirm (approve) a plan of reorganization. To obtain confirmation, the plan and the proponent must comply with the requirements of 11 U.S.C. § 1129.

U.S. Trustees object to the approval of disclosure statements that do not provide adequate information or do not meet statutory requirements. They also object to confirmation of proposed reorganization plans that do not meet statutory requirements. The USTP will raise these objections even when the debtor and select constituencies agree upon a course of action that is forbidden by the Bankruptcy Code.

CHAPTER 5. 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 and the Program's 93 field office locations 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 Appellate Staff of the Civil 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.

Appellate Rulings

Over the past several years the USTP has handled a significant number of appeals, many of which address the integrity of the bankruptcy system. During FY 2014, the Program participated in 110 appeals and received written decisions in 52 appeals, winning 48 of them.

Two significant appellate cases decided in FY 2014 involved enforcement against bankruptcy petition preparers and fees and expenses in chapter 11 bankruptcy cases.

In *Hills v. McDermott (In re Wicker)*, 702 F.3d 553 (6th Cir. 2012), the U.S. Court of Appeals for the Sixth Circuit affirmed a bankruptcy court order imposing civil penalties under Bankruptcy Code sections 110(i), 110(l), and 526(c)(5)(B) against a non-lawyer bankruptcy petition preparer who assisted a debtor in filing for bankruptcy. The bankruptcy petition preparer had been permanently enjoined from providing any bankruptcy services because of prior misconduct. 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 bankruptcy court sanctioned him. The circuit court agreed 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), held that the \$5,000 penalty under that section was an "appropriate civil penalty."

CHAPTER 5. APPELLATE ACTIVITIES

The USTP won an appeal in the case of *U.S. Trustee v. Elliot Mgmt. Corp. (In re Lehman Brothers Holdings Inc.)*, 508 B.R. 283 (S.D.N.Y. 2014). In that decision, the U.S. District Court for the Southern District of New York agreed with the Program’s position and vacated a bankruptcy court order awarding \$26 million to individual members of the unsecured creditors’ committee for their personal attorneys’ fees associated with their committee work. The district court reversed the bankruptcy court’s order overruling the USTP’s objection to a provision in the debtors’ confirmed chapter 11 plan authorizing payment of those fees in contravention of Bankruptcy Code sections 503(b)(3)(F) and (4). The ruling was important, particularly in the chapter 11 context, because it reaffirmed—in the words of the district court—that “interested parties and bankruptcy courts” cannot “tweak the law to fit their preferences.” The district court rejected the bankruptcy court’s view and adopted the USTP’s argument that parties’ purported consent through a plan cannot circumvent the Bankruptcy Code.

The implications of this decision went beyond the issue of fees. The district court correctly observed that confirming a plan that contravenes the Bankruptcy Code can lead to “serious mischief,” and gave as an example plan terms providing for “gifting” to junior creditors in contravention of the order of payment priority established by Congress. The Bankruptcy Code establishes rules and standards that may not be ignored or re-written just because the debtor and its creditors agree to a different plan.

CHAPTER 6. TRUSTEE OVERSIGHT

Private Trustees

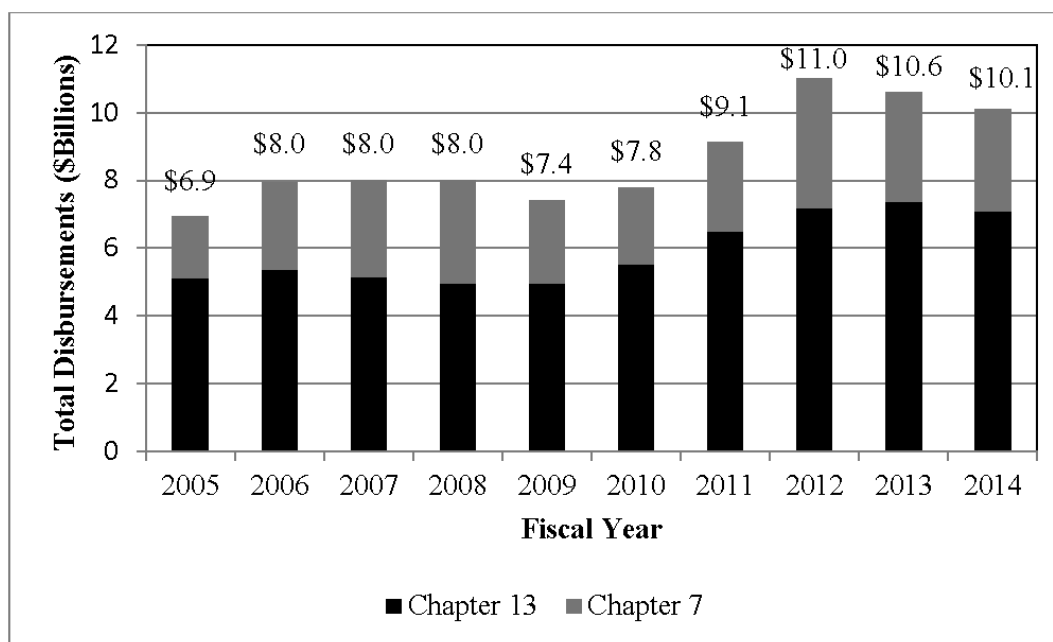
The USTP appoints and supervises private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12, and 13. Chapter 7 trustees collect a debtor's assets that are not exempt from creditors, liquidate the assets, and distribute the proceeds to creditors. Chapter 12 and chapter 13 trustees evaluate the financial affairs of a debtor, make recommendations to the court regarding confirmation of a debtor's repayment plan, and administer the court-approved plan by collecting payments from the debtor and disbursing the funds to creditors.

The Program instructs 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 bankruptcy estate assets when embezzlement, mismanagement, or other improper activity is suspected or alleged.

Trustee Distributions

As of September 30, 2014, the USTP supervised the activities of 1,031 chapter 7 trustees, 39 chapter 12 trustees, and 179 chapter 13 trustees. In FY 2014, chapter 7 trustees administered about 64,000 asset cases that generated more than \$3 billion in funds, while chapter 12 and chapter 13 trustees administered more than 1.2 million cases and disbursed more than \$7.1 billion.

Figure 6.1. Total Disbursements in Chapter 7 and 13 Cases, FY 2005-2014



Source: Executive Office for U.S. Trustees

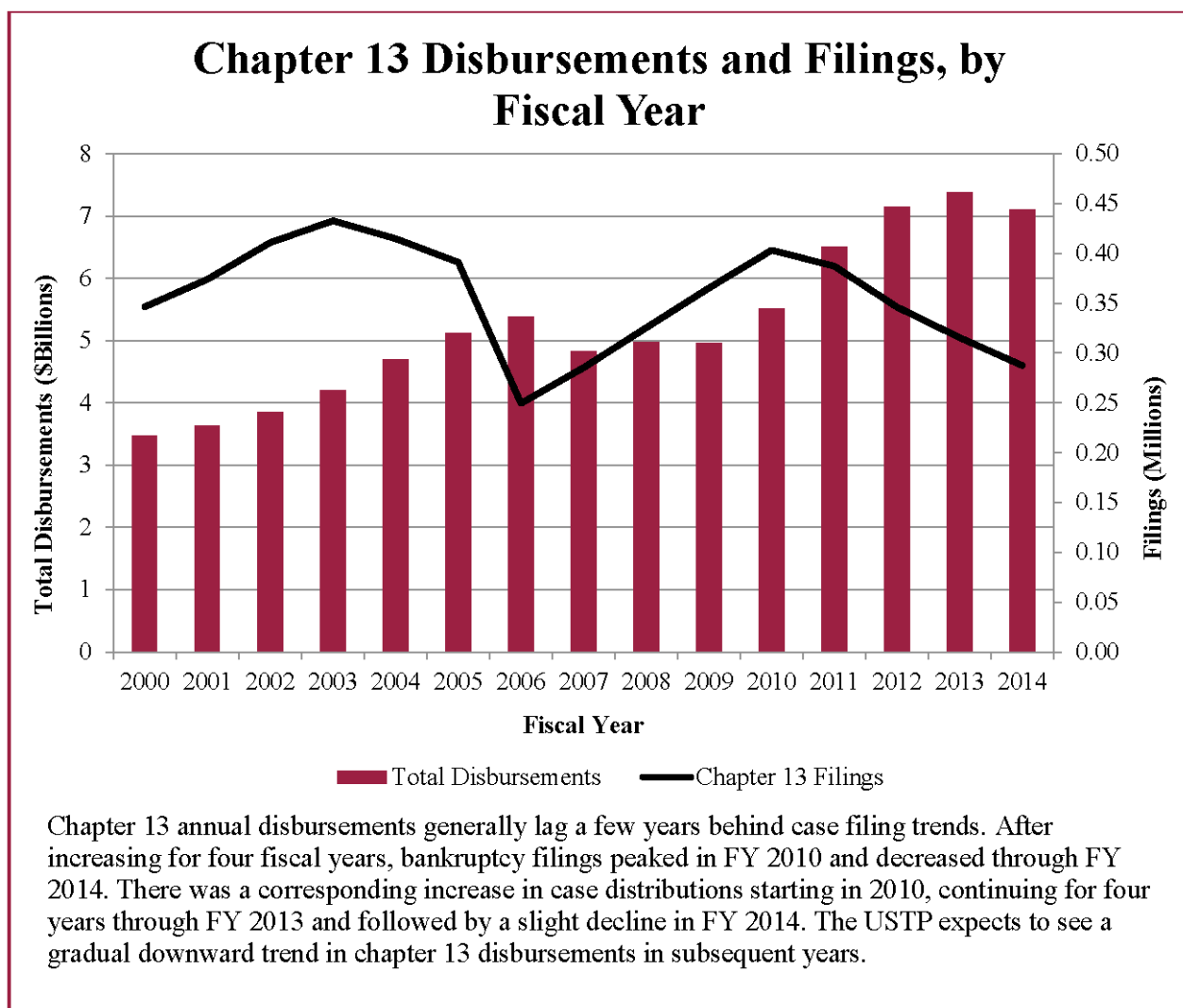
CHAPTER 6. TRUSTEE OVERSIGHT

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.

TRENDS



Source: Executive Office for U.S. Trustees and Administrative Office of the U.S. Courts

CHAPTER 6. TRUSTEE OVERSIGHT

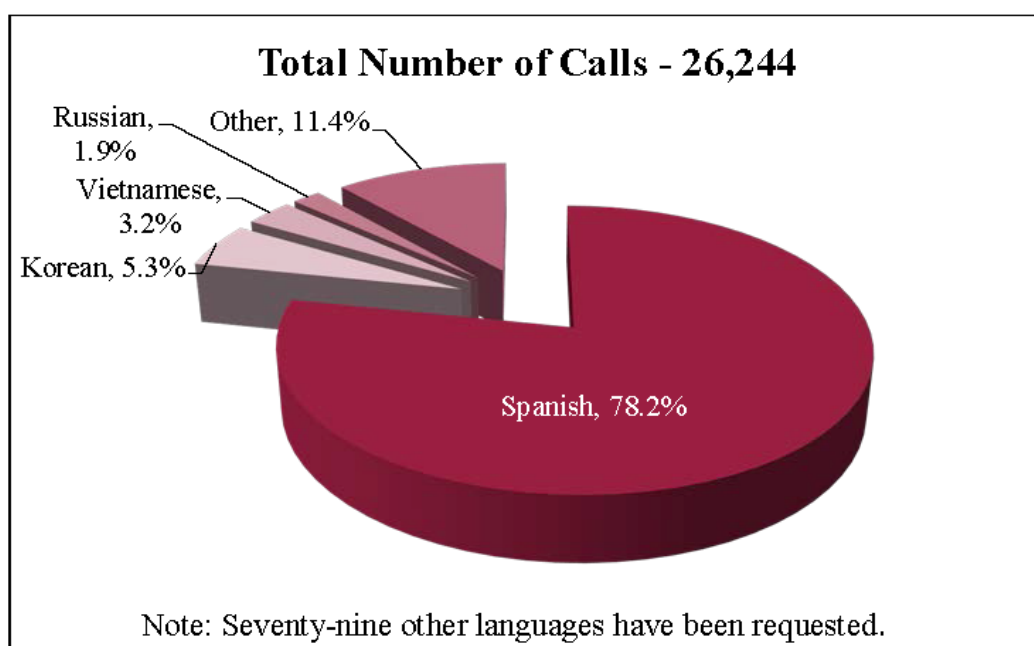
Language Assistance for Individuals with Limited English Proficiency

Debtors are required to attend the “first meeting of creditors,” or “section 341 meeting,” where the trustee, U.S. Trustee, and creditors may question them under oath about their financial affairs. For individuals with limited English proficiency, the Program offers telephonic interpreter services at the section 341 meetings of creditors, at no charge to debtors. In cases under chapter 7, chapter 12, and chapter 13, the trustee must advise the individual that telephonic interpreter services are available and help the individual access those services.

The USTP collects data from the interpreter services to use for oversight, billing, and statistical purposes. In FY 2014, more than 26,000 calls were made for interpreter services, and the top five cities for interpreter usage were Los Angeles, California; Riverside, California; Newark, New Jersey; Chicago, Illinois; and Sacramento, California.

The data are posted by state, city, and language on the USTP’s “interactive dashboard” at http://www.justice.gov/ust/file/lap_dashboard1.pdf/download and in delimited text files at <http://www.justice.gov/ust/bankruptcy-data-statistics/language-assistance-program-data> and www.data.gov.

Figure 6.2. Telephone Interpreter Usage by Language, FY 2014



Source: Executive Office for U.S. Trustees

CHAPTER 7. CREDIT COUNSELING AND DEBTOR EDUCATION

Approval of Agencies and Providers

The U.S. Trustee approves eligible agencies and providers who meet statutory qualifications to offer pre-bankruptcy credit counseling and post-bankruptcy education services to debtors. Consumer debtors generally must receive credit counseling before filing for bankruptcy relief and personal financial management instruction before receiving a discharge of debts. These statutory requirements are intended to ensure that 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.

An entity seeking approval as a credit counseling agency or debtor education provider must apply for approval by the USTP, 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.

At the end of FY 2014, there were 149 credit counseling agencies and 232 debtor education providers approved by the USTP.

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.

Figure 7.1. Median Fee for Services, of Agencies and Providers That Charge a Fee, FY 2014

Type of Service	Cost for Individuals	Cost for Couples
Credit Counseling	\$50	\$50
Debtor Education	\$40	\$50

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.

CHAPTER 7. CREDIT COUNSELING AND DEBTOR EDUCATION

Figure 7.2. Delivery Method for Services Received, FY 2014

Type of Service	In-Person	Internet or Internet/ Telephone	Telephone
Credit Counseling	1%	86%	13%
Debtor Education	4%	88%	8%

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 2014, the Program undertook 13 quality of service reviews. These reviews may 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.

The Program also investigates complaints against approved agencies and providers, with the most common complaints involving authenticity of credit counseling certificates.

U.S. TRUSTEE PROGRAM NATIONWIDE OFFICE LOCATOR

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

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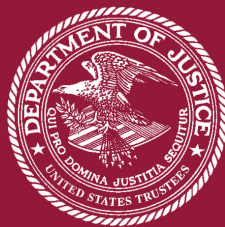
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