



# U.S. Trustee Program Annual Report Fiscal Year 2019



# Contents

---

Message from the Director .....	3
<b>About the USTP .....</b>	<b>4</b>
Mission and Responsibilities .....	4
Organization .....	5
Funding.....	5
Case Filings .....	6
<b>Civil Enforcement and Means Testing.....</b>	<b>7</b>
Means Testing and Debtor Violations .....	7
The HAVEN Act .....	8
Consumer Debtor Protection .....	8
Professional Misconduct .....	8
Creditor Violations.....	10
Marijuana Enforcement.....	10
<b>Criminal Enforcement .....</b>	<b>11</b>
Elder Abuse and Fraud Targeted at Seniors.....	12
<b>Chapter 11 Business Reorganizations .....</b>	<b>13</b>
Review of Executive and Other Insider Bonuses .....	13
Disclosure of Connections .....	14
Professional Fees .....	14
Post-Bankruptcy Asbestos Trusts.....	15
USTP Implements the Small Business Reorganization Act of 2019 .....	15
<b>Appellate Practice .....</b>	<b>16</b>
<b>Private Trustees and Consumer Cases.....</b>	<b>17</b>
Assistance for Individuals with Limited English Proficiency .....	17
Credit Counseling and Debtor Education.....	17
<b>U.S. Trustee Program Nationwide Office Locator.....</b>	<b>18</b>

## MESSAGE FROM THE DIRECTOR

---



It is my pleasure to present the United States Trustee Program's Fiscal Year 2019 Annual Report, which highlights the outstanding work of our staff throughout the country to advance the mission and priorities of the United States Trustee Program and the Department of Justice. Our efforts over the course of this fiscal year have brought greater transparency to the bankruptcy system and held accountable those who have attempted to compromise its integrity and efficiency.

During a year of many challenges, including managing a partial government shutdown while the bankruptcy courts remained open, we were able to achieve many notable accomplishments. Among them were:

- Reaching a record-breaking settlement to redress failure to disclose possible conflicts of interest by the nation's largest financial advisory firm that resulted in \$15 million in payments to creditors and other parties;
- Successfully advocating for changes in case law governing asbestos trusts to impose tougher auditing requirements and higher standards for the appointment of fiduciaries;
- Protecting consumers and creditors by redressing misconduct by consumer debtors' counsel;
- Continuing to monitor mortgage claims for fraud and abuse and completing an agreement with a national mortgage servicer that provided approximately \$35 million in remediation to more than 20,000 debtor homeowners;
- Developing and launching a comprehensive implementation plan to carry out the statutory mandates of the Small Business Reorganization Act of 2019, which included conducting a nationwide search for and selecting and training more than 200 new private trustees with a diverse skillset in business, accounting, turn-around management, and legal areas; and
- Deploying innovative management strategies to maximize the value of limited resources towards achieving mission.

The bankruptcy system plays a vital role in our national economy. Through more than 26,000 civil enforcement actions, nearly 2,300 criminal referrals, robust trustee, credit counseling, and debtor education oversight, and a whole host of other activities, we help to promote and protect the integrity and efficiency of the system for the benefit of all stakeholders—debtors, creditors, and the American public. I congratulate and thank our more than 900 employees located in 90 offices across the country for the exceptional work they do every day in support of the bankruptcy system and the fresh start it affords consumer and business debtors alike.

I invite you to learn more about our accomplishments over this past fiscal year and encourage you to visit [www.justice.gov/ust](http://www.justice.gov/ust) regularly for updates on our work.

Sincerely,

A handwritten signature in black ink, which appears to read "Clifford J. White III". The signature is fluid and cursive, with a long horizontal stroke at the end.

Clifford J. White III

# ABOUT THE USTP

---

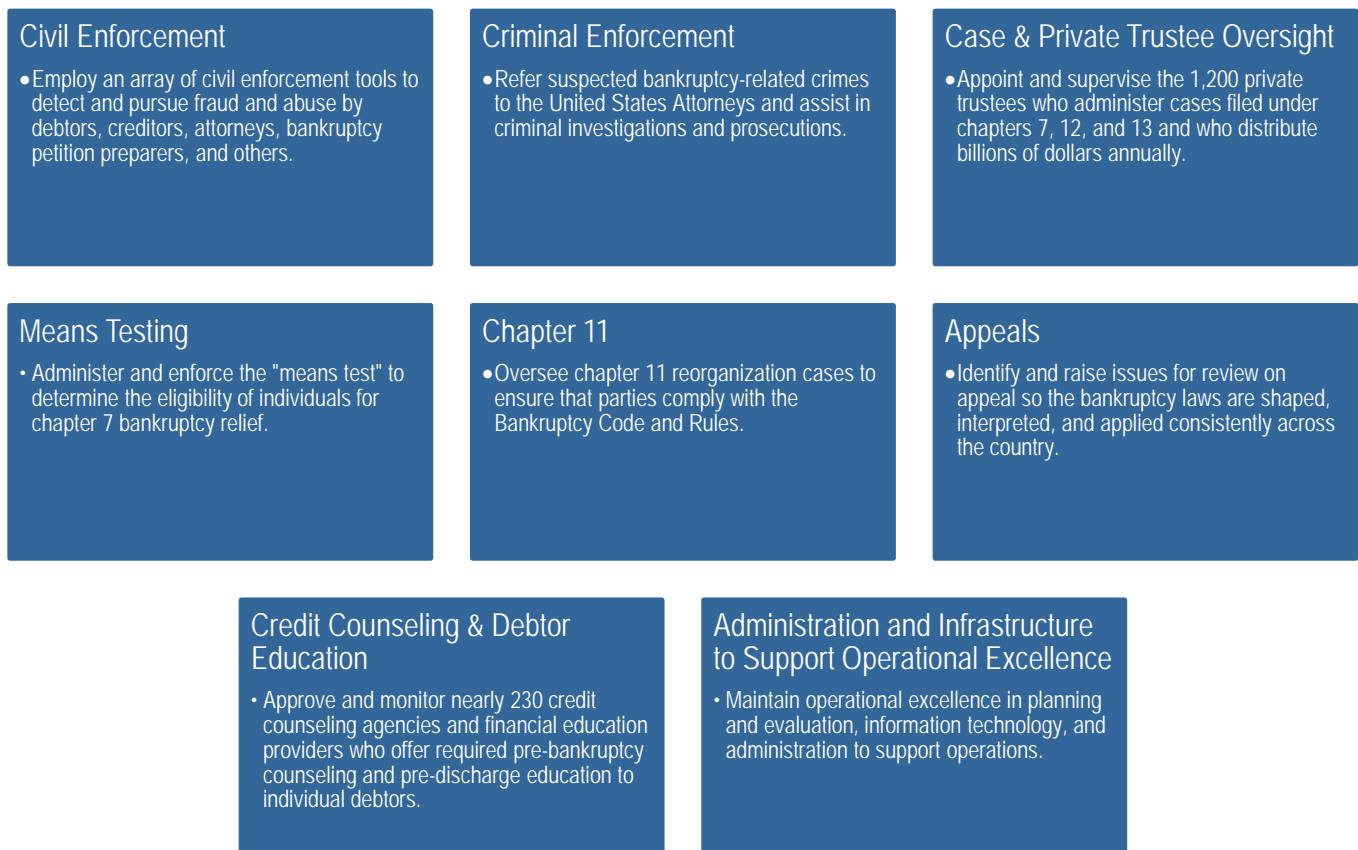
## MISSION AND RESPONSIBILITIES

The United States Trustee Program (USTP or Program) is a litigating component of the Department of Justice (DOJ) whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the American public.

Annually, the Program oversees the administration of about 1.5 million ongoing bankruptcy cases in 88 federal judicial districts.<sup>1</sup> The USTP has standing to participate in every individual and business bankruptcy case filed in those districts. More than two-thirds of all cases pending in the federal judicial system are bankruptcy cases.<sup>2</sup>

To ensure the integrity of the bankruptcy system, the Program carries out a broad range of enforcement, regulatory, and administrative activities that are critical to the proper functioning of the bankruptcy system (Figure 1).

**FIGURE 1: CORE DUTIES OF THE U.S. TRUSTEE PROGRAM**



<sup>1</sup> This figure is calculated using data from both the Executive Office for U.S. Trustees and the Administrative Office of the U.S. Courts.

<sup>2</sup> Data from the Administrative Office of the U.S. Courts, available at <http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables>. For bankruptcy caseload data, see Table F. U.S. Bankruptcy Courts – Bankruptcy Cases Commenced, Terminated and Pending During the 12-Month Periods – Ending September 30, 2018 through September 30, 2019. For data on cases pending in district courts and number of appeals pending in the courts of appeals, see United States District Courts – National Judicial Caseload Profile; and U.S. Court of Appeals – Judicial Caseload Profile.

## ORGANIZATION

The USTP is led by a Director headquartered in the Executive Office for U.S. Trustees in Washington, D.C. United States Trustees manage 21 regions consisting of 90 field offices that are supervised by Assistant United States Trustees (Figure 2).<sup>3</sup>

The Program's regional and field office structure enables it to participate in 250 bankruptcy courts; preside over statutory meetings of creditors held in 400 locations; detect and address multi-jurisdictional violations through coordinated enforcement efforts; and ensure maximum accessibility to the bankruptcy system by both debtors and creditors.

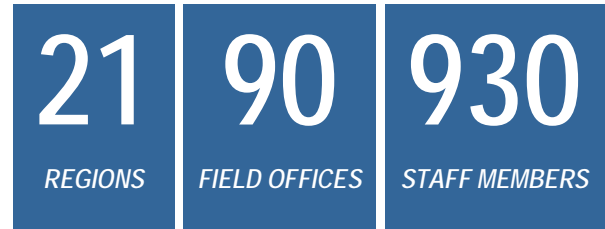
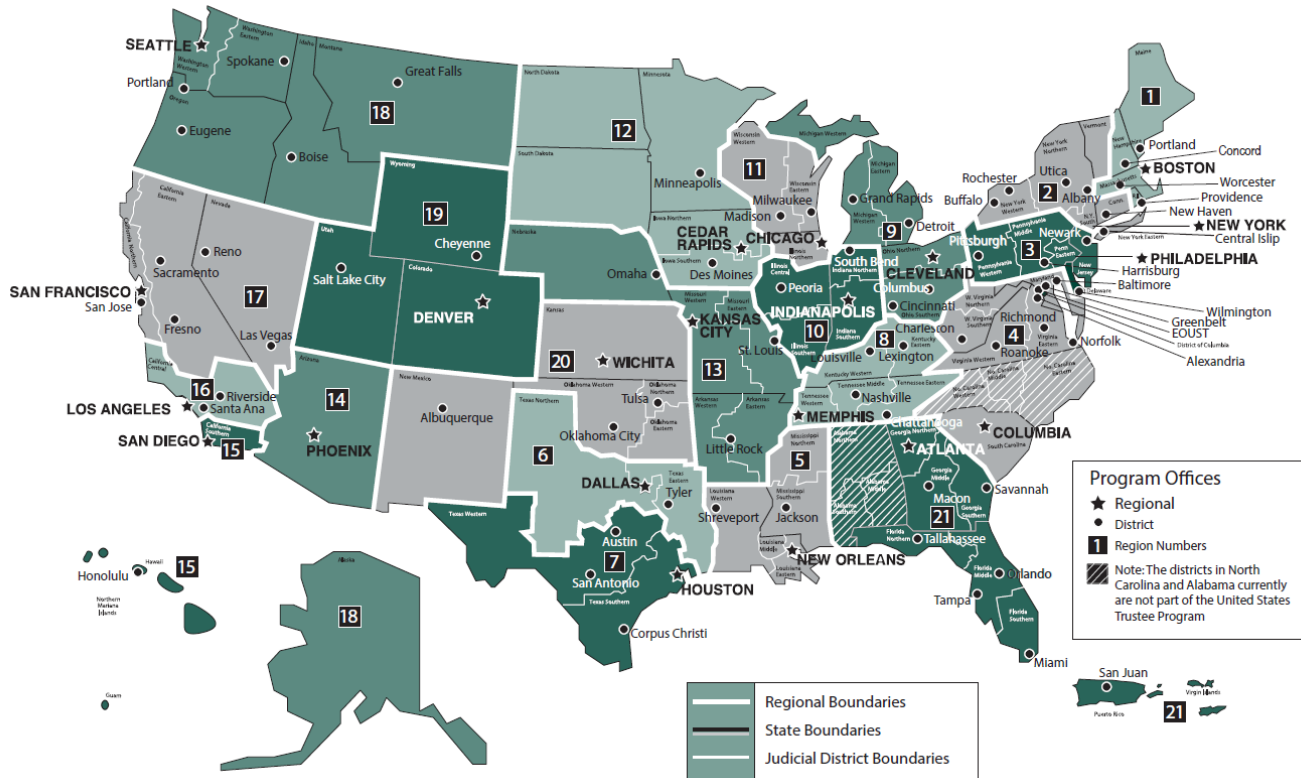


FIGURE 2: MAP OF USTP REGIONS AND OFFICES



At the conclusion of FY 2019, the Program employed approximately 930 staff members consisting of attorneys, financial analysts, paralegals, and support staff. The majority of field offices have eight or fewer employees, and more than 90 percent of the Program's employees are located in its field offices.

## FUNDING

The USTP is funded through appropriations made by Congress that are offset by a portion of fees paid by bankruptcy debtors and deposited into the United States Trustee System Fund (Fund). The USTP's FY 2019 appropriation was fully offset by bankruptcy fees collected and deposited in the Fund.

<sup>3</sup> The USTP has jurisdiction in all judicial districts except those in Alabama and North Carolina. In those districts, bankruptcy court officials called Bankruptcy Administrators perform a similar function.

## CASE FILINGS

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, 12, or 13.

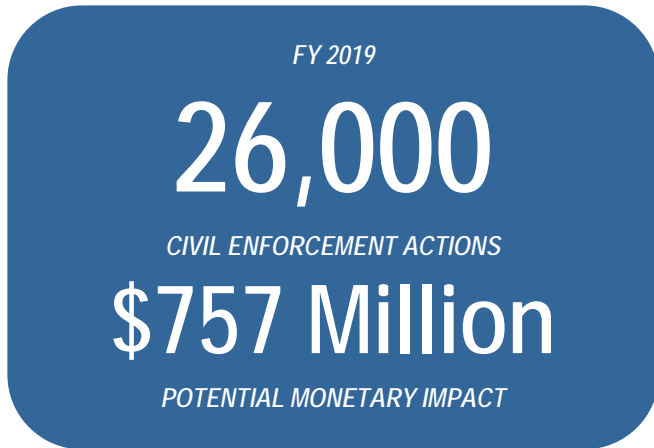
736,440

*BANKRUPTCY FILINGS*

- 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 the statute excludes from discharge.
- Chapter 11 provides a procedure by which a business can reorganize debts while continuing to operate. The vast majority of chapter 11 cases are filed by businesses, although individuals also may file under chapter 11. The debtor, often with participation from creditors, creates a plan of reorganization to repay debts, in full or in part.
- Chapter 12 allows family farmers or family fishermen to reorganize their debts and remain in possession of their property. The debtor continues operating under a repayment plan that must be completed within three to five years.
- 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 in the judicial districts covered by the Program totaled 736,440 in Fiscal Year (FY) 2019. This total represented an increase of 0.5% over FY 2018, continuing a trend of stable filings over recent years. Most cases are filed by individuals, who file under chapters 7 and 13. Businesses liquidate under chapter 7 or reorganize (including through sale) under chapter 11.

## CIVIL ENFORCEMENT AND MEANS TESTING



One of the USTP's core functions is to combat bankruptcy fraud and abuse. While most of the Program's actions address debtor violations, a significant number focus on remedying wrongdoing by attorneys, non-attorney bankruptcy petition preparers, creditors, and others who attempt to exploit debtors and the bankruptcy system.

During FY 2019, the Program took more than 26,000 civil enforcement actions,<sup>7</sup> with a potential monetary impact of more than \$757 million in debts not discharged, fines, penalties, and other relief. From FY 2003, when the USTP began tracking results, through the end of FY 2019, the Program took more than 807,000 actions, with a potential monetary impact of nearly \$22 billion.

Figure 3 shows the number of inquiries (informal investigations) and actions initiated by the Program in consumer cases during FY 2019 in key civil enforcement areas, along with the success rate for those actions and the potential financial impact.

**FIGURE 3: CIVIL ENFORCEMENT ACTIVITY IN CONSUMER CASES, FY 2019**

Type of Activity	Inquiries <sup>4</sup>	Actions <sup>5</sup>	Action Success Rate <sup>6</sup>	Potential Financial Impact (Thousands)
§ 707(a) Dismissal for Cause	1,000	939	95%	\$40,036
§ 707(b) Dismissal for Abuse	8,583	1,248	99%	\$150,679
§ 727 Denial of Discharge	1,383	815	99%	\$531,647
§ 1328(f) Denial of Discharge	107	105	100%	\$8,181
§ 1307(c) Dismissal or Conversion	60	161	99%	N/A
§ 110 Bankruptcy Petition Preparers	372	169	99%	\$2,218
§ 526 Debt Relief Agencies	225	45	97%	\$202
§ 329 Attorney Fee Disgorgement	1,093	393	97%	\$1,338
Other Attorney Misconduct	154	30	97%	\$83
Abusive Conduct by Creditors	241	35	100%	\$2,859

### MEANS TESTING AND DEBTOR VIOLATIONS

One of the major responsibilities of the USTP is to administer and enforce the "means test," which is used to help determine an individual's eligibility for chapter 7 bankruptcy relief. Under the means test, individual debtors with primarily consumer debt and income above their state median income are subject to a statutorily prescribed formula. The formula determines disposable income by using historical income, which is then partially reduced by allowable expense standards issued by the Internal Revenue Service for its use in tax collection. In FY 2019, a case with disposable income above \$227.50 per month was presumed abusive and subject to dismissal.

<sup>4</sup> Inquiries (informal investigations) include documented communications by United States Trustee staff with parties or others involved in a bankruptcy case concerning compliance with bankruptcy law and rules.

<sup>5</sup> Actions include motions, complaints, and objections that Program personnel filed with the bankruptcy court to seek relief.

<sup>6</sup> The success rate is calculated by dividing the number of actions decided successfully in FY 2019 into the total number of actions decided in FY 2019. Action success rate includes outcomes where the court entered an order granting the relief sought by the United States Trustee, in whole or in part, or the defendant agreed to other relief satisfactory to the United States Trustee.

<sup>7</sup> This figure includes all FY 2019 civil enforcement activity, not just the civil enforcement activity in consumer cases reflected in this section of the report.

The effectiveness of the means test largely depends on the USTP identifying cases that are presumed abusive under the statutory formula and filing actions to dismiss those cases when appropriate. The USTP is required by law to file with the court either a motion to dismiss a presumed abusive case or a statement explaining the reasons for declining to file such a motion. The USTP moves to dismiss cases where the debtor has an ability to repay creditors or declines to seek dismissal after consideration of special circumstances, such as a recent job loss or continuing medical debt.

In FY 2019, the USTP declined to file a motion to dismiss in about 64 percent of presumed abusive cases. The percentage of declinations has grown from less than 35 percent in FY 2006 to more than 60 percent in recent years. This suggests that the objective criteria of the means test are now well established and that most debtors' attorneys file presumed abusive cases only if the cases satisfy statutory exceptions.

As a result of the USTP's prudent exercise of its enforcement responsibilities, the means test is meeting its statutory objective of denying chapter 7 relief to debtors who have an ability to pay without creating unnecessarily harsh results.

Even if a case is not presumed abusive under the means test, the Bankruptcy Code permits the USTP to seek dismissal based on the debtor's bad faith or the totality of the circumstances. For example, the case of a debtor who retains luxury items, incurs debt shortly before filing bankruptcy, or fails to disclose information required by the Bankruptcy Code and Rules may be subject to dismissal on the U.S. Trustee's motion.

In addition to or instead of seeking case dismissal, the U.S. Trustee may file a complaint to deny or revoke a bankruptcy discharge if the debtor engaged in improper conduct such as transferring, concealing, or destroying property to hinder or defraud creditors or the bankruptcy estate; knowingly and fraudulently 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 provision.

### The HAVEN Act

The Honoring American Veterans in Extreme Need (HAVEN) Act of 2019 became law on August 23, 2019. To ensure servicemembers, veterans, and their survivors receive the full measure of certain categories of military disability and death-related benefits, the law excludes these benefits from the calculation of "current monthly income" under the Bankruptcy Code. The Program issued detailed guidance to U.S. Trustees regarding implementation of the Act and adopted a policy to resolve ambiguities in legal requirements in favor of the recipients of benefits covered by the Act. The Program also conducted training concerning the Act for Program attorneys and others.

## CONSUMER DEBTOR PROTECTION

### Professional Misconduct

Addressing misconduct by consumer debtor attorneys remains a top priority for the USTP, and it has a long history of rigorous enforcement against attorneys and others who engage in fraudulent conduct or provide inadequate representation to their consumer debtor clients. Some attorneys fail to carry out their basic obligations to their clients by, for example, not meeting with their client, not attending court proceedings, and engaging in other unprofessional behavior. In some of the more egregious cases, professionals engaged in fraud by lying to the court, misrepresenting their services to clients, or engaging in other wrongful conduct. This professional misconduct not only harms the debtor who receives substandard representation but also burdens the creditors and the courts by causing unnecessary delay in the bankruptcy case.



**600**  
COURT ACTIONS FILED  
ON PROFESSIONAL  
MISCONDUCT



### CASE HIGHLIGHT

After an investigation by the U.S. Trustee's Portland and Eugene offices, the Bankruptcy Court for the District of Oregon entered a stipulated order between the U.S. Trustee and a bankruptcy attorney, permanently barring him from practicing bankruptcy law in the district. The attorney was affiliated with a national law firm. The U.S. Trustee's offices sought the ban based on the attorney's failure to consult with clients before filing bankruptcy cases on their behalf, review documents with clients filed on their behalf, and obtain signatures from clients. In addition, in one case, his failure to take action resulted in case dismissal and the sale of the debtor's residence. The U.S. Trustee became aware of the attorney's conduct after obtaining disgorgement and penalties in a previous case against the firm and another attorney affiliated with the firm.

The Program filed more than 600 court actions in FY 2019 against professionals and non-attorney bankruptcy petition preparers who violated legal standards to the detriment of debtors, creditors, and the bankruptcy system. The USTP's enforcement actions in this area have led to remedies including refunds of attorneys' fees already paid, cancellation of retention contracts, civil penalties, injunctions, and other sanctions.

Nationally, the USTP addresses the system-wide, multi-jurisdictional violations by law firms who advertise to consumer debtors primarily through the Internet, operate in many states, and market themselves as "national law firms" (see Case Highlight under Appellate Practice section). The Program has addressed a range of improper practices related to such firms, including their failure to oversee non-attorneys who employ high-pressure sales tactics and engage in the unauthorized practice of law in order to convert potential debtors into clients; their "partnerships" with attorneys who fail to satisfy even minimal professional standards for representation of their clients; and their entry into improper schemes with towing companies that take custody of

debtors' automobiles in a way that harms debtors, as well as creditors who are deprived of their collateral.

At a local level, the USTP acts against consumer debtor attorneys employing alternative fee arrangements that violate bankruptcy law and harm the attorneys' clients. In most jurisdictions, attorneys in chapter 7 liquidation cases cannot receive payment for pre-petition work after the bankruptcy case is filed because collection is stayed and the fees are subject to discharge. Therefore, most attorneys require the full payment of fees prior to filing a bankruptcy case. But others have sought to "bifurcate" their services by having clients execute contracts for pre- and post-petition services, which may raise concerns. For instance, because payments owed for post-petition work are not discharged, bifurcation may result in the attorney improperly seeking payment for pre-petition services under the color of the post-petition fee agreement. Or, the attorney may not perform critical case analysis before filing, which may cause an ineligible debtor to file bankruptcy or to file under the wrong chapter.

### CASE HIGHLIGHT

Granting a summary judgment motion by the U.S. Trustee's Denver office, the Bankruptcy Court for the District of Colorado ordered a disbarred attorney to disgorge \$584,298 to his former clients. The U.S. Trustee first initiated proceedings against the attorney in 2013 based on his use of a "zero-down" attorney fee payment model. Under the zero-down model, the attorney improperly collected attorney fees owed under a pre-petition contract from his clients in 584 cases after he filed their bankruptcy petitions. After an agreed settlement of the matter failed as the result of the attorney's own bankruptcy filing and subsequent disbarment, the court granted the U.S. Trustee's motion for summary judgment, finding that the attorney willfully violated the Bankruptcy Code's automatic stay and discharge injunction provisions.

### CASE HIGHLIGHT

The Bankruptcy Court for the District of Maryland granted a motion by the U.S. Trustee's Baltimore office for sanctions against a law firm for engaging in the unauthorized practice of law and failing to provide services of value to a debtor in violation of 11 U.S.C. §§ 110 and 526. The firm and one of its principals entered into an agreement to provide legal services to a prospective debtor. They represented that the services would be provided through an attorney licensed to practice law in the state of Maryland despite the firm having no relationships with any attorneys licensed there. The firm and the principal advised the debtor to file two chapter 13 cases, instructed him on how to complete the forms, and told him to indicate that no attorney was involved. The firm and the principal provided no further services to the debtor, and both of his cases were dismissed. Ultimately, the debtor retained legal aid services and obtained confirmation of a chapter 13 repayment plan in a subsequent bankruptcy case. After a trial on the U.S. Trustee's motion, the court ordered the firm and the principal to return \$4,900 to the debtor; pay legal aid's fees of \$5,035; and pay additional damages, fines, and sanctions of \$10,420.

Bifurcation arrangements may also include the additional feature of "factoring," where a debtor's post-petition fee agreement is assigned by the attorney to a third-party finance company in exchange for a lump sum discounted payment. To offset the discount, attorneys may inflate their fees beyond what is reasonable under the Code. Factoring presents additional issues, such as those related to inadequate disclosures to the client and to the court. The USTP is litigating enforcement actions related to inappropriate bifurcation and factoring in several bankruptcy courts and will continue to investigate and take action as appropriate when debtors' attorneys engage in this sort of conduct.

In many instances, attorneys who violate the Bankruptcy Code and Rules during their representation of debtors or other parties also violate the rules of professional conduct governing all lawyers. Where appropriate, the USTP refers these matters to

state licensing and disciplinary authorities for investigation and action, that may include suspension from practice or disbarment.

### Creditor Violations

In many creditor abuse cases, there are multiple victims, including debtors and other creditors whose distributions are diminished by overpayment to the violating creditor. This activity also is an affront to the integrity of the bankruptcy system.

The USTP's creditor abuse enforcement efforts have sought to address a range of violations committed by both secured and unsecured creditors, including robo-signing documents filed with the bankruptcy court that have the signature of a person who did not review the document, billing debtors for amounts not owed, violating the bankruptcy discharge injunction, failing to protect debtors' personally identifiable information, and other non-compliance issues.

The USTP actively monitors mortgage claims for fraud and abuse issues, although industry compliance and self-reporting have improved following a multi-year effort in which the USTP has obtained 11 national settlements addressing mortgage servicing misconduct. In September 2019, the Program entered into a memorandum of understanding with mortgage servicer Ditech Financial LLC, memorializing approximately \$35 million in remediation to more than 20,000 homeowners for violations of the Bankruptcy Code and Rules.

### MARIJUANA ENFORCEMENT

As more states have legalized medical marijuana, recreational marijuana, or both, the issue of marijuana assets in bankruptcy cases has grown. In FY 2019, the USTP continued its enforcement efforts in this area to ensure that bankruptcy is not used to evade federal drug laws prohibiting the use and sale of marijuana. These actions have protected trustees from having to administer marijuana assets in violation of federal law, prevented proceeds from illegal marijuana activities from entering the bankruptcy system, and denied the privilege of bankruptcy reorganization to people and companies who seek to use the federal courts to perpetuate criminal activity.

#### CASE HIGHLIGHT

Granting a motion of the U.S. Trustee's Detroit office, the Bankruptcy Court for the Eastern District of Michigan entered an order dismissing a chapter 11 case because of the debtor's ties to marijuana. The debtor was the property owner for a marijuana dispensary tenant, and the lease required the premises to be used only for the sale of marijuana. The debtor filed in part seeking to set aside the lease so that it could negotiate a new one with more favorable terms, which the court found was an attempt to set aside one illegal contract so the debtor could negotiate a better illegal contract. The court ruled there was cause to dismiss the case, agreeing with the U.S. Trustee that the case had been filed in bad faith and that the debtor had unclean hands in seeking to profit from a marijuana dispensary.

## CRIMINAL ENFORCEMENT

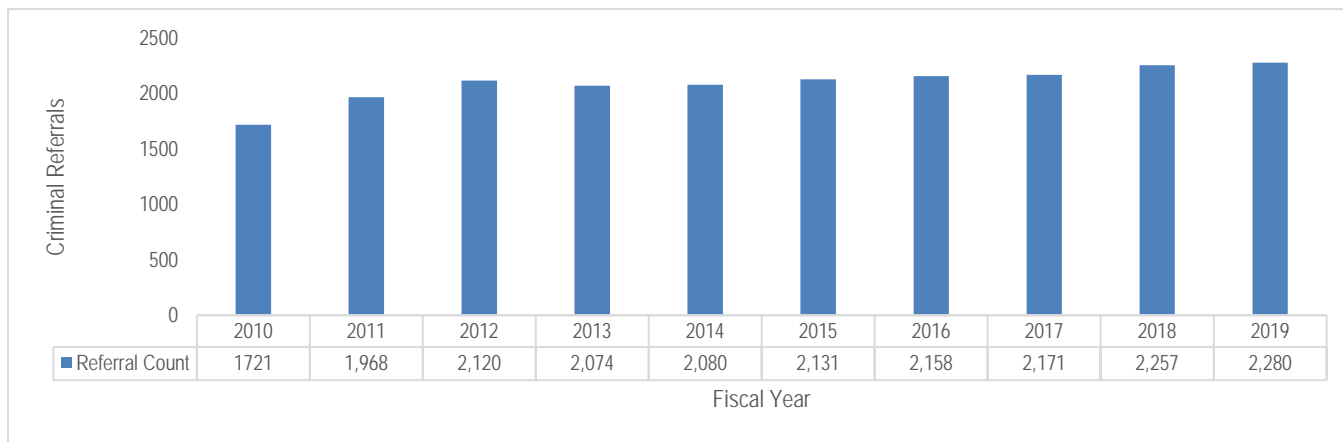
# 2,280

CRIMINAL REFERRALS

The USTP has a statutory duty to refer matters to the United States Attorneys' offices (USAOs) for investigation and prosecution that "relate to the occurrence of any action which may constitute a crime" and to assist the United States Attorney in "carrying out prosecutions based on such action." 28 U.S.C. § 586(a)(3)(F). As bankruptcies cross all industries and levels of American society, the detection of bankruptcy fraud and other criminal activity can lead to the detection and prosecution of other serious crimes.

In FY 2019, the Program made 2,280 bankruptcy and bankruptcy-related criminal referrals (Figure 4). The Program works with its federal and state law enforcement partners and is a member of approximately 70 national and local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. Approximately 25 Program attorneys are designated as Special Assistant U.S. Attorneys to assist U.S. Attorneys' offices in the prosecution of bankruptcy and bankruptcy-related crimes. In addition, many other staff—including attorneys, bankruptcy analysts, and paralegals—are called upon to assist with investigations and to provide expert or fact testimony at criminal trials.

FIGURE 4: CRIMINAL REFERRALS BY FISCAL YEAR



The USTP provides expansive training for federal, state, and local law enforcement personnel; USTP staff; private trustees; and members of the bar and other professional associations. This training reaches, on average, nearly 3,000 individuals each year including agents and other representatives from the United States Attorneys' Offices, Federal Bureau of Investigation (FBI), Internal Revenue Service Criminal Investigation Division, U.S. Postal Inspection Service, Department of Housing and Urban Development Office of the Inspector General, and Secret Service. Notable for FY 2019 were presentations made by Program personnel at two national FBI conferences sponsored by the Economic Crime Unit, FBI Headquarters. Combined, approximately 600 FBI managers, agents, and analysts attended the seminars. The USTP also employs a variety of strategies to identify fraud, including the Program's Internet email "Hotline," which enables individuals to report suspected bankruptcy crimes.

For further information on the USTP's criminal enforcement work, please visit [https://www.justice.gov/ust/file/criminal\\_report\\_fy2019.pdf/download](https://www.justice.gov/ust/file/criminal_report_fy2019.pdf/download) to view the USTP's annual report to Congress.

### CASE HIGHLIGHT

A Trial Attorney in the USTP's Wilmington office served as a Special Assistant U.S. Attorney and assisted in the prosecution of a former real estate broker and business owner attorney who pleaded guilty to wire fraud in March 2019 for running a multi-year Ponzi scheme. The defendant admitted that he solicited more than \$3.3 million from investors and fraudulently represented that the funds would be used to purchase real estate that would provide investors annual interest rate returns of up to 15 percent. Instead, the defendant diverted the money from later investors to pay off interest obligations to earlier investors and to pay his own personal expenses. The defendant filed bankruptcy in October 2017 in an attempt to discharge his debt to the investors. He was sentenced in August 2019 to 51 months in prison followed by three years of supervised release and ordered to pay \$3.33 million in restitution. The Program referred the matter to the U.S. Attorney for the District of Delaware. The Program also pursued a successful civil enforcement action that resulted in the defendant waiving his bankruptcy discharge of more than \$6.9 million.

## ELDER ABUSE AND FRAUD TARGETED AT SENIORS

Combatting elder abuse and financial fraud targeted at seniors is a priority of the Program. In this area, the USTP evaluates cases for, and acts on, signs of potential criminal violations. The Program also works in concert with private trustees to identify instances of bankruptcy cases that involve the abuse of an elderly person's money or property, sometimes by a person with access to the elderly individual, such as a caregiver or family member. This can include cases filed for an elderly debtor without their informed consent or cases that involve funds obtained from an elderly person through fraudulent means. The Program also remains vigilant in detecting signs of more sophisticated fraudulent financial schemes, such as those that target groups that may include elderly persons. Beyond financial crimes, the bankruptcy process, which requires transparency and disclosures, also enables the Program to monitor cases for signs of neglect and physical abuse of elderly individuals through bankruptcy filings.

### CASE HIGHLIGHT

A mortgage fraudster was sentenced to 20 years in prison for a scheme that targeted vulnerable homeowners, including the elderly and those who did not speak English. The USTP's Los Angeles office referred the matter for investigation and provided substantial assistance to law enforcement. The \$17 million mortgage fraud scheme had two parts: one involving property theft and litigation extortion, and the other involving illegal foreclosure and eviction delay. In the foreclosure rescue part of the scheme, the defendant and his co-conspirators had homeowners unwittingly sign fraudulent deeds transferring interests in their property to debtors in bankruptcy cases. The homeowners paid the fraudsters believing that they were legitimately delaying foreclosure or eviction actions against them when, in fact, the bankruptcy filings were fraudulent and not a genuine effort to restructure or eliminate the homeowners' debts. The assistance provided by the Los Angeles office included uncovering aliases used by the defendant and forwarding additional related bankruptcies and leads over the course of a decade.

## CHAPTER 11 BUSINESS REORGANIZATIONS

The Program carries out significant responsibilities in chapter 11 business reorganization cases, including:

- appointing official committees of creditors;
- objecting to the employment and compensation of professionals, such as attorneys and financial advisors, whose applications do not meet statutory standards;
- appointing trustees and examiners when warranted, such as when there is suspected financial wrongdoing;
- reviewing and objecting to disclosure statements to ensure adequate information is provided to stakeholders;
- moving to dismiss or convert chapter 11 cases because they are not progressing toward financial rehabilitation; and
- enforcing the statutory limitations on insider and executive compensation under 11 U.S.C. § 503(c).

While the USTP does not substitute its business judgment for that of management, the Program's role is critical to protecting the interests of all stakeholders by advocating for strict compliance with the law and promoting management and professional accountability.

Figure 5 shows the number of inquiries (informal investigations) and actions initiated by the Program during FY 2019 in six key areas related to chapter 11 case administration and oversight, along with the success rate for those actions.

**FIGURE 5: CHAPTER 11 CASE ENFORCEMENT AND ADMINISTRATION, FY 2019**

Type of Activity	Inquiries <sup>8</sup>	Actions <sup>9</sup>	Action Success Rate <sup>10</sup>
§ 1112(b) Conversion or Dismissal	1,734	1,893	98%
§ 1125 Disclosure Statements	383	471	98%
§ 1129 Plan Confirmation	292	303	94%
§ 1104 Appointment of Trustee or Examiner	15	50	88%
§ 330 Professional Fee Requests <sup>11</sup>	891	293	92%
§ 503(c) Key Employee Retention Plans	50	51	65%
§ 327 Employment of Professionals	1,613	462	92%
§ 1103 Employment of Professionals	114	14	70%

### REVIEW OF EXECUTIVE AND OTHER INSIDER BONUSES

The USTP reviews executive bonuses and other compensation requests for compliance with the Bankruptcy Code and is often the only party to challenge excessive management bonuses. Federal law prohibits chapter 11 debtors' executives from awarding themselves bonuses during the bankruptcy case except in narrow circumstances that often require a finding by the court based on evidence in the record. 11 U.S.C. § 503(c). Debtors sometimes disguise "pay to stay" bonuses for executives and insiders as performance incentives to increase the value of the company for the benefit of creditors. In many cases, the United States Trustee's objections and other actions have resulted in substantial voluntary changes to the debtor's proposed executive compensation programs, including advocating for more challenging milestones that must be reached before the bonus is paid.

In FY 2019, the USTP filed 51 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 65 percent among objections that were decided during FY 2019. It is important to note that many objections are resolved informally through voluntary modification of the debtor's initial bonus proposal. The kinds of changes sought by the USTP include eliminating top executives from the list

#### CASE HIGHLIGHT

The Bankruptcy Court for the Northern District of California sustained an objection by the USTP's San Francisco office to a motion by joint chapter 11 debtors to award up to \$16 million in performance incentive bonuses to its executives. Among other things, the U.S. Trustee argued in its objection that the debtors' Key Employee Incentive Plan (KEIP) did not provide enough information to determine whether it was a true incentive plan with sufficiently difficult performance targets, as required by 11 U.S.C. § 503(c). The court found that the KEIP performance targets virtually guaranteed a payout so that the KEIP was neither incentivizing nor justified by the facts and circumstances of the case. The court denied the debtors' motion.

<sup>8</sup> Inquiries (informal investigations) include documented communications by United States Trustee staff with parties or others involved in a bankruptcy case concerning compliance with bankruptcy law and rules.

<sup>9</sup> Actions include motions, complaints, and objections that Program personnel filed with the bankruptcy court to seek relief.

<sup>10</sup> The success rate is calculated by dividing the number of actions decided successfully in FY 2019 into the total number of actions decided in FY 2019. Action success rate includes outcomes where the court entered an order granting the relief sought by the United States Trustee, in whole or in part, or the defendant agreed to other relief satisfactory to the United States Trustee.

<sup>11</sup> Professional fee requests under 11 U.S.C. §§ 327, 330, and 1103 arise primarily in chapter 11 cases but also in cases filed under other chapters.

of bonus recipients or requiring more stringent performance milestones that must be met prior to payment of the bonus so that they are genuinely incentive, not retention, bonuses.

## DISCLOSURE OF CONNECTIONS

The Bankruptcy Code assigns an important responsibility to the Program to review applications to employ law and other professional firms that will seek payment from the bankruptcy estate in chapter 11 cases. Due to the multiplicity of interests in a case—from large to small creditors and employees to other stakeholders—the Bankruptcy Code and Rules mandate that professional firms disclose their connections to other parties in the case and satisfy conflict of interest standards.

Although all parties in a case may object to the adequacy of a professional firm's disclosures and to a firm's retention because of potential or actual conflicts, it is usually only the USTP that makes inquiries or files objections. The Program's role as the "watchdog" of the bankruptcy system is to faithfully apply the Bankruptcy Code and Rules and to raise issues so that the court may make the ultimate determination on a professional firm's employment.

462

*OBJECTIONS TO THE  
EMPLOYMENT OF  
PROFESSIONALS,  
INCLUDING THOSE WITH  
CONFLICTS OF INTEREST*

### CASE HIGHLIGHT

The USTP entered into a \$15 million, multi-district settlement agreement with global consulting firm McKinsey & Company, Inc.—one of the highest repayments made by a bankruptcy professional for alleged non-compliance with disclosure rules. The settlement resolved disputes over the adequacy of the firm's disclosures of connections in three chapter 11 bankruptcy cases. The payment was distributed to the creditors and other parties in accordance with the reorganization plans approved by the courts or other applicable law.

In recent years, the increasingly complex profile of professional firms subject to the disclosure and conflict provisions has made the USTP's review of employment applications more challenging. The organizational structure of many professional firms being retained has grown more complex. Some are affiliates of larger businesses that provide a variety of services to clients, both inside and outside of the bankruptcy system. In addition, some professional firms (including parents and affiliates) sponsor funds that invest in their business clients, in distressed debt that may be at issue in a bankruptcy case, or in industries (including competitors of their business clients) to which they provide services.

In response to the increasing challenge of reviewing applications to employ professional firms, this year, the USTP issued guidance to its staff establishing four principles Program personnel should use during this review. These principles, which were publicly posted, put the parties and professional firms on notice of the USTP's enforcement positions and provide a common framework for consistent enforcement of the

Bankruptcy Code's provisions and Rules related to disclosures and conflicts.

## PROFESSIONAL FEES

U.S. Trustees monitor and, when appropriate, object to applications for compensation filed by professionals such as attorneys, accountants, turnaround specialists, and others who are paid from bankruptcy estate funds. The USTP is often the only party to object to professional fees. In FY 2019, the USTP made 891 inquiries and took 293 formal actions related to professional fees, resulting in an aggregate of nearly \$20 million in fee requests reduced or withdrawn.

The requirement to obtain bankruptcy court approval of professional compensation reflects the unique environment in which bankruptcy cases arise. Often, there is urgency to the bankruptcy filing due to impending foreclosure, lack of cash to continue operations, or other emergencies that result in a filing. As a result, the client control present in other business litigation is often absent. Moreover, a bankruptcy case often involves multiple parties with varying interests that are affected by the conduct of the case and varying levels of financial ability to assert their interests. Therefore, non-debtor parties seldom exercise oversight or do so only as a litigation tactic.

### CASE HIGHLIGHT

The Bankruptcy Court for the District of Delaware entered an agreed order resolving an objection by the U.S. Trustee's Wilmington office to a substantial contribution application filed by a noteholder committee in a chapter 11 case and to the final fee application of the committee's counsel. The U.S. Trustee sought complete denial of the substantial contribution request and partial denial of the law firm's fee application for duplicative billing and failure to adhere to the budget. In negotiations with the U.S. Trustee and other parties, the firm agreed to withdraw the substantial contribution application, which sought approximately \$200,000 in fees and expenses incurred prior to the committee's appointment, and to reduce the firm's fee request in its final application by \$650,891.

## POST-BANKRUPTCY ASBESTOS TRUSTS

In FY 2019, the Program worked to ensure that asbestos trusts operate with greater transparency and with protections against fraud and abuse—protecting the most vulnerable future claimants whose injuries may not manifest themselves for years. Asbestos trusts operate and pay claims for years, or even decades, after a company with asbestos liability emerges from bankruptcy. In recent years, there has been growing public concern that some trusts may mismanage funds and pay fraudulent claims, including to persons who lack valid medical claims or who were not exposed to the defendant-debtor's products. Mismanagement and fraud may deplete the trusts at the expense of future claimants, who may receive less than what was provided in the plan.

The USTP is addressing these issues by exercising its enforcement authority in two ways. First, the Program scrutinizes candidates nominated by debtors for appointment as a future claimants' representative (FCR) and, where a candidate lacks the required independence, objects and offers an alternative candidate for the court's consideration. Second, the Program objects to disclosure statements that do not adequately explain the terms of the proposed trusts and the risks to future claimants, as well as plans that lack provisions to prevent fraud and abuse or that fail to provide transparency. The USTP's litigation in this area has led to significant rulings that heighten the standard and improve the process for the appointment of FCRs, impose new requirements regarding the disclosure of claims history and other relevant information, and provide for the audit of trust claims.

Since 1994, more than 60 such trusts have been established. According to the Government Accountability Office, asbestos bankruptcy trusts paid out \$17.5 billion from 1988 through 2011, and more recent studies estimate even higher amounts.

## USTP IMPLEMENTS THE SMALL BUSINESS REORGANIZATION ACT OF 2019

The USTP engaged in extensive preparations to implement the Small Business Reorganization Act of 2019 (SBRA), which was signed into law in August 2019. The SBRA implemented substantial changes to bankruptcy law and practice for small business bankruptcies designed to reduce costs to debtors and provide quicker return to creditors.

Under the SBRA, small business debtors—defined in 2019 as entities with less than about \$2.7 million in debts<sup>12</sup> that also meet other criteria—may voluntarily elect to proceed under a new subchapter V of chapter 11 of the Bankruptcy Code. Among other things, subchapter V imposes shorter deadlines for completing the bankruptcy process, allows for greater flexibility in negotiating restructuring plans with creditors, and provides for a private trustee who will work with the small business debtor and its creditors to facilitate the development of a consensual plan of reorganization.

U.S. Trustees conducted a nationwide search for qualified candidates to serve as subchapter V private trustees, ultimately selecting about 250 candidates from more than 3,000 applications. These trustees offer a diverse set of business, accounting, turn-around management, and legal skills. The USTP also developed a comprehensive manual and handbook to guide staff and subchapter V private trustees in carrying out their new SBRA responsibilities; provided extensive training to staff, subchapter V private trustees, bankruptcy professionals, and others interested in the new law; and coordinated with the bankruptcy courts on administrative issues to ensure successful implementation.

### CASE HIGHLIGHT

The USTP objected to a debtor company's proposed candidate for appointment as the Future Claimants' Representative (FCR) in a case involving a trust to compensate those suffering from asbestos disease. In its objection, the USTP argued that the court was required to select the best candidate without deference to the lawyers for the debtor or plaintiffs. The USTP asked the court to adopt an open selection process that allowed candidates without conflicts, such as connections to the professionals in the case, to be considered. The court approved the nominee proposed by the debtors and claimants but issued a lengthy written decision that adopted the heightened legal standard and the open process for appointment recommended by the USTP.

<sup>12</sup> The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 temporarily raised the limit to \$7.5 million.

## APPELLATE PRACTICE

The USTP is the only participant in the bankruptcy system with a national perspective and a responsibility to promote the coherent and consistent application and development of bankruptcy law throughout the country. One of the most important roles the USTP plays in the bankruptcy system is to identify and raise issues for review on appeal, thereby ensuring that the law is shaped, interpreted, and applied evenly in all judicial districts. When substantial rights and financial interests of creditors large and small are affected, the clearer the standards and the law, the better for stakeholders—not only in the case at hand but in the larger marketplace as well. In support of this effort, the USTP handles a large number of appeals annually, many of which have a profound and long-standing effect on the bankruptcy system.



During FY 2019, the USTP participated in more than 80 appeals to bankruptcy appellate panels, district courts, courts of appeals, and the Supreme Court. Of the 32 appeals decided in FY 2019, the USTP's position prevailed in 30 of them, a 94 percent success rate. Many appeals arise from enforcement actions prosecuted by the USTP, but the USTP also intervenes as *amicus curiae* (friend of the court)<sup>13</sup> in other cases.

In all litigation activities, but especially in deciding the USTP's position on bankruptcy appeals, the USTP is guided by its role to define the boundaries of bankruptcy practice so that all parties act in compliance with the law and the Bankruptcy Code is not contravened by any party.

### CASE HIGHLIGHTS

The United States Court of Appeals for the Fifth Circuit agreed with the USTP and affirmed the bankruptcy court's suspension of a self-styled national law firm that represents consumer debtors. At the bankruptcy court level, the USTP proved that the entity failed its client, a Louisiana debtor, in many ways. For example, it violated its promise to give her a "local" Louisiana attorney by instead giving her one located more than 300 miles away, which prevented face-to-face meetings. The entity also engaged in a pattern of incompetence, negligence, and lack of communication that led to the unnecessary dismissal of two of the debtor's bankruptcy cases. On appeal, the Fifth Circuit agreed with the USTP that the putative law firm had misled and neglected the debtor and egregiously mishandled her case. The USTP has filed a number of successful actions against this entity and similar firms across the country.

### CASE HIGHLIGHTS

The U.S. Court of Appeals for the Eighth Circuit affirmed the lower court orders denying the discharge of more than \$5 million in debt by joint debtors—one a surgeon and the other a surgeon who also had a law degree—who could not account for the dissipation of hundreds of thousands of dollars' worth of assets. The assets included watches and jewelry that they claimed to have obtained through an informal relationship with a high-end jeweler who would ship expensive watches without any paperwork and would permit the debtors to keep the ones they wanted and return the rest. The debtors had no record of the value of what was kept and what was returned. They also failed to document the contents of storage bins that they estimated contained property worth hundreds of thousands of dollars. Those items were forfeited and sold after the debtors failed to pay the storage fees. In the bankruptcy court, the USTP successfully advocated for denial of discharge. Both the bankruptcy court and the bankruptcy appellate panel agreed with the USTP's position that the failure of these sophisticated debtors to maintain records concerning these valuable assets undermined the ability of the court, the USTP, and creditors to determine the debtors' financial condition.

<sup>13</sup> When the USTP acts as *amicus curiae*, it is not a party to the case. Instead, it files a brief as a neutral party that shares its views about the legal issues presented by the appeal and its proposed solutions. Given that USTP is a neutral party, courts often give weight to its views.



## PRIVATE TRUSTEES AND CONSUMER CASES



U.S. Trustees appoint and supervise private trustees, who are not government employees, to serve as fiduciaries in bankruptcy cases. They have responsibility for administering the bankruptcy estate and distributing payments to creditors in cases filed under chapter 7, 12, and 13. These trustees support a system that provides a fresh start to consumer debtors and efficiently distributes assets to repay creditors, thereby assisting the national economy. They also conduct the section 341 meeting of creditors, generally the only formal proceeding in which most debtors participate during the bankruptcy process.

In FY 2019, there were approximately 1,200 private trustees<sup>14</sup> who handled the day-to-day activities of nearly 1.5 million ongoing bankruptcy cases. These trustees distributed \$8.7 billion from the assets of bankruptcy estates over this time.

Chapter 7 trustees often are referred to as “panel trustees” because the U.S. Trustee appoints them 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.

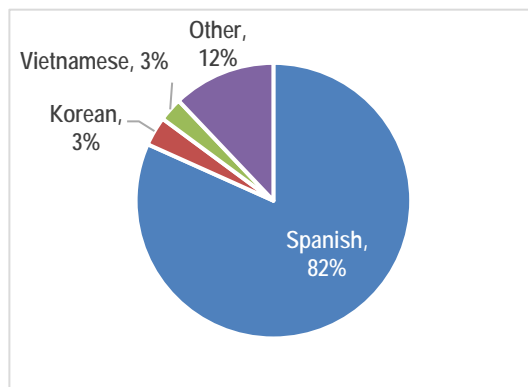
The Program’s oversight includes recruiting and training trustees, and evaluating their performance, including through extensive financial and case management reviews.

### ASSISTANCE FOR INDIVIDUALS WITH LIMITED ENGLISH PROFICIENCY

To help ensure that individuals with limited English proficiency can fully participate in the statutory section 341 meetings of creditors, the Program offers free telephonic interpreter services at the meetings.

In FY 2019, more than 14,000 calls were made for interpreter services in nearly 80 languages. The top three languages requested were Spanish, Korean, and Vietnamese (Figure 6).

FIGURE 6: LANGUAGES REQUESTED FOR INTERPRETER SERVICES



### CREDIT COUNSELING AND DEBTOR EDUCATION

To ensure that debtors are aware of alternatives to bankruptcy, and to provide tools to avoid future financial problems when they exit bankruptcy, the Bankruptcy Code requires individual debtors to receive credit counseling (including a discussion of options outside of bankruptcy) before filing and to complete a personal financial management education course before receiving a discharge of debts.

The USTP is charged with the responsibility to approve providers who meet statutory qualifications to offer credit counseling and debtor education services to debtors. At the end of FY 2019, there were 83 approved credit counseling agencies and 143 approved debtor education providers. Debtors primarily elect to take their credit counseling and debtor education via the Internet, although services also are available by telephone or in-person in many districts (Figure 7).

Credit counseling and debtor education are accessible at an average combined cost of less than \$50. In addition, around 10 percent of services are provided at no or reduced cost.

FIGURE 7: DELIVERY METHOD FOR SERVICES RECEIVED, FY 2019

Type of Service	In-Person	Telephone	Internet
Credit Counseling	<1%	10.2%	89.4%
Debtor Education	2.4%	9.5%	88.1%

<sup>14</sup> This figure includes trustees overseeing cases under chapters 7, 12, and 13; it does not include trustees overseeing cases under chapter 11 subchapter V.

# U.S. TRUSTEE PROGRAM NATIONWIDE OFFICE LOCATOR

Please visit our Web site at [www.justice.gov/ust](http://www.justice.gov/ust) for office phone numbers and addresses.

## EXECUTIVE OFFICE FOR U.S. TRUSTEES

Washington, D.C.

## REGIONS, JUDICIAL DISTRICTS, AND FIELD OFFICES

### Region 1

*District of Massachusetts*  
Boston  
Worcester

*District of Maine*  
Portland

*District of New Hampshire*  
Concord

*District of Rhode Island*  
Providence

### Region 2

*Southern District of New York*  
New York

*Eastern District of New York*  
Central Islip

*Northern District of New York*  
Albany  
Utica

*Western District of New York*  
Buffalo  
Rochester

*District of Connecticut*  
New Haven

*District of Vermont*  
Covered by the Albany  
office

### Region 3

*Eastern District of  
Pennsylvania*  
Philadelphia

*Middle District of Pennsylvania*  
Harrisburg

*Western District of  
Pennsylvania*  
Pittsburgh

*District of Delaware*  
Wilmington

*District of New Jersey*  
Newark

### Region 4

*District of South Carolina*  
Columbia

*District of Maryland*  
Baltimore  
Greenbelt

*Eastern District of Virginia*  
Alexandria  
Norfolk  
Richmond

*Western District of Virginia*  
Roanoke

*Southern District of West  
Virginia*  
Charleston

*Northern District of West  
Virginia*  
Covered by the Charleston  
office

*District of Columbia*  
Covered by the Alexandria  
office

### Region 5

*Eastern District of Louisiana*  
New Orleans

*Middle District of Louisiana*  
Covered by the New  
Orleans office

*Western District of Louisiana*  
Shreveport

*Southern District of Mississippi*  
Jackson

*Northern District of Mississippi*  
Covered by the Jackson  
office

### Region 6

*Northern District of Texas*  
Dallas

*Eastern District of Texas*  
Tyler

### Region 7

*Southern District of Texas*  
Houston  
Corpus Christi

*Western District of Texas*  
Austin  
San Antonio

### Region 8

*Western District of Tennessee*  
Memphis

*Middle District of Tennessee*  
Nashville

*Eastern District of Tennessee*  
Chattanooga

*Eastern District of Kentucky*  
Lexington

*Western District of Kentucky*  
Louisville

### Region 9

*Northern District of Ohio*  
Cleveland

*Southern District of Ohio*  
Cincinnati  
Columbus

*Eastern District of Michigan*  
Detroit

*Western District of Michigan*  
Grand Rapids

### Region 10

*Southern District of Indiana*  
Indianapolis

*Northern District of Indiana*  
South Bend

*Central District of Illinois*  
Peoria

*Southern District of Illinois*  
Covered by the Peoria office

### Region 11

*Northern District of Illinois*  
Chicago

*Eastern District of Wisconsin*  
Milwaukee

*Western District of Wisconsin*  
Madison

### Region 12

*Northern District of Iowa*  
Cedar Rapids

*Southern District of Iowa*  
Des Moines

*District of Minnesota*  
Minneapolis

*District of North Dakota*  
Covered by the Minneapolis  
office

*District of South Dakota*  
Covered by the Des Moines  
office

### Region 13

*Western District of Missouri*  
Kansas City

*Eastern District of Missouri*  
St. Louis

*District of Nebraska*  
Omaha

*Eastern District of Arkansas*  
Little Rock

*Western District of Arkansas*  
Covered by the Little Rock  
office

### Region 14

*District of Arizona*  
Phoenix

### Region 15

*Southern District of California*  
San Diego

*District of Hawaii*  
Honolulu

*District of Guam*  
Covered by the Honolulu  
office

*District of the Northern  
Mariana Islands*  
Covered by the Honolulu  
office

### Region 16

*Central District of California*  
Los Angeles  
Riverside  
Santa Ana

### Region 17

*Northern District of California*  
San Francisco  
San Jose

*Eastern District of California*  
Fresno  
Sacramento

*District of Nevada*  
Las Vegas  
Reno

### Region 18

*Western District of Washington*  
Seattle

*Eastern District of Washington*  
Spokane

*District of Oregon*  
Portland  
Eugene

*District of Idaho*  
Boise

*District of Montana*  
Great Falls

*District of Alaska*  
Covered by the Seattle  
office

### Region 19

*District of Colorado*  
Denver

*District of Utah*  
Salt Lake City

*District of Wyoming*  
Cheyenne

### Region 20

*District of Kansas*  
Wichita

*District of New Mexico*  
Albuquerque

*Northern District of Oklahoma*  
Tulsa

*Western District of Oklahoma*  
Oklahoma City

*Eastern District of Oklahoma*  
Covered by the Tulsa office

### Region 21

*Northern District of Georgia*  
Atlanta

*Middle District of Georgia*  
Macon

*Southern District of Georgia*  
Savannah

*Northern District of Florida*  
Tallahassee

*Middle District of Florida*  
Orlando  
Tampa

*Southern District of Florida*  
Miami

*District of Puerto Rico*  
San Juan

*District of the Virgin Islands*  
Covered by the Atlanta  
office