

U.S. Department of Justice

United States Trustee Program



FY 2019 Performance Budget
Congressional Submission

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TABLE OF CONTENTS

- I. Overview of the United States Trustee Program..... 1
 - A. Introduction 1
 - B. Core Duties and Recent Activities 2
 - 1. Core Duties 2
 - 2. Recent Activities..... 3
 - C. Program Structure 5
 - 1. Executive Office for United States Trustees 5
 - 2. USTP Field Offices 6
 - D. Challenges 7
 - 1. Maintaining Funding and Staffing to Support Operations 7
 - 2. Funding Debtor Audits 7
 - 3. Programmatic Issues..... 8
 - E. Offsetting Collections and the United States Trustee System Fund 9
 - F. Efforts to Maximize Appropriated Resources..... 10
 - G. Program Efforts Toward Integrating Environmental Accountability 12
- II. Summary of Program Changes 13
- III. Appropriations Language and Analysis of Appropriations Language..... 13
- IV. Program Activity Justification 13
 - A. Administration of Cases 13
 - 1. A Balanced Approach to Civil Enforcement..... 14
 - 2. A Criminal Enforcement Mandate 18
 - 3. Chapter 11 Oversight..... 20
 - 4. Appellate Practice and Challenges to the Bankruptcy Code 21
 - 5. Private Trustee Oversight 23
 - 6. Credit Counseling and Debtor Education 24
 - 7. PROMESA Filing by the Commonwealth of Puerto Rico 24
 - B. Performance Tables..... 25
 - C. Performance and Strategies 25
- V. Program Increases by Item..... 25
- VI. Program Offsets by Item 25
- VII. Exhibits..... 27

United States Trustee Program

- VII. Exhibits:
 - A. Organizational Chart
 - B. Summary of Requirements
 - C. FY 2019 Program Increases/Offsets by Decision Unit (Not Applicable)
 - D. Resources by DOJ Strategic Goal/Objective
 - E. Justification for Technical and Base Adjustments
 - F. Crosswalk of 2017 Availability
 - G. Crosswalk of 2018 Availability
 - H. Summary of Reimbursable Resources
 - I. Detail of Permanent Positions by Category
 - J. Financial Analysis of Program Changes (Not Applicable)
 - K. Summary of Requirements by Object Class
 - L. Status of Congressionally Requested Studies (Not Applicable)
 - M. Senior Executive Service Reporting (Not Applicable)
 - N. Modular Costs for New Positions (Not Applicable)
 - O. Information on Overseas Staffing (Not Applicable)
 - P. IT Investment Questionnaire (Not Applicable)

I. Overview of the United States Trustee Program

A. Introduction

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 nation's bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the American public. The Program was established by the Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, et seq.) as a pilot effort encompassing 18 judicial districts. Through the enactment of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, the Program expanded to 21 regions nationwide, covering all federal judicial districts except those in Alabama and North Carolina.

As the vigilant “watchdog” of the bankruptcy system,¹ the USTP is the only player to address multi-jurisdictional violations, targeting misconduct by national law firms, creditors, and fraudsters, while also combatting abuse committed by debtors. To faithfully carry out these duties, the Program conducts a broad range of administrative, regulatory, and enforcement activities, including the appointment and oversight of approximately 1,300 private trustees.

*The nation's consumer bankruptcy laws are premised on the notion that **honest but unfortunate debtors should be able to receive a fresh start** and return to becoming economically productive members of society; and **business debtors should be provided a breathing spell to reorganize their debts and operations to become profitable, job-creating enterprises.***

To meet its mission, the USTP requests \$223,221,000, which supports 1,011 positions (354 attorneys) and 1,011 full-time equivalent employees (FTEs) for Fiscal Year (FY) 2019. This request will cover the most mission critical personnel and operational needs, statutory case administration and oversight responsibilities, and investigation into cases of fraud and abuse, along with associated litigation and enforcement activities.

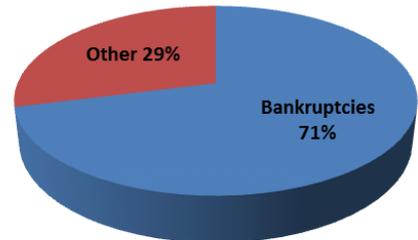
The USTP is funded through appropriations made by Congress that are offset primarily by a portion of fees paid by bankruptcy debtors and deposited into the United States Trustee System Fund (Fund). In October 2017, the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, was enacted, which adjusted quarterly fees for the largest chapter 11 debtors. As a result, the USTP's FY 2019 budget request is anticipated to be fully offset by bankruptcy fees collected and on deposit in the Fund.

¹ See H.R. Rep. No. 595, at 88 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6049 (United States Trustees “serve as bankruptcy watch-dogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena.”).

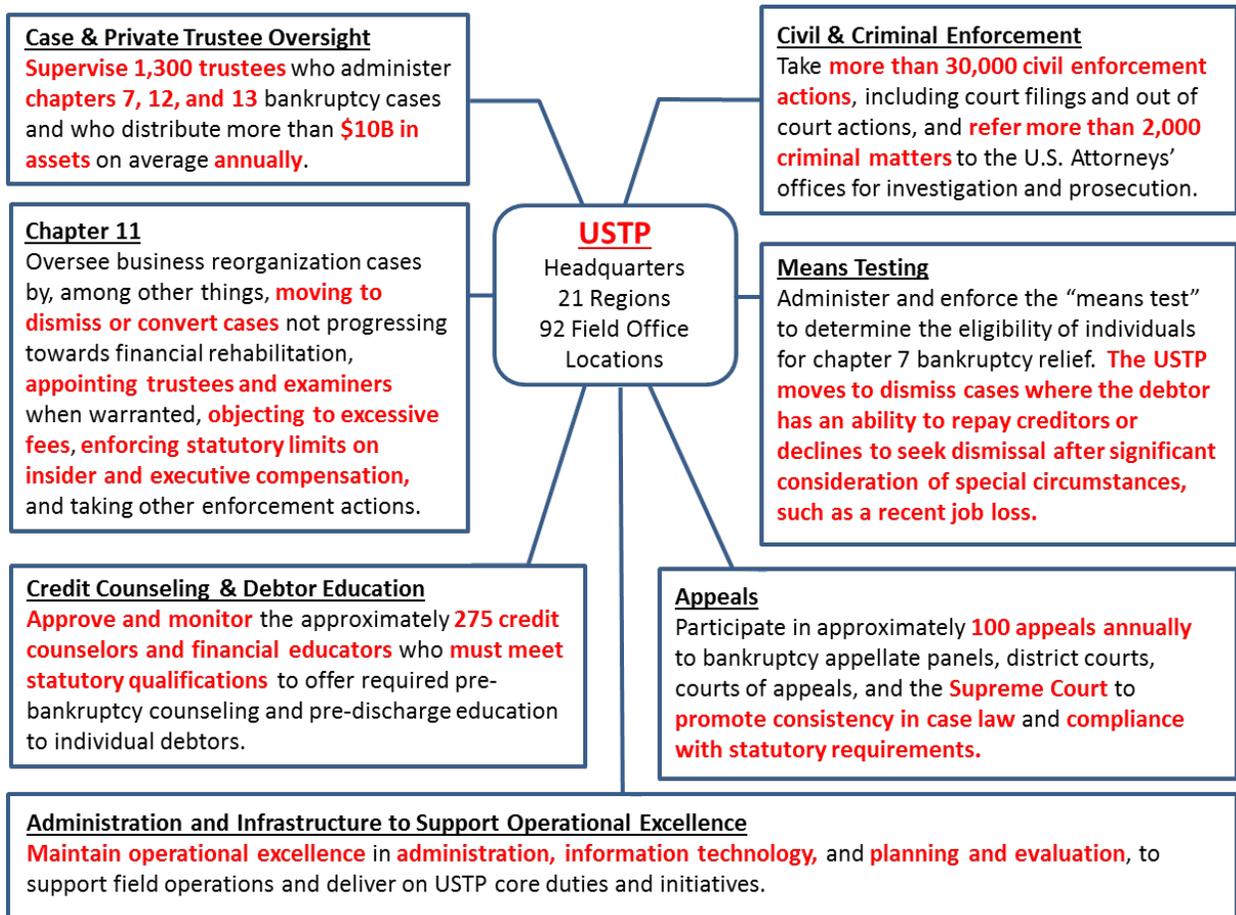
B. Core Duties and Recent Activities

The Program oversees the administration of about 1.7 million ongoing bankruptcy cases in 88 judicial districts. As illustrated in the adjacent chart, over the most recent three fiscal years, more than two-thirds of the cases in the federal judicial system at the end of the fiscal year were bankruptcy cases.² As further discussed below, Program activities are extensive, covering statutory requirements as well as initiatives in support of the USTP mission.

**Pending Cases:
Bankruptcies as % of Total Cases
Average FY 2015 to FY 2017**



1. Core Duties



² Data per 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, 2015 through September 30, 2017. 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.

2. Recent Activities

- a. Debtor Fraud and Abuse.** The USTP combats debtor fraud and abuse primarily by seeking case dismissal as a result of the means test, and by seeking denial of discharge for the concealment of assets and other misconduct that harms creditors or the integrity of the bankruptcy process. Motions to dismiss resulting from the means test may be filed if a debtor has an ability to repay debts as determined by a statutory formula. Motions to dismiss may also be filed if the bankruptcy case is deemed abusive under a bad faith or totality of the circumstances standard. In FY 2017, the USTP took over 13,000 formal and informal actions to address fraud and abuse by debtors, with a total financial impact of approximately \$765 million.
- b. Violations by Consumer Debtor Attorneys.** Debtors, creditors, and the bankruptcy system alike are harmed when consumer debtor attorneys and debt relief agencies fail to comply with bankruptcy standards. The USTP's initiative to combat misconduct and abuse by these entities, including a focused review of national law firms that advertise through the Internet, builds upon the USTP's traditional enforcement activities. In both FY 2016 and FY 2017, USTP enforcement actions against attorneys and debt relief agencies were approximately 30 percent higher than the pre-initiative total from FY 2015. In addition, the Program's investigations and enforcement actions resulted in injunctions that led to the closure of two national law firms operating through sham partnership agreements with local partners and soliciting clients through the Internet. Investigations have uncovered alleged abusive schemes outside the bankruptcy process as well, including instances of lawyers not merely failing to perform their duties, but misusing the client relationship to sell services that are of little or no value to the debtor.
- c. Creditor Abuse.** Creditor abuse cases often involve multiple victims, including debtors and other creditors whose distributions are diminished by overpayments to the violating creditor, and are an affront to the integrity of the bankruptcy system itself. In this area, the USTP continues to monitor mortgage claims for fraud and abuse issues; however, industry compliance and self-reporting has improved following a multi-year effort in which the USTP entered into six national settlements addressing mortgage servicing misconduct. In one recent matter concluded in May 2017, JPMorgan Chase Bank, N.A., agreed to pay \$2.8 million to homeowners in bankruptcy across more than 16,000 accounts to resolve self-reported violations relating to inaccurate account statements and inaccurate mailings that caused debtors to receive less than the required 21-day notice before increasing the mortgage payment. Other USTP creditor abuse enforcement efforts have sought to address the robo-signing of documents filed with the bankruptcy court that have the signature of a person who did not review the document, violations of the discharge injunction, and other non-compliance with bankruptcy statutes and rules committed by both secured and unsecured lenders.
- d. Management and Professional Accountability in Chapter 11 Cases.** Following the success of the Large Case Attorney Fee Guidelines, the USTP is developing two

additional guidelines affecting chief restructuring officers and financial professionals, including investment bankers, in chapter 11 cases. The Program plans to follow the model established with the Large Case Attorney Fee Guidelines, including outreach to the industry, publication of draft guidelines for comment, and a public meeting in which stakeholders participate, followed by final guidelines that set forth the Program's criteria for reviewing applicable retention and compensation applications.

- e. **Appellate Advocacy.** The most important and potentially far-reaching appeal in which the USTP participated recently was *Czyzewski v. Jevic Holding Corp.*, ___ U.S. ___, 137 S. Ct. 973 (2017). That case illustrates the USTP's role in advocating for the most faithful reading of the Bankruptcy Code. Reversing the U.S. Court of Appeals for the Third Circuit, the Supreme Court ruled in favor of the position the government took as *amicus curiae*.³ It held that a bankruptcy court may not approve a settlement between debtors and certain creditors that violates the Bankruptcy Code's priority scheme for distributions – absent the affirmative consent of the adversely affected creditors. The USTP sided with the adversely affected creditors – truck drivers fired by the debtor company the day before the bankruptcy filing – who were denied their right to priority payment under the Bankruptcy Code.
- f. **PROMESA Filing by the Commonwealth of Puerto Rico.** On May 3, 2017, the Financial Oversight Board for Puerto Rico, as representative of the Commonwealth of Puerto Rico, filed a petition for relief to adjust its debts under title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). COFINA, an instrumentality of the Commonwealth, filed a separate title III petition on May 5, 2017. Other instrumentalities, including the Puerto Rico Electric Power Authority, subsequently filed. Under PROMESA, the United States Trustee has two responsibilities: to appoint one or more official committees of creditors, including retirees whose pension funds may be underfunded; and to review compensation applications filed with the court by attorneys, financial advisors, and other professionals. The USTP's appointment of these committees has since been challenged and upheld, and its establishment of a standardized review structure may result, in aggregate, with the Program considering hundreds of millions of dollars in fee applications in accordance with the standardized structure.
- g. **Marijuana Assets in Bankruptcy.** It has been the USTP's long-standing legal position that marijuana assets cannot be administered in bankruptcy. The Program's practice has been to move to dismiss, object to confirmation, or take other appropriate action when there are marijuana assets in a case or when a proposed plan will be funded with marijuana proceeds.⁴ The basic argument for dismissal is that the bankruptcy system cannot be used to facilitate illegal activity and the Bankruptcy Code does not provide a

³ 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. As a neutral party, courts often give weight to the USTP's views.

⁴ State law and regulations are immaterial to whether a bankruptcy case involves an illicit marijuana asset. Federal law designates marijuana as an illicit substance. The bankruptcy system cannot be used to facilitate illegal activity.

mechanism to administer assets that cannot legally be possessed or sold under federal law.⁵ Although small in number in relation to the many hundreds of thousands of bankruptcy cases filed each year, the USTP plays a vital role in these matters by reviewing the particular facts of each case referred to the Program by private trustees and deciding what enforcement action should be taken, if any. The USTP's goals are to ensure uniform application of the bankruptcy law and protect trustees from being placed in the untenable position of selling or otherwise administering an asset that cannot legally be possessed or sold under federal law.

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet at <http://www.justice.gov/02organizations/bpp.htm>.

For more information on Program activities, see the Annual Report of Significant Accomplishments at http://www.justice.gov/ust/eo/public_affairs/annualreport/index.htm.

C. Program Structure

The USTP is a national program with broad administrative, regulatory, litigation and enforcement responsibilities under the Bankruptcy Code (title 11) and title 28 of the United States Code. The Program has a headquarters office in Washington, D.C., led by a Director; 21 regions managed by United States Trustees; and 92 field office locations in 46 states supervised by Assistant United States Trustees.⁶ In FY 2017, the Program had 1,043 FTEs, consisting of attorneys, financial analysts, paralegals, and support staff. More than 90 percent of the Program's employees are located in its field offices.

1. Executive Office for United States Trustees

The Executive Office for United States Trustees (EOUST) oversees the Program by providing leadership, central policy and management direction, and administrative and information technology support to its field offices. Within the EOUST, the Office of the Director directly supervises the United States Trustees and the operations of the EOUST, and has primary responsibility as liaison with the Department, Congress, the judiciary, private trustee organizations, and other stakeholders in the bankruptcy system (e.g., professional associations). The EOUST also includes the Office of the General Counsel, the Office of Oversight, the Office

⁵ Depending on the facts of the specific case, there often are multiple grounds for the USTP to move to dismiss a marijuana asset case or take other appropriate civil action. For example, the law does not allow a consumer or business to confirm a bankruptcy repayment plan that relies on activity forbidden by law, and funding a plan from income derived from a substance that is illegal under the Controlled Substances Act would be a means forbidden by law. Further, a private trustee may not sell marijuana because selling a controlled substance violates federal law.

⁶ The number of field office locations includes two offices that USTP is proposing to close as outlined section I.F.

United States Trustee Program

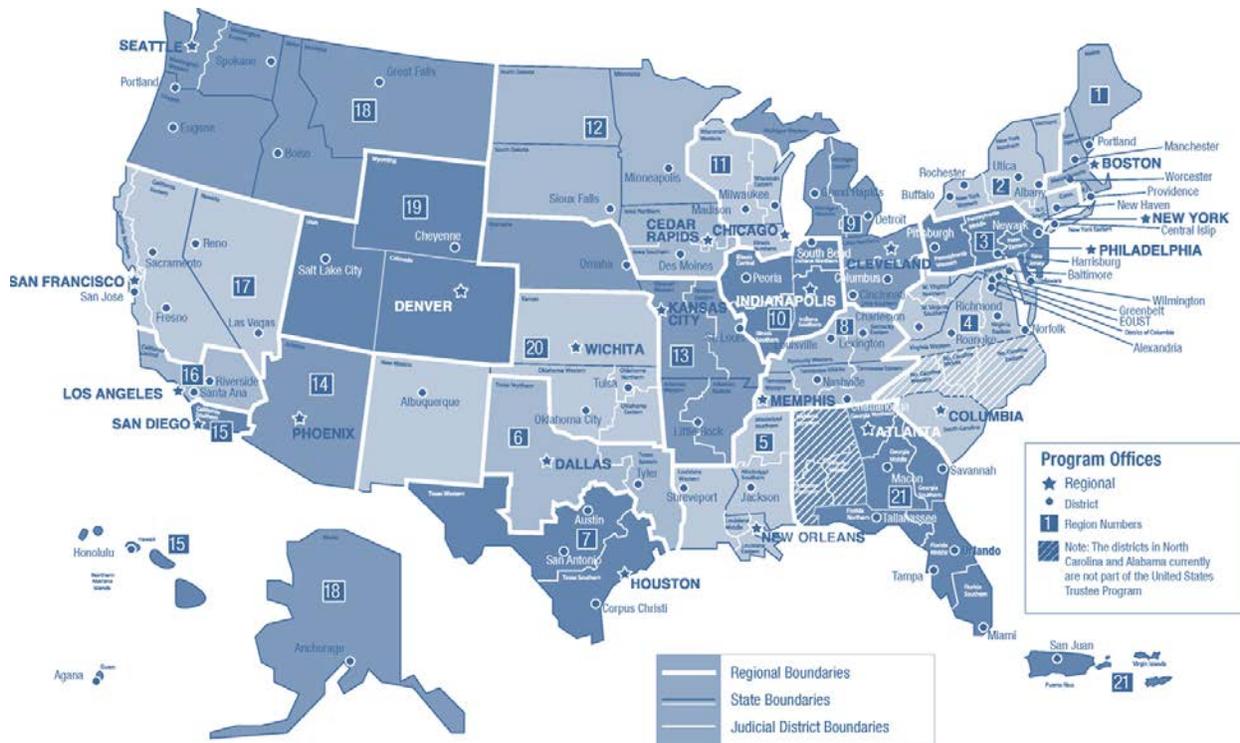
of Criminal Enforcement, the Office of Planning and Evaluation, the Office of Administration, and the Office of Information Technology.

2. USTP Field Offices

USTP field offices oversee bankruptcy case administration by supervising the private trustees who administer consumer bankruptcy estates under chapters 7, 12, and 13 of the Bankruptcy Code; litigating civil enforcement actions; monitoring financial reporting and ensuring that chapter 11 cases proceed toward rehabilitation, conversion, or dismissal; and carrying out other core responsibilities such as administration of the statutory means test.

United States Trustee Program Map of Regions and Offices

A **regional and field office structure** enables the USTP to participate in **300 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**.



D. Challenges

The USTP, like other federal organizations, faces several external and internal challenges.

1. Maintaining Funding and Staffing to Support Operations

The largest immediate challenge facing the USTP is its ability to maintain the high level of enforcement activities, oversight and bankruptcy services for all stakeholders in a challenging budget environment. Over the past decade, the USTP has taken on substantial new responsibilities conferred by statute and expanded its capacity to combat fraud and abuse committed by debtors, creditors, professionals, and other third parties while absorbing budget and staffing reductions. Despite this workload expansion, the FY 2019 budget request represents the fifth consecutive year of funding at the same or reduced level. Within existing funding levels, the USTP has made difficult resource decisions in order to support critical staffing levels and cover cost increases outside of the Program's control. The USTP will need to further reduce overall FTE levels by 3 percent between FY 2017 and FY 2019. This follows on a 5 percent reduction in FTEs from FY 2015 to FY 2017. The Program's far-reaching field structure, which provides for an effective service model on which the courts and bankruptcy system have relied for more than thirty years, presents difficult challenges for managing attrition and achieving other cost reductions.

The USTP has maintained high performance and even increased its capacity to address bankruptcy fraud and abuse during this period of dwindling resources by adopting innovative personnel, financial, and work flow strategies. The Program has consolidated functions; deployed staff throughout the country to address local workload challenges and national initiatives; implemented shared services within the Program and in partnership with other agencies; and reduced space including co-locating offices. These strategies have proven effective thus far and the Program will continue to reprioritize activities within its mission to focus on the most essential aspects of its bankruptcy administration and enforcement duties. While this may require some difficult decisions in the diminution of litigation and enforcement activities, the Program will focus on those cases most likely to create the greatest deterrent or precedential impact.

2. Funding Debtor Audits

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the USTP is authorized to designate randomly for audit one out of every 250 consumer bankruptcy cases per federal judicial district and also conduct exception audits for cases in which debtors report income or expenditures outside of the statistical norm. Despite this statutory authority, the Program has never received base budget resources to conduct these audits, and the Program has suspended audits four times. The USTP funds these audits through one-time carryover funding, as available.

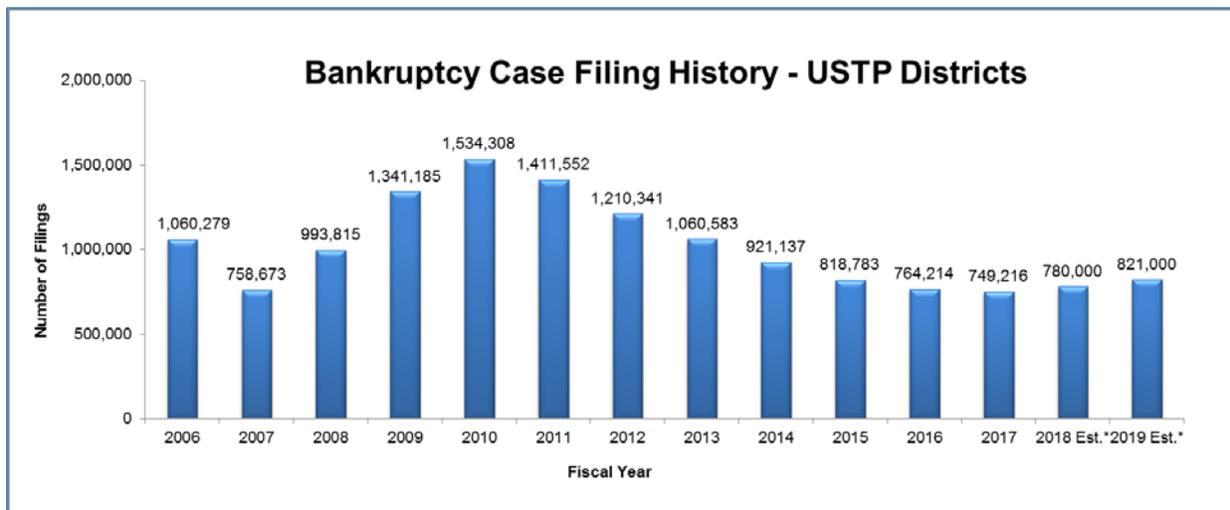
3. Programmatic Issues

Unpredictable Legal Challenges. Legal challenges relating to the Bankruptcy Code are unpredictable in scope and number. The USTP enforces the Bankruptcy Code and defends challenges to its provisions, including by litigating issues of first impression.

Evolving and Complex Caseload. The USTP’s sustained heavy workload in civil enforcement, along with the sheer sophistication of fraud schemes and abusive activities, present challenges for USTP staff to move cases through the system efficiently. In addition to carrying out statutory duties, including means testing and trustee oversight, the Program remains very much involved in new and complex issues associated with debtor fraud, creditor and professional misconduct, Internet law firms, and complex chapter 11 bankruptcy filings.

Volatility in Bankruptcy Filings. The volatility in the number and location of bankruptcy filings creates challenges in case management. For the past century, filings have generally increased about two-thirds of the time and decreased the other one-third. However, in recent years, bankruptcy filing rates have been extraordinarily unpredictable, with unprecedented volatility that some experts attribute to changes in the law, low interest rates, declining consumer credit, and the availability of distressed debt funding in the capital markets. Many of these factors are subject to sudden change, as shown by the doubling in the number of bankruptcy filings from FY 2007 to FY 2010 and the subsequent decrease that began in FY 2011. Filing totals in FY 2017 were approximately equal to the totals from FY 2007, before the last filing surge. The USTP anticipates that filings will increase in FY 2018 and FY 2019.

The following chart reflects actual and projected filings for fiscal years 2006 through 2019.⁷



⁷ The chart reflects bankruptcy filings under all chapters of the Bankruptcy Code, as reported by the Administrative Office of the U.S. Courts (AOUSC). Fiscal years 2018–2019 contain estimated filings. The FY 2018 estimate was updated for the FY 2019 President’s Budget request. The AOUSC has projected bankruptcy filing increases of 5 percent each year for FY 2018 and FY 2019.

Compatibility of USTP and Court Data Systems. The Program depends on the exchange of electronic data with the Bankruptcy Courts to ensure the timely administration of bankruptcy cases. As data systems are updated, the Program must work cooperatively with the Administrative Office of the U.S. Courts to ensure compatibility to support an effective and efficient bankruptcy process.

E. Offsetting Collections and the United States Trustee System Fund

From 1989 through FY 2016, the Program's appropriation was fully offset by bankruptcy fees paid primarily by those who use the bankruptcy system. Two categories of fees generate nearly all of the revenue for the Fund. The first category is the filing fee paid at the commencement of each case in chapters 7, 11, 12, and 13,⁸ and the second category is the quarterly fee paid by chapter 11 debtors. All fees are deposited into the Fund and offset the USTP's annual appropriation. Unlike other bankruptcy fees that are set administratively by the Judicial Conference of the United States, the filing fees and quarterly fees paid to the USTP are set in statute and cannot be adjusted by the USTP.

In FY 2016, a change in appropriation language was made such that the USTP's full appropriation is initially derived from the General Fund of the Treasury and subsequently offset by net fees received during the fiscal year and the balance in the Fund.

With a decline in bankruptcy filings over the past seven years, the unrestricted balance in the Fund was exhausted during FY 2017 and the Program fell short of offsetting the FY 2017 appropriation. To address this issue, the USTP set forth a proposal to adjust quarterly fees for the largest chapter 11 debtors. A modified version of the proposal was enacted in October 2017 with the passage of the Bankruptcy Judgeship Act of 2017. As a result, the FY 2019 budget request is anticipated to be fully offset by bankruptcy fees collected and on deposit in the Fund.⁹ The fee increase will sunset after five years, so the USTP will need to re-evaluate the fee structure prior to FY 2023.

⁸ The USTP receives a portion of these filing fees as specified by statute.

⁹ The amended fee structure is effective January 1, 2018 and for each fiscal year through FY 2022. The fee schedule, however, will revert to the prior schedule for any fiscal year in which the balance of the Fund equals or exceeds \$200 million as of the end of the prior fiscal year.

United States Trustee Program

The following table reflects actual and projected revenue and earnings on investments deposited into the Fund, by source, for the period FY 2013 – FY 2019.^{/A}

Bankruptcy Fees by Source (\$ in Thousands)	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Est.	FY 2019 Est.
Bankruptcy Filing Fees	\$ 81,374	\$ 69,518	\$ 60,515	\$ 56,380	\$ 54,675	\$ 53,600	\$ 62,200
Chapter 11 Quarterly Fees	\$ 126,948	\$ 110,623	\$ 92,688	\$ 91,125	\$ 96,690	\$ 181,300	\$ 318,163
Interest on Earnings on Investments	\$ 902	\$ 744	\$ 650	\$ 523	\$ 210	\$ 257	\$ 465
Other	\$ 142	\$ 178	\$ 76	\$ 301	\$ 163	\$ 143	\$ 172
Total Deposits	\$ 209,366	\$ 181,063	\$ 153,929	\$ 148,329	\$ 151,738	\$ 235,300	\$ 381,000

^{/A} The USTP estimate for FY 2018 and FY 2019 excludes 2 percent of chapter 11 quarterly fees deposited into the general fund of the Treasury as required by section 1004(b) of the Bankruptcy Judgeship Act of 2017, to fund additional bankruptcy judgeships. The FY 2018 estimate is based on a filing projection of 733,000 as presented in the FY 2018 President's Budget request.

F. Efforts to Maximize Appropriated Resources

In recent years, the USTP has developed innovative strategies to find cost-effective operational solutions. The following are examples of the Program's efforts to date. In FY 2019, the Program will continue to explore further efficiencies within its work processes, technology systems, and operating structure.

Consolidation of Functions

The Program piloted and implemented nationwide a number of work process changes by consolidating at the regional level functions previously conducted in each field office, freeing valuable time for field office personnel to pursue other enforcement priorities and providing greater consistency in case administration. This consolidation includes certain administrative areas of trustee oversight, chapter 11 quarterly fee review, and bankruptcy case data extraction and download. For example, the USTP approves and files Trustee Final Reports (TFRs) that provide for the distribution of chapter 7 estate funds to creditors in accordance with statutorily prescribed priorities. TFRs must be reviewed and approved by the USTP, and filed with the Bankruptcy Court, within 60 days of receipt. Consolidation has resulted in more efficient and consistent review of TFRs, now conducted by only a few specially trained staff members in each region. In FY 2019, to fulfill its core mission, the Program will continue to expand use of these functional consolidation measures while also continuing to develop new methods to maximize use of resources across the Program.

Co-Location of Work Space

The USTP has achieved considerable savings by returning underutilized space and reducing space allocations as leases expire. In total, since FY 2012, the Program estimates it has returned approximately 50,000 square feet of space. This includes co-locating several Program field offices between FY 2014 and FY 2016 (Brooklyn with Manhattan; Woodland Hills with Los Angeles; and Oakland with San Francisco), providing the dual benefit of reducing office space costs while increasing operational efficiencies.

Proposed Closure of Two Field Offices

The USTP proposes to close its two field offices in Anchorage, Alaska and Sioux Falls, South Dakota.¹⁰ The Program has maintained these offices since November 1988. Each office has traditionally had three FTEs, although due to staff resignations and retirements, the Anchorage office currently has no staff and the Sioux Falls office is down to one support staff.

Between FY 2010 and FY 2017, bankruptcy filings in the District of Alaska fell from 1,132 to just 460, a decline of nearly 60 percent. Similarly, filings in the Districts of North Dakota and South Dakota, both of which are covered by the Sioux Falls office, dropped from 3,669 filings in FY 2010 to 1,846 in FY 2017, a decline of nearly 50 percent.

The USTP has worked with the courts in these districts to be able to attend non-evidentiary hearings via telephone or video teleconference. In addition, staff in other offices within the respective regions have successfully covered the workload, which requires making several trips a month to attend court and section 341 meetings of creditors.

The USTP estimates that closing the Anchorage and Sioux Falls offices will result in annual cost savings of \$272,000.

Use of Technology for Streamlining and Cost Savings

The Program is always examining ways to maximize its use of technology to improve operations while reducing costs.

- In FY 2016, the Program completed a transition away from desktop computers to mobile laptop devices, thereby eliminating the need for multiple devices for employees. This technology refresh reduced the Program's total inventory of devices by 500, resulting in an estimated cost avoidance of more than \$500,000 per life-cycle.
- The Program is in the process of enhancing its underlying network operational performance by tripling its internal bandwidth capacity in all of its offices at no net cost increase.

¹⁰ A FY 2018 Congressional Relocation Request is forthcoming and the necessary congress members will be notified.

United States Trustee Program

- The USTP has reduced its Help Desk support costs by joining with the Bureau of Alcohol, Tobacco, Firearms and Explosives and the United States Marshals Service in the use of a shared Help Desk operation for Tier 1 support and call management. This has allowed the Program to save over \$100,000 a year in resources.
- The Program is reducing its Data Center footprint through an accelerated effort to virtualize physical servers and a migration to cloud services.
- The USTP continues to expand its use of video teleconferencing equipment in its field offices nationwide to reduce travel costs to attend court hearings and for meetings and training programs.

G. Program Efforts Toward Integrating Environmental Accountability

The USTP continues its work to improve its environmental management activities. The Program actively participates in a number of recycling and other greening initiatives and ensures compliance with existing Federal Acquisition Regulations. The following activities reflect the Program's continuing efforts toward managing and improving its environmental and health safety matters.

- The USTP's Facilities Management Division works with the General Services Administration to ensure the use of environmentally preferable building products and materials for the design, construction, and operation of commercially owned office space occupied by the Program.
- The Program makes every effort to purchase electronic products that are Electronic Product Environmental Assessment Tool registered, or EnergyStar Compliant products. Such products include computers, computer monitors, printers, and copiers.
- The Program purchases supplies that are environmentally preferable products made from recycled content, such as copier paper, file folders, pens, and remanufactured toner cartridges.
- Recycling of paper products, cans, bottles, and plastics is encouraged throughout the Program – an effort highlighted through the use of signage, posters, and the continual availability of appropriate recycling receptacles.

II. Summary of Program Changes

The FY 2019 budget does not request program changes.

III. Appropriations Language and Analysis of Appropriations Language

The FY 2019 budget request includes proposed changes in the appropriations language as set forth below.

United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, \$223,221,000 to remain available until expended: Provided, That, notwithstanding any other provision of law, deposits to the United States Trustee System Fund and amounts herein appropriated shall be available in such amounts as may be necessary to pay refunds due depositors: Provided further, That, notwithstanding any other provision of law, fees deposited into the Fund pursuant to section 589a(b) of title 28, United States Code (as limited by section 1004(b) of the Bankruptcy Judgeship Act of 2017 (division B, Public Law 115-72)), shall be retained and used for necessary expenses in this appropriation and shall remain available until expended: Provided further, That to the extent that fees deposited into the Fund in fiscal year 2019, net of amounts necessary to pay refunds due depositors, exceed \$223,221,000, those excess amounts shall be available in future fiscal years only to the extent provided in advance in appropriations Acts: Provided further, That the sum herein appropriated from the general fund shall be reduced (1) as such fees are received during fiscal year 2019, net of amounts necessary to pay refunds due depositors, (estimated at \$381,000,000) and (2) to the extent that any remaining general fund appropriations can be derived from amounts deposited in the Fund in previous fiscal years that are not otherwise appropriated, so as to result in a final fiscal year 2019 appropriation from the general fund estimated at \$0.

Analysis of Appropriation Language

The proposed language reflects updates related to the provision in the recently enacted Bankruptcy Judgeship Act of 2017 which requires two percent of quarterly fees collected to be deposited into the general fund of the Treasury.

IV. Program Activity Justification

A. Administration of Cases

The USTP budget is contained in one decision unit, the Administration of Cases, which encompasses all operational activities and includes the direct cost of all outputs, indirect costs, and common administrative systems. The USTP's work encompasses two main activities: (1) enforcement; and (2) case and trustee administration. The FTEs and associated funding are allocated to these Program activities based upon the direct, productive hours of the USTP staff,

United States Trustee Program

and the resources directly related to performing these activities. Administrative and other overhead costs are allocated based upon the direct hours expended for the two Program activities.

<i>Administration of Cases</i>	Direct Pos.	Estimated FTE	Amount (\$ in thousands)
2017 Enacted	1,060	1,043	\$ 225,908
2018 Annualized Continuing Resolution	1,028	1,028	\$ 224,374
Adjustments to Base and Technical Adjustments	(17)	(17)	\$ (1,153)
2019 Current Services	1,011	1,011	223,221
2019 Request	1,011	1,011	\$ 223,221
Total Change 2018 - 2019	(17)	(17)	\$ (1,153)

<i>Administration of Cases</i>	Direct Pos.	Estimated FTE	Amount (\$ in thousands)
Information Technology Breakout			
2017 Enacted	33	32	\$30,704
2018 Annualized Continuing Resolution	31	31	\$28,264
Adjustments to Base and Technical Adjustments	-	-	-\$1,490
2019 Current Services	31	31	\$26,774
2019 Request	31	31	\$26,774
Total Change 2018 - 2019	-	-	-\$1,490

/1 FY 2017 FTE is actual.

1. A Balanced Approach to Civil Enforcement

As the vigilant “watchdog” of the bankruptcy system, the USTP is the only national enforcement agency that can identify significant fraud and abuse trends in, and marshal resources against emerging threats to the integrity of, the bankruptcy system. The Program takes an aggressive and balanced approach to address violations by debtors, creditors, attorneys, and others in the bankruptcy system.

*In **FY 2017**, the USTP took **more than 31,000 civil enforcement actions against debtors and creditors**, including court filings and out of court actions, with a potential monetary impact of **\$884 million** in debts not discharged, fees disgorged, and other relief. **Since 2003**, the USTP has taken **more than 748,000 actions with a monetary impact in excess of \$18.1 billion.***

The USTP is uniquely positioned to execute its role and address widespread problems in the bankruptcy system. The EOUST provides critical policy and management direction on all fraud and abuse initiatives and relies on the investigative and litigation expertise of staff across its headquarters and 92 field office locations. This has permitted the USTP to aggregate enforcement efforts as necessary to optimally address national or multi-jurisdictional violations. This flexibility in resource allocation has for some years enabled the Program to mitigate the impact of continued staffing reductions. The result has been an effective service model that has

allowed the USTP to detect patterns of abuse, advance consistent legal arguments, and develop coordinated and sustained enforcement efforts against threats to the bankruptcy system.

Debtor Abuse

The Program combats debtor fraud and abuse primarily by seeking case dismissal if a debtor has an ability to repay debts and by seeking denial of discharge for the concealment of assets and other misconduct that harms creditors or the integrity of the bankruptcy process.

Means Testing. Under the means test, which was adopted under BAPCPA, individual debtors with primarily consumer debt and income above their state median are subject to a statutorily prescribed formula to determine disposable income. The formula is based partially on allowable expense standards issued by the Internal Revenue Service for its use in tax collection. The primary purpose of the means test is to help determine eligibility for chapter 7 bankruptcy relief. In FY 2017, a case with disposable income above \$214.17 per month would be presumed abusive and subject to dismissal.

CASE EXAMPLE: The Bankruptcy Court for the Middle District of Florida **granted a motion** filed by the Orlando office **to dismiss** a debtor's chapter 7 case after finding that her monthly expenses were excessive and her filing was an abuse of the bankruptcy system. The debtor listed **monthly expenses** that were **more than three times** the **applicable IRS Standards**, including **over \$1,700 for food, housekeeping, and personal care**. She also **claimed \$1,450 in monthly expenses for country club membership, vacations, and recreation**.

The effectiveness of the means test largely depends on the United States Trustees' identification of cases that are presumed abusive under the statutory formula and filing of 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 – that is, special circumstances that justify an adjustment to the current monthly income calculation. Common reasons to decline to seek dismissal of a case that is presumed abusive include recent job loss or continuing medical debt.

In FY 2017, the USTP declined to file a motion in over 60 percent of presumed abusive cases as a result of special circumstances that justified an adjustment to the current monthly income calculation. The percentage of declinations has exceeded 60 percent in recent years as debtors and their counsel better understand the requirements of the statute and file presumed abuse cases only if special circumstances apply.

Bad Faith or Totality of the Circumstances. Even if a case is not presumed abusive under the means test, the Bankruptcy Code permits the USTP to seek dismissal for bad faith or the totality of the circumstances. These enforcement actions are filed in cases where, among other things, the debtor makes extravagant purchases right before filing bankruptcy or fails to provide accurate financial information.

Denial of Discharge. In addition to seeking case dismissal, the USTP may file a complaint to deny or revoke a debtor's discharge, which constitutes one of the most serious civil remedies against fraud and abuse by individual debtors in the bankruptcy system. Examples of debtor conduct that could lead to this action include transferring, concealing, or destroying property to hinder or defraud a creditor or the trustee; knowingly and fraudulently making a false oath; refusing to obey a court order; or failing to keep or preserve financial records.

CASE EXAMPLE: Granting a motion filed by the USTP's Norfolk office, the Bankruptcy Court for the Eastern District of Virginia **dismissed a debtor's case** with prejudice, **preventing the current or future discharge of \$107,891 in unsecured debt** listed in this case. The U.S. Trustee alleged the **debtor used multiple Social Security numbers to file bankruptcy petitions and obtain lines of credit**. Additionally, the debtor **failed to disclose multiple businesses** and a pending employment discrimination lawsuit. Finding that the debtor manipulated the bankruptcy system, the **court** ordered dismissal with prejudice and **barred the debtor from refiling bankruptcy within five years in any district**.

CASE EXAMPLE: After a trial on a complaint to deny discharge filed by the U.S. Trustee's Detroit office, the **Bankruptcy Court for the Eastern District of Michigan denied** a chapter 7 debtor's **discharge of over \$1.5 million in unsecured debt**. At the trial, the **debtor could not satisfactorily explain where the profits of the fraud scheme went**, and he claimed he lost most of them through gambling. The **debtor**, a physician, **was previously convicted in a long-running Medicare fraud scheme** and was **sentenced to 101 months in prison and payment of \$7.9 million in restitution**.

Misuse of the Bankruptcy System to Administer Marijuana Assets

The Program moves to dismiss cases that are filed by active marijuana businesses or involve marijuana assets on a variety of statutory grounds. In all instances, the basic argument for dismissal is that the bankruptcy system cannot be used to facilitate illegal activity and the Bankruptcy Code does not provide a mechanism to administer assets that cannot legally be possessed or sold under federal law. It does not matter if the state in which the case was filed has legalized marijuana in any way. Under federal law, marijuana is designated as an illicit substance. The USTP has been extremely effective in its marijuana enforcement litigation, including in successfully defending against an appeal in *Arenas v. United States Trustee*, 535 B.R. 845 (B.A.P. 10th Cir. 2015), of the bankruptcy court's favorable decision. Only one bankruptcy court has ruled against the USTP's position, which adverse decision the USTP has appealed.

Although small in number compared to total bankruptcy filings, the USTP has seen an increase in marijuana cases. In response to this, and in recognition of the wide variety of fact scenarios in which marijuana assets may be present, in April 2017, the Program directed private trustees to inform the United States Trustee when they become aware that a case assigned to them includes assets or income derived from marijuana. The Program's field offices analyze every case that is referred, as well as those uncovered through their routine oversight activities. This practice not only ensures uniform application of the bankruptcy law, but also protects trustees from being placed in the untenable position of selling or otherwise administering an asset that cannot legally be possessed or sold under federal law.

Violations by Consumer Debtor Attorneys

The Program has a long history of utilizing statutory tools to sanction debtors' attorneys who fail to fulfill their basic obligations to their client by, for example, failing to meet with their client, causing costly delays by not appearing at court or section 341 proceedings, and engaging in a range of other unprofessional behavior. The victims of such professional misconduct are not only the debtor client, but also creditors and the court, which expend scarce resources in proceedings that are unnecessarily lengthy or complex due to the failure of debtors' counsel to do their jobs properly. Under the Bankruptcy Code, this conduct may be sanctionable and debtors may receive refunds of the attorneys' fees already paid.

In a series of "town hall" meetings held with all Program employees, as well as meetings with bankruptcy judges and private trustees, almost all those surveyed said that the problem of underperforming consumer debtor attorneys was on the rise, particularly among national law firms that advertise on the Internet. Based on this information, and the need to tackle multi-jurisdictional problems with coordinated national action, the USTP has assembled litigation groups to investigate and take action where violations in multiple jurisdictions are identified. In fact, it appears that at least two national law firms have disbanded as a result of the Program's enforcement actions against them.

CASE EXAMPLE: A **law firm** that **advertised on the Internet as a national entity**, the firm's managing member, and local attorneys called "Class B" members were **barred from practicing in the Western District of Virginia** and ultimately ordered to **pay more than \$22,000 in sanctions, civil fines, and disgorged fees** after the USTP's Roanoke office filed a motion to review the firm's fees and, subsequently, a motion for contempt. **Non-lawyer staff generated clients' bankruptcy documents for filing** and, for a small fixed fee, local "Class B member" attorneys filed clients' cases and attended the section 341 meeting of creditors, where the debtor must answer questions under oath. The **bankruptcy court found that the Class B agreements were sham transactions designed to skirt bankruptcy disclosure obligations**, and that the use of non-lawyers to prepare bankruptcy documents constituted the unauthorized practice of law. **Because the firm, the managing member, and the Class B member violated the initial court order, the U.S. Trustee obtained an order finding them in contempt, imposing additional disgorgements and financial penalties, and reaffirming the ban on filing or participating in cases in the district.**

*In **FY 2016 and FY 2017**, Program **actions against debtor's attorneys** under the disgorgement provisions of sections 329 and the debt relief agency provisions of section 526 of the Bankruptcy Code **increased to approximately 30 percent above the pre-initiative totals from FY 2015**. The Program also utilized other statutory tools to combat this abuse.*

Among the more noteworthy allegations the Program is investigating are instances of lawyers not merely failing to perform, but misusing the client relationship to sell services that are of little or no value to the debtor. Some of these schemes may be abusive and others may be fraudulent. Our investigations and actions are continuing and remain a priority of the USTP.

Creditor Abuse

The USTP continues to monitor mortgage claims for fraud and abuse issues, however, following a multi-year effort in which the USTP entered into six national settlements addressing mortgage servicing misconduct, industry compliance and self-reporting have improved. As detailed in the case example, self-reporting by one bank led to settlements providing substantial relief to homeowners affected by violations of the Bankruptcy Code and Rules. Additional enforcement priorities include USTP investigations into the robo-signing of documents filed with the bankruptcy court, violations of the discharge injunction, and other failures to comply with bankruptcy statutes and rules committed by both secured and unsecured lenders.

CASE EXAMPLE: In May 2017, as a **result of self-reporting**, the Program filed with the court two agreements with JPMorgan Chase Bank, N.A. (Chase), to resolve bankruptcy-related violations relating to **inaccurate mailings** sent to **more than 10,000 accounts of homeowners in bankruptcy** and **inaccurate billing statements** that may have affected **more than 6,000 accounts of homeowners in bankruptcy**. As remediation to the affected homeowners, Chase will provide a total of **approximately \$2.8 million in payments, refunds, and credits**.

2. A Criminal Enforcement Mandate

Bankruptcy cases may involve conduct that violates both civil and criminal laws. The USTP pursues available civil enforcement remedies to address fraud and abuse issues and refers alleged wrongdoers, as required by statute, to the United States Attorney and other law enforcement partners for potential criminal prosecution. As bankruptcies cross all industries and levels of American society, they often can be the last step in a criminal's chain of wrongdoing. Detection of bankruptcy fraud can, therefore, lead to the detection and prosecution of other serious crimes.

*Annually, the Program **makes more than 2,000 criminal referrals** on matters that include allegations of **bankruptcy fraud**; tax fraud; **identity theft or use of false or multiple Social Security numbers**; mail and wire fraud; bank fraud; **mortgage fraud**; and real estate fraud.*

The USTP is required by statute to refer potential criminal violations to the United States Attorney and, on the request of the United States Attorney, to assist in criminal prosecutions. In this capacity, the Program works closely with the United States Attorney Offices, the FBI, and our other law enforcement partners. Program staff contribute to the prosecution of bankruptcy and bankruptcy-related crimes by serving as Special Assistant United States Attorneys in cases, consulting on bankruptcy law and related issues, drafting charging documents, and providing support as expert and fact witnesses at trial. Recently, the USTP was delegated the authority to review United States Attorney declinations of criminal referrals pursuant to 18 U.S.C. § 3057.

The USTP further contributes to the Department's ability to detect criminal activity by participating in bankruptcy and fraud working groups with federal and state law enforcement partners, as well as providing training to approximately 3,500 federal, state, and local law enforcement personnel, Program employees, private bankruptcy trustees, and members of the bar

and other professional associations throughout the country on average each year. Most recently, the Program, in partnership with the Complex Financial Crimes Unit, FBI Headquarters, conducted the first in a series of videoconference bankruptcy and bankruptcy-related fraud training sessions for FBI agents and staff, Assistant United States Attorneys and USTP staff. The first half-day training session was held in November 2017 with ten Program offices serving as host locations for more than 65 participants. A second session is scheduled for February 2018.

The following recent case examples illustrate the wide array of prosecutions that result from USTP referrals.

CONCEALING ASSETS IN BANKRUPTCY AND TRANSPORTING FOREIGN CURRENCY: The **star of a reality television show** was **sentenced** in the Western District of Pennsylvania to **12 months and a day in prison** followed by **two years of supervised release**, and ordered to pay a **\$120,000 judgment** and a **\$40,000 fine**, after pleading guilty to concealing assets in bankruptcy and transporting foreign currency. The defendant was **charged with concealing more than \$750,000 of income** received from a reality show and related spinoff shows, dance sessions, and merchandise and apparel sales. After filing chapter 11 bankruptcy, the defendant made multiple false entries in her monthly operating reports, failing to disclose or under-reporting business income. She was **also charged with transporting \$120,000 in foreign currency from Australia into the United States** and **failing to file required reports**, as well as **using other individuals to transport the currency**. The USTP's Pittsburgh office referred the criminal matter and assisted in the investigation, and a Trial Attorney from that office testified at the sentencing hearing.

WIRE FRAUD AND EMBEZZLEMENT: The **former chief financial officer** of a chapter 7 debtor company was **sentenced** in the Middle District of Louisiana to **45 months in prison** and **two years of supervised release** and was **ordered to pay \$966,257 in restitution** to the company's bankruptcy estate after pleading guilty to wire fraud and embezzlement. During the bankruptcy case, the **CFO diverted nearly \$1 million in estate revenues from the debtor's 30 fast food establishments to personal bank accounts, associates' bank accounts that he controlled, and himself via mail delivery**. The CFO concealed these transactions by recording fictitious purchases in the debtor's books and records. The USTP's New Orleans office referred the criminal matter.

MAIL FRAUD IN CONNECTION WITH "FORECLOSURE RESCUE" SCHEME: A **woman** was **sentenced** in the Northern District of Texas to **15 months in prison** and ordered to **pay \$270,134 in restitution** after pleading guilty to conspiracy to commit mail fraud in connection with a "foreclosure rescue" scheme. **Along with co-conspirators**, the **woman recruited at least 70 homeowners facing imminent foreclosure** and **fraudulently collected at least \$242,000**. The conspirators **used third parties to contact homeowners, falsely representing that investors would purchase the homeowners' loans and the homeowners could receive new loans with lower monthly payments**. The conspirators conducted fraudulent closings where homeowners paid large down payments on the new fraudulent loans. Conspirators used the fraudulently collected down payments and monthly mortgage payments for their personal benefit. To delay foreclosure and conceal their criminal conduct, they instructed some homeowners to file *pro se* bankruptcy petitions. The USTP's Dallas office referred the matter to the U.S. Attorney's office after identifying and investigating a one-month spike in *pro se* bankruptcy cases.

For more information on criminal referrals, see the annual reports to Congress:
http://www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm

3. Chapter 11 Oversight

The USTP carries out significant responsibilities in chapter 11 reorganization cases. These responsibilities include: appointing official committees of creditors; appointing trustees and examiners when warranted, such as when there is suspected financial wrongdoing; objecting when appropriate to the retention and compensation of professionals; and moving to dismiss or convert about one-third of chapter 11 cases each year because they are not progressing toward financial rehabilitation. 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. The following sections highlight several of the USTP's key activities in chapter 11 cases.

CASE EXAMPLE: The Bankruptcy Court for the District of Delaware approved a **reduction of more than \$1 million in the fee application filed by a financial adviser in a technology company's chapter 11 case.** The financial advisor initially sought payment of \$1,512,411 in fees and costs. The **USTP's Wilmington office opposed the fee request** based on the **poor result of the advisor's sale-related efforts** and because the **advisor's effective hourly rate of \$1,374 was unjustified.** The official committee of equity security holders also opposed the fee request. After the objections were filed, the **advisor agreed to reduce its compensation by \$1.2 million – nearly 80 percent –** resulting in fees of \$312,411 and an effective hourly rate of \$274.

Review of Professional Fees

Under the Bankruptcy Code, the court must approve all professional fees that are paid from the bankruptcy estate under criteria set forth in statute. This requirement 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 precipitate a filing. Even though all parties can object to the payment of fees, professionals rarely target the fees of other professionals except as a tactic to gain an advantage in a case. As a result, the USTP generally is alone in reviewing and objecting to applications that include excessive or questionable fees.

In light of record-breaking fee awards in major bankruptcy cases and escalating bankruptcy rates at a time when the non-bankruptcy marketplace was imposing more cost-conscious controls on outside counsel, in 2013, the Program issued new Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 for Attorneys in Larger Chapter 11 Cases (Guidelines). The Guidelines are based upon statutory authority, but do not have the force of law. In particular, the Guidelines reflect standards and procedures in section 330 of the Bankruptcy Code and Bankruptcy Rule 2016. The Guidelines express the USTP's policy positions, and the USTP will use them in the absence of controlling law or rules in the jurisdiction. Although it is difficult to quantify any resulting cost savings, law firm practices have improved, fee applications are more restrained, and there is greater consistency in fee review.

Review of Professional Retention Applications for Conflicts of Interest

The Program rigorously reviews applications to retain professionals to ensure the adequate disclosure of connections and the absence of disqualifying conflicts of interest. In one recent case, the Program objected to a large advisory firm’s skeletal disclosures. The USTP worked out a reasonable scope of disclosure in light of the firm’s exceptionally wide-ranging client base and expansive professional services in areas remote from the terms of the engagement in the particular bankruptcy case. The judge agreed with the USTP’s position and the firm appears to have conformed subsequent applications to that position. In another case, the USTP objected to fees after it was revealed that there was a strong personal connection between principals in a law firm and the financial firm that was engaged to review the work performed by the law firm. Even though some expressed the view that the USTP should excuse the failure to disclose with minimal penalty, after a court hearing, the financial firm ultimately relinquished all its fees, which totaled more than \$2 million, after a court hearing.

Review of Proposed Executive and Other Insider Bonuses

The USTP reviews executive bonuses and other compensation requests for compliance with the Bankruptcy Code. In the BAPCPA, Congress curtailed the lingering practice of chapter 11 debtors’ executives awarding themselves lavish bonuses during the bankruptcy case, which were often styled as “retention programs” that ostensibly dissuaded those executives from seeking employment elsewhere. In many cases, the United States Trustee’s formal or informal objections have resulted in substantial voluntary changes to the debtor’s proposed executive compensation programs. Other cases require formal court action.

CASE EXAMPLE: Ruling for the USTP’s Wilmington office, the Bankruptcy Court for the District of Delaware **denied approval of \$2.85 million in bonus compensation sought by the management of a nationwide sporting goods retailer** in chapter 11 bankruptcy. The debtor argued that the bonuses should be allowed because they would be paid by a secured lender rather than by the bankruptcy estate. **The court sustained the U.S. Trustee’s objection, holding that the proposed bonuses were inappropriate where high-level management executives were merely staying in their positions after the business had been liquidated and rank-and-file employees were losing their jobs.**

4. Appellate Practice and Challenges to the Bankruptcy Code

The USTP is the only participant in the bankruptcy system with a national perspective and a responsibility to develop consistent case law across the nation. The Program handles a large number of appeals annually, many of which have a profound and long-standing effect on the bankruptcy system.

*In **FY 2017**, the Program **participated in 102 appellate matters beyond the bankruptcy court, including over a dozen matters at the United States court of appeals level and 11 before the Supreme Court.***

Enforcement of the bankruptcy laws is a priority for the USTP, and the Program ensures that they are followed as Congress has written them. This responsibility often presents itself in chapter 11 cases where some parties understandably seek to advance their interests over the rights of other parties. In the case of *Czyzewski v. Jevic Holding Corp.*, ___ U.S. ___, 137 S. Ct. 973 (2017), the USTP, as *amicus*, lost below in its effort to uphold the law, but its position prevailed before the Supreme Court. The USTP first became involved when it unsuccessfully advocated on the side of laid-off truck drivers in chapter 11 proceedings before the bankruptcy court and then as *amicus* on appeal to the court of appeals. In *Jevic*, the debtor trucking company fired its employees and filed for bankruptcy relief the next day. Ultimately, the company decided to dismiss its bankruptcy case, but only after agreeing to pay some creditors by skipping others. It sought to bypass the truckers' higher priority claims entirely in order to pay lower priority unsecured creditors. Even though the Bankruptcy Code provides employee wage claims with a higher repayment priority than the claims of general unsecured creditors, the bankruptcy court approved an agreement under which the truck drivers were not paid while lower priority unsecured creditors were paid. The United States filed a brief in the Supreme Court as *amicus*, and the Court ultimately reversed the lower court's approval of the priority-skipping payments. The Supreme Court's holding may have broader application in other bankruptcy contexts of great interest to USTP chapter 11 practice and enforcement.

The Jevic case stands as a good example of the role the USTP can play in reorganization cases. As the only neutral party and one without a pecuniary interest, the Program is able to ensure that the provisions of the Bankruptcy Code are followed by all parties to the case. Sometimes the USTP sides with employees and other times we side with major lenders. But at all times, the Program advocates for the most faithful construction of the Code.

The Program also ensures that important precedent is followed. In *Baker Botts LLP v. ASARCO LLC*, ___ U.S. ___, 135 S. Ct. 2158 (2015), the Supreme Court held that bankruptcy attorneys cannot charge bankruptcy estates for the cost they incur in defending objections to their fee requests. Following that decision, the Program has taken steps to ensure that professionals retained by bankruptcy estates comply with the *ASARCO* decision, including acting as *amicus* before the federal district court in Chicago. In the Chicago case, a financial advisor attempted to recover professional fees for defending their fee application. The district court agreed with the USTP that the *ASARCO* prohibition preventing attorneys from recovering fees for defending fee applications extends to other bankruptcy professionals as well.

Below are other notable case examples from the USTP's appellate practice:

- The USTP assisted the Solicitor General in successfully arguing that the term “actual fraud,” as used in an exception to discharge for debts obtained by false pretenses, a false representation, or actual fraud, encompasses fraudulent schemes even if the scheme does not involve a false statement. *Husky Int'l Electronics v. Ritz*, ___ U.S. ___, 136 S. Ct. 1581 (2016).

- The Bankruptcy Code does not allow debtors to obtain a chapter 7 discharge of their debts when they possess the financial ability to repay a reasonable portion of their debts. The Program successfully argued that the relevant statute applies equally to debtors who convert their cases from chapter 13 to chapter 7. This prevents unscrupulous debtors from avoiding dismissal by filing for bankruptcy relief in a different chapter and converting to chapter 7. *Pollitzer v. Gebhardt*, 860 F.3d 1334 (11th Cir. 2017).
- The USTP successfully defended the permanent suspension of an underperforming attorney. Following a lengthy disciplinary hearing, the bankruptcy court found, among other things, that the attorney signed his clients' names as though they had reviewed and signed the documents, reused client signatures to ghost-sign for them, submitted petitions on behalf of an ineligible debtor, and submitted inaccurate documents to the bankruptcy court. The court of appeals agreed that these findings provided grounds for permanent suspension. *In re Husain*, 866 F.3d 832 (7th Cir. 2017).
- The USTP successfully defended sanctions imposed upon an attorney who made misleading and inaccurate arguments in documents filed with the bankruptcy court. *Baker v. Harrington (In re Hoover)*, 827 F.3d 191 (1st Cir. 2016).
- The USTP successfully defended an order significantly reducing a bankruptcy attorney's fees because no attorney-client relationship existed during the periods when the disputed services were provided and, even if such a relationship had existed, the attorney failed to adequately record his time, had a conflict of interest, and violated the court's rules governing compensation requests which justified the reduction of fees. *Gold v. Harrington (In re Gold)*, 654 F. App'x 14 (2d Cir. 2016).

5. Private Trustee Oversight

The Program 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 the 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 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 in accordance with the priorities of the Bankruptcy Code.

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

The Program supervises the activities of approximately 1,300 private trustees, including 1,085 chapter 7 trustees, 34 chapter 12 trustees, and 175 chapter 13 trustees, who distribute more than \$10 billion in assets on average annually and handle approximately 1.7 million ongoing cases.

6. 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 must meet statutory qualifications to offer these services to debtors, and it also monitors their operations through quality service reviews. Currently, about 100 credit counseling agencies and 175 debtor education providers are approved to offer these services. Around 20 percent of credit counseling certificates and debtor education certificates are issued at no or reduced cost. Of those paying the full fee, the average combined cost of pre-bankruptcy credit counseling and post-discharge debtor education is around \$50, making these services accessible at a relatively modest cost.

7. PROMESA Filing by the Commonwealth of Puerto Rico

On May 3, 2017, the Financial Oversight Board for Puerto Rico, as representative of the Commonwealth of Puerto Rico filed a petition for relief to adjust its debts under title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). COFINA, an instrumentality of the Commonwealth, filed a separate title III petition on May 5, 2017. Other instrumentalities, including the Puerto Rico Electric Power Authority, subsequently filed.

Similar to cases filed under chapter 9 of the Bankruptcy Code, which provides debt relief for state municipalities, the courts and the USTP have significantly limited powers compared to their powers under the reorganization provisions of chapter 11. Under PROMESA, the United States Trustee has responsibility to appoint an official committee of unsecured creditors and review professional fees.

Appoint an Official Committee of Unsecured Creditors

PROMESA mandates that the United States Trustee appoint an official committee of unsecured creditors willing to serve and gives the United States Trustee discretion to appoint additional committees. Accordingly, the United States Trustee appointed two committees which are “representative” of the various unsecured creditor constituencies, including retirees whose pension plans are underfunded. The United States District Court, which handles cases under title III of PROMESA, upheld the USTP’s appointments against a variety of legal challenges, and the USTP reserves the right to make additional appointments in the future.

United States Trustee Program

The committee formation process involves written solicitation for service, publication and mailing of the solicitation, and a formation meeting at which candidates appear and are questioned about the nature of the debt they hold and any potential conflicts of interest. The official committees are fiduciaries for their unsecured creditor constituencies and serve as critical negotiating partners with the debtor. Each committee may employ attorneys and other professionals at the expense of the debtor to assist the committee in carrying out its duties.

Review Professional Fees

The United States Trustee will review the fee applications filed with the court by attorneys, financial advisors, and other professionals who are employed by the Commonwealth, its Financial Oversight and Management Board, and the official committees to assist in the debt adjustment process under title III of PROMESA. Among other things, the United States Trustee will confer with the parties and file with the court appropriate papers to ensure that fee applications conform with the Program's guidelines governing the fees of attorneys and other professionals (e.g., submission of budgets and disclosure of rates outside of insolvency proceedings so that above-market rates are not charged).

B. Performance Tables

Performance materials will be provided at a later date.

C. Performance and Strategies

Performance materials will be provided at a later date.

V. Program Increases by Item

The FY 2019 budget does not request program increases.

VI. Program Offsets by Item

The FY 2019 budget does not request program offsets.

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VII. Exhibits