U.S. Department of Justice

United States Trustee Program

FY 2016 Performance Budget

Congressional Submission

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I. Overview for the United States Trustee Program

A. Introduction

The United States Trustee Program ("USTP" or "Program") is a litigating component of the Department of Justice 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 public. The USTP mission supports the Department of Justice's Strategic Objective 2.6 – Protect the federal fisc and defend the interests of the United States – by enforcing the Bankruptcy Code and ensuring the effective administration of bankruptcy cases.

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.

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.

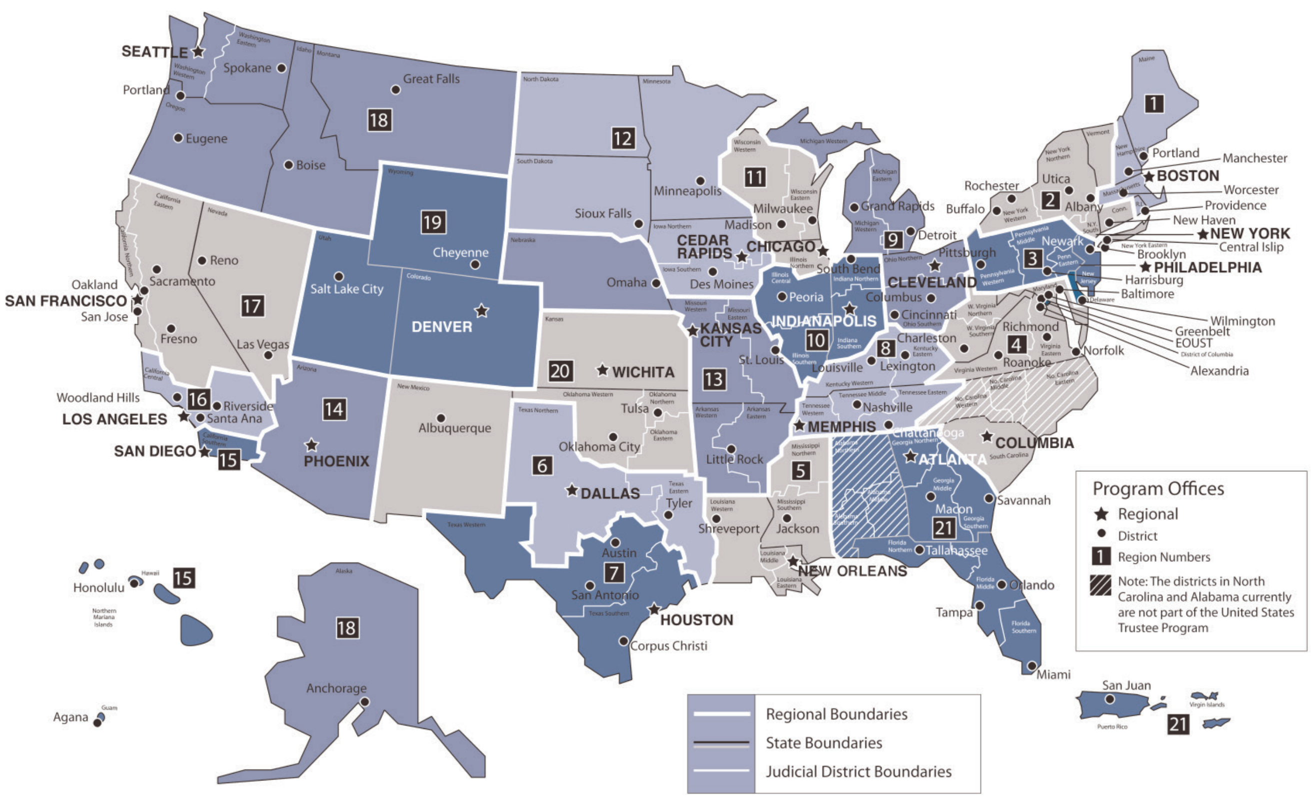
B. Program Overview

The USTP is responsible for overseeing the administration of bankruptcy cases and private trustees under 28 U.S.C. § 586 and 11 U.S.C. § 101, *et seq*. 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, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986, the Program expanded to 21 regions nationwide, covering all Federal judicial districts except Alabama and North Carolina. Since 1997, the Program has been fully funded by the United States Trustee System Fund ("Fund"), which consists primarily of fees paid by parties and businesses invoking bankruptcy protection.

The Program has a headquarters office in Washington, D.C., led by a Director; 21 regions managed by U.S. Trustees; and 92 district office locations in 46 states supervised by Assistant U.S. Trustees.[1] In FY 2014, the Program had 1,130 full time equivalent employees, consisting of attorneys, financial analysts, paralegals, and support staff. More than 90 percent of the Program's employees are located in the district offices.

[1] The Program completed two consolidations of offices during FY 2014 (Brooklyn with Manhattan and Woodland Hills with Los Angeles). In FY 2015, a third consolidation is planned (Oakland with San Francisco). By FY 2016, the number of USTP field office locations will be 92 (versus the 95 reported in prior years).

1. U.S. Trustee Program Map of Regions and Offices



2. Executive Office for United States Trustees

The USTP's Executive Office for U.S. Trustees (EOUST) sets policy, directs litigation, and manages Program operations and staff. The Office of the Director directly supervises the U.S. Trustees and the operations of the EOUST and has primary responsibility for liaison with the Department, Congress, the Judiciary, private trustee organizations, and other stakeholders in the bankruptcy system (e.g., professional associations, debtors, and creditors). The EOUST also includes the Office of the General Counsel, the Office of Oversight, the Office of Criminal Enforcement, the Office of Planning and Evaluation, the Office of Administration, and the Office of Information Technology.

3. Enforcement and Oversight Activities

By statute, the Program has standing to participate in every bankruptcy case filed within its jurisdiction. To ensure the integrity of the bankruptcy system, the Program employs a broad range of enforcement and oversight activities. These activities include:

- Taking tens of thousands of civil enforcement actions each year, including those not requiring formal resolution by a court, for a monetary impact of more than $1 billion.

- Protecting consumer debtors from unscrupulous creditors, bankruptcy petition preparers, or attorneys, and those who use the bankruptcy system to perpetrate fraud.

- Protecting distressed homeowners victimized by improper mortgage servicer practices that may cause unnecessary loss of the family home.

- Providing oversight of chapter 11 cases, taking actions that range from objecting to excessive professional fees and improper management bonuses to reviewing debtors' disclosure statements and proposed plans of reorganization.

- Promulgating and enforcing professional fee guidelines to ensure transparency and limit fees to market rates.

- Supervising private trustees who administer chapters 7, 12, and 13 bankruptcy cases and distribute more than $10 billion in assets each year. This duty involves reviewing more than 140,000 case reports per year, reviewing hundreds of trustee operations, and performing other trustee oversight and auditing tasks.

- Participating in more than 100 appeals to the bankruptcy appellate panels, district courts, circuit courts of appeals, and the U.S. Supreme Court. The USTP works closely with the Office of the Solicitor General in the Department of Justice on Supreme Court cases involving bankruptcy.

- Identifying and referring cases of potential criminal wrongdoing to law enforcement and assisting the U.S. Attorneys in the prosecution of cases through Program attorneys who are cross-designated as Special Assistant U.S. Attorneys.

- Training law enforcement who investigate bankruptcy crimes, and communicating with the bankruptcy bench and bar throughout the 88 judicial districts in which the USTP litigates.

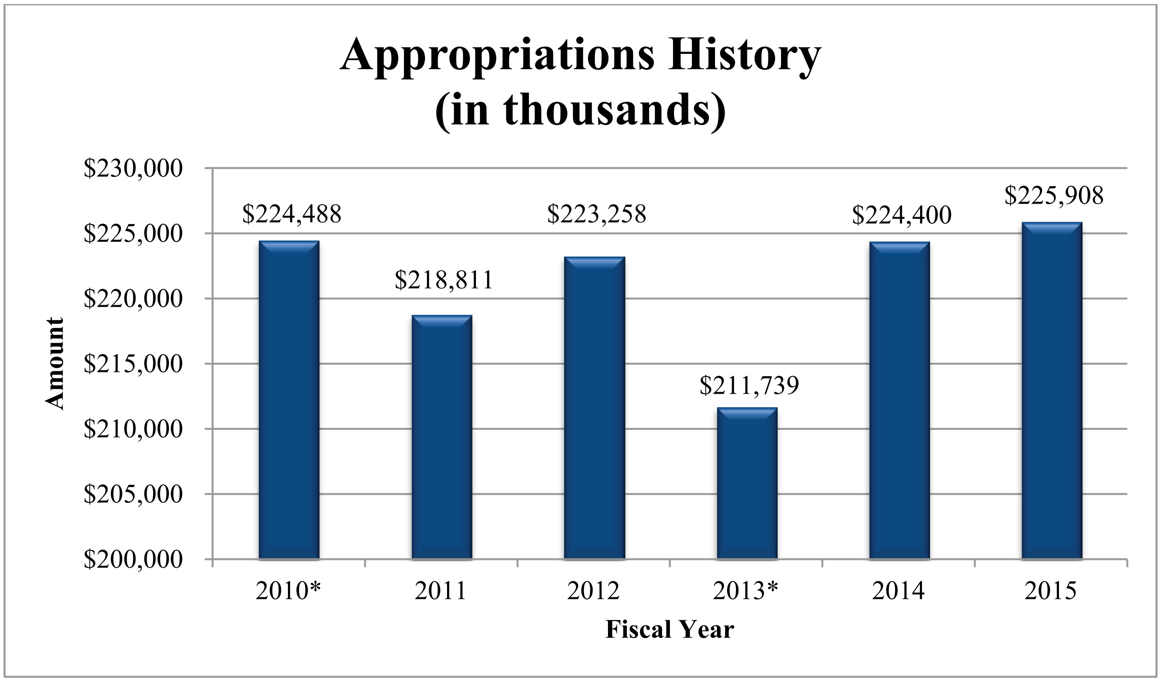
- Annually approving and monitoring 375 credit counseling agencies and debtor education providers that provide mandatory pre-filing counseling and post-filing education.

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. Appropriation History and FY 2016 Budget Request

1. Appropriation History

The following chart reflects USTP enacted appropriations for FY 2010 through FY 2015.



*Note: The FY 2010 amount was augmented with $5.2 million in prior year unobligated balances. The FY 2013 amount reflects the appropriation less sequestration reductions. In FY 2013, the Program also received a transfer of $5.343 million from the U.S. Marshals Service that is not reflected in this chart.

Over the past three years, the USTP has sustained a net loss of more than 100 staff or over 10 percent of total staff. The restoration of vital funding in the FY 2014 and FY 2015 appropriations allows the Program to backfill critical positions, including 13 Assistant U.S. Trustees for field offices without full-time managers. The Program is utilizing a targeted workload approach to backfilling positions in the areas of greatest need. In addition to staff hiring, the Program restored funding necessary to ensure the efficient and effective continuation of Program operations and achievement of mission, including in the areas of: information technology; oversight of trustees, field operations, and financial education providers; and staff training.

The Program has taken a number of important steps over the past few years to achieve our mission during a period of budget stringency. Our focus is to preserve staff positions by reducing other costs. We have achieved considerable savings by streamlining operations, returning underutilized space, and reducing space allocations as leases expire. In FY 2014, the USTP completed two office consolidations (Brooklyn with Manhattan and

Woodland Hills with Los Angeles) and a third consolidation is planned for FY 2015 (Oakland with San Francisco). Colocation of these offices reduces office space and increases operational efficiencies. The Program also piloted and implemented nationwide a number of work process changes, including consolidating functions such as the financial review of trustees, with the goal of improving efficiency and effectiveness.

In addition, the Program upgraded its video teleconferencing equipment in field offices nationwide, which has allowed the Program to avoid additional travel costs by increasing the use of video teleconferences for meetings and training programs. The USTP also has proactively utilized low cost alternative and internal resources to significantly reduce PACER expenses, which is anticipated to yield savings of over $500,000 annually in FY 2015 and out-years.

2. FY 2016 Budget Request

The Program's FY 2016 budget request of $228,107,000 supports 1,314 permanent positions (436 attorneys) and 1,184 work years. It also supports the Program's most critical operational needs and provides funds for mortgage fraud and creditor abuse enforcement activities – an area that continues to grow in terms of case complexity. The request includes funding to support the most essential positions and for oversight activities, facilities, and other mission-critical Program operations. The USTP's FY 2016 budget request is anticipated to be offset by bankruptcy fees collected and on deposit in the United States Trustee System Fund. The Fund ended FY 2014 with a balance of $172 million.

D. Challenges

The United States Trustee Program, like other federal organizations, faces several external and internal challenges.

1. External Challenges

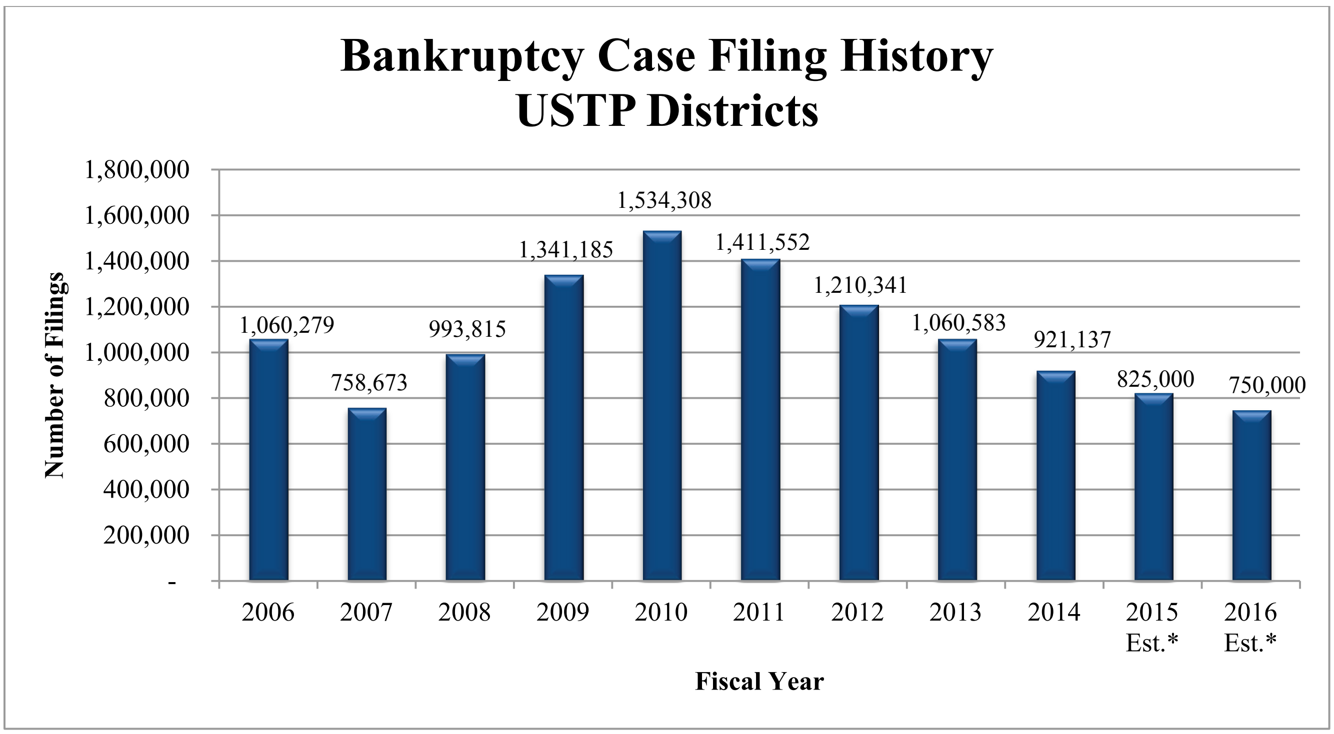
There are a number of external factors that impact the operations of the USTP.

Coordination with the Judicial Branch. The Program depends on the exchange of electronic data with the U.S. Bankruptcy Courts to ensure timely processing of bankruptcy cases. The Program must work cooperatively with the Administrative Office of the U.S. Courts to ensure that the systems that are in place support an effective and efficient bankruptcy process.

Unpredictable Legal Challenges. Legal challenges to the Bankruptcy Code are unpredictable in scope and number. The USTP enforces and defends challenges to provisions of the Bankruptcy Code, 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 mortgage fraud schemes and creditor abuse activities, place an incredible burden on USTP staff to move cases through the system efficiently. In addition to carrying out statutory duties, including means testing and credit counseling oversight, the Program remains very much involved in new and complex issues associated with national mortgage servicers, other consumer protection issues, and large chapter 11 bankruptcy filings.

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. 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 explosion in the number of bankruptcy filings from 2008 to 2010. Filings from FY 2014 to 2016 are estimated to be fewer than one million for the first time since 2008. The following chart reflects actual and projected filings for fiscal years 2006 through 2016.[2]



* Note: The estimated FY 2015 and FY 2016 bankruptcy filings are based on current estimates. These estimates differ from the FY 2015 enacted estimate of 1.061 million filings and the FY 2016 request estimate of 825,000 filings. Estimates were revised to reflect current estimates and trends.

[2] Reflects bankruptcy filings under all chapters of the Bankruptcy Code, as reported by the Administrative Office of the U.S. Courts (AOUSC). Fiscal years 2015 and 2016 are current estimated filings. These estimates differ from the FY 2015 enacted estimate of 1.061 million filings and the FY 2016 request estimate of 825,000 filings. Estimates were revised to reflect current estimates and trends.

Revenue/Offsetting Collections. Due to a projected decline in case filings and associated revenues in FY 2015 and FY 2016, offsetting collections are projected to cover approximately 65 to 70 percent of the Program's appropriation, with the remainder to be drawn down from the Fund. Based on current projections, the Fund balance is projected to decline from $172 million at the end of FY 2014 to $29 million in FY 2016. Absent legislative changes to the fee amounts paid to the Fund, the Program is predicted to exhaust the balance of the Fund in FY 2017.

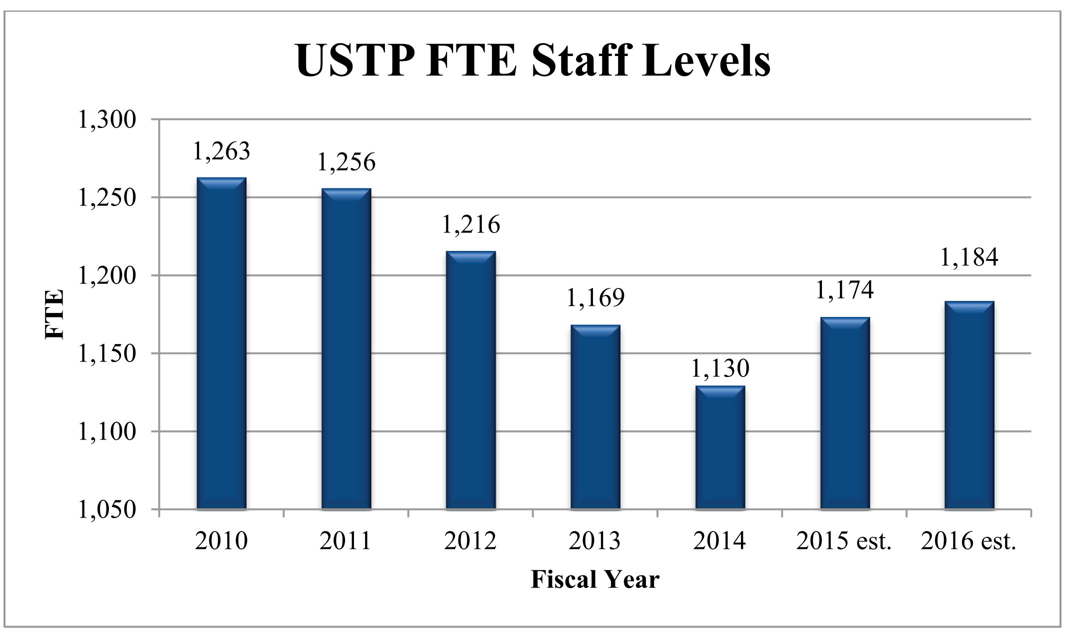
Quarterly fees were last increased in 2008. Unlike other bankruptcy fees that are set administratively by the Judicial Conference of the United States, quarterly fees are set in statute and cannot be adjusted by the USTP.

To address the offsetting collection shortfall, the USTP plans to propose a temporary increase to the current quarterly fee structure for chapter 11 cases that will not impact consumers or small businesses.

2. Internal Challenges

Over the past three years, the USTP has sustained a net loss of more than 100 staff or over 10 percent of total staff. The restoration of vital funding in the FY 2014 and FY 2015 appropriations and FY 2016 budget requests will allow the Program to backfill and sustain critical positions, including 13 Assistant U.S. Trustees for field offices without full-time managers. Although staffing levels are predicted to remain below pre-FY 2013 levels, by utilizing a target workload approach to backfilling positions, the Program will maximize mission impact of the limited staffing increases.

The following chart reflects actual and projected USTP staffing levels in full-time equivalents (FTE) for FY 2010 through FY 2016.



The Program manages 92 field office locations nationwide, the Executive Office, and more than 400 sites where administrative proceedings are held. In addition, staff appear in court in more than 300 locations nationwide. In any given year, forced move costs and associated renovations can exceed $2 million. In addition, there are inflationary pressures that increase lease and utility expenditures.

E. Program Efforts Towards Integrating Environmental Accountability

The USTP continues its work toward improving 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 (GSA) 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.

- As required by Federal Acquisition Regulation (FAR) 23.705, the Program makes every effort to purchase electronic products that are Electronic Product Environmental Assessment Tool (EPEAT) registered, or EnergyStar Compliant products. Such products include computer monitors, desktop computers, notebook computers, printers, and copiers.

- As required by FAR Subpart 23, 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 USTP is not proposing program changes in FY 2016.

III. Appropriations Language and Analysis of Appropriations Language

The FY 2016 budget request includes proposed changes in the appropriations language set forth and explained below. New language is ***italicized and underlined,*** and language proposed for deletion is bracketed.

United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, [$225,908,000] *$228,107,000*, to remain available until expended and to be derived from the United States Trustee System Fund: Provided, That, notwithstanding any other provision of law, deposits to the Fund shall be available in such amounts as may be necessary to pay refunds due depositors: Provided further, That, notwithstanding any other provision of law, [$225,908,000] *$162,400,000* of offsetting collections pursuant to section 589a(b) of title 28, United States Code, shall be retained and used for necessary expenses in this appropriation and shall remain available until expended: Provided further, That the sum herein appropriated from the Fund shall be reduced as such offsetting collections are received during fiscal year [2015] *2016*, so as to result in a final fiscal year [2015] *2016* appropriation from the Fund estimated at [$0] *$65,707,000*.

Analysis of Appropriation Language

No other substantive changes are proposed at this time.

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. There are two main Program activities: (1) enforcement and (2) case and trustee administration. The work years and associated funding are allocated to these Program activities based upon the direct, productive hours of USTP staff performing enforcement and case administration activities, as well as resources directly related to the performance of these activities. Administrative and other overhead costs are allocated based upon the direct hours expended for the two Program activities.

Administration of Cases	Direct Pos.	Estimated FTE	Amount
2014 Enacted	1,314	1,174	$ 224,400
2015 Enacted	1,314	1,174	$ 225,908
Adjustments to Base and Technical Adjustments	-	10	$ 2,199
2016 Current Services	1,314	1,184	$ 228,107
2016 Request	1,314	1,184	$ 228,107
Total Change 2015 - 2016	-	10	$ 2,199

Administration of Cases **Information Technology Breakout**	Direct Pos.	Estimated FTE	Amount
2014 Enacted	39	37	$27,892
2015 Enacted	39	39	$26,082
Adjustments to Base and Technical Adjustments[1]	-	-	-$4,288
2016 Current Services	39	39	$21,794
2016 Request	39	39	$21,794
Total Change 2015 - 2016	-	-	-$4,288

/1 This adjustment accounts for Information Technology investments included in the FY 2015 President's Budget funded from one-time prior year carryforward.

General Civil Enforcement

A core function of the USTP is to combat bankruptcy fraud and abuse. The Program combats fraud and abuse committed by debtors by seeking denial of discharge for the concealment of assets and other violations, by seeking case conversion or dismissal if a debtor has an ability to repay debts, and by taking other enforcement actions. Similarly, the Program combats fraud and abuse committed by attorneys, bankruptcy petition preparers, creditors, and others against consumer debtors by pursuing a variety of remedies, including disgorgement of fees, fines, and injunctive relief.

Since the USTP began tracking its civil enforcement and related actions in 2003, it has taken more than 654,000 actions with a monetary impact in excess of $15.1 billion. During FY 2014, USTP offices reported taking more than 35,000 formal and informal civil enforcement actions, yielding in excess of $1.07 billion in debts not discharged in chapter 7, fines, and other remedies. USTP attorneys prevailed in 98.4 percent of the actions resolved by judicial decision or consent in the fundamental areas of dismissal for abuse (11 U.S.C. § 707(b)), denial of discharge (11 U.S.C. § 727), fines and injunctions against bankruptcy petition preparers (11 U.S.C. § 110), and disgorgements of attorney’s fees (11 U.S.C. § 329).

Means Testing

The Program also administers and enforces the “means test” per the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Under the means test, individual debtors with above median income 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 fiscal year 2014, approximately 12 percent of chapter 7 debtors had income above their state median. Of those cases filed by above median income debtors, about six percent were "presumed abusive" under the means test. Of those presumed abusive cases that did not voluntarily convert or dismiss, the Program exercised its statutory discretion to decline to file a motion to dismiss in about 68 percent of the cases after consideration of the debtor's special circumstances, such as recent job loss, that justified an adjustment to the current monthly income calculation.

Consumer Protection

The USTP is active in the Department's efforts to protect Americans from financial fraud and abuse, particularly by mortgage servicers who inflate their claims or otherwise fail to comply with bankruptcy requirements of accuracy, disclosure, and notice to their customers in bankruptcy. The USTP played a leading role in the historic $25 billion National Mortgage Settlement (NMS) announced by the Attorney General in 2012, and remains actively involved post-settlement through its service as co-chair of the NMS Monitoring Committee. The Monitoring Committee includes representatives from the Department of Housing and Urban Development and state attorneys general and is tasked with ensuring compliance with the NMS by the settling servicers. The Program also continues to investigate and redress violations committed by settling servicers who are bound by the NMS, as well as by non-settling servicers and new entrants to the mortgage servicing market for violations of the bankruptcy statutes and rules.

In addition, in recent years, the USTP has addressed other multi-jurisdictional violations against consumer debtors with a coordinated nationwide enforcement approach. As a result, the Program has entered into eight nationwide settlements, including five settlements to protect consumer debtors against national creditors. These national settlements provide relief for victimized debtors, require systemic corrective actions so such violations do not recur, and uphold the integrity of the bankruptcy system.

For example, in July 2013, the Program announced the unsealing of a settlement entered into in 2012 with Citigroup Inc. (Citi) to protect the PII of nearly 150,000 consumers in 85 jurisdictions around the country. Citi agreed to redact proofs of claim filed in bankruptcy cases nationwide in which the personal information of consumer debtors and third parties, including Social Security numbers and birthdates, had not been properly redacted as required by the Bankruptcy Rules. Citi also agreed to notify all affected consumers and offer them one year of free credit monitoring. The settlement, which was originally approved by the court in March 2012, had been sealed to prevent potential wrongdoers from learning of the breach and seeking to victimize the affected consumers. In the nearly one year that it took to effectuate the appropriate redactions, the USTP worked with courts across the country and with Citi to ensure all instances of disclosure were corrected. An independent auditor appointed under the settlement reviewed Citi's redaction and replacement process and issued a final report in December 2014 certifying the accuracy of the remediation (In re Matter of Citi Replacement Filings, No. 11-00405 (Bankr. S.D.N.Y.).)

Criminal Enforcement

The Program has a statutory duty to refer matters to the U.S. Attorney's offices for investigation and prosecution that "related to the occurrence of any action which may constitute a crime." 28 U.S.C. § 586(a)(3)(F). The statute also requires that each U.S. Trustee shall assist the U.S. Attorney in carrying out prosecutions. The Program submits an annual report to the Congress which details the number and types of criminal referrals made by the Program. In FY 2014, the USTP made 2,079 criminal referrals.

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

For example, on March 4, 2014, in the District of New Jersey, a husband and wife each pleaded guilty to bankruptcy fraud by concealment of assets, bankruptcy fraud by false oaths, bankruptcy fraud by false declarations, and conspiracy to commit mail and wire fraud. The husband also pleaded guilty to failure to file a tax return. From September 2001 through September 2008, the couple submitted fraudulent applications and supporting documents to lenders to obtain mortgages and other loans, falsely representing that they were employed and/or receiving substantial salaries. In their 2009 chapter 7 bankruptcy case, the debtors intentionally concealed and made false oaths and declarations about businesses they owned; income they received from a rental property; and the wife's true income from a television show, Web site sales, and personal and magazine appearances. The husband also admitted that for tax years 2004 through 2008, he failed to report nearly $1 million in individual income. The husband and wife were ultimately sentenced to 41 months and 15 months in prison, respectively, along with forfeitures and fines. The United States Trustee's Newark office referred the matter to the U.S. Attorney and assisted in the investigation. The office also filed a civil enforcement action seeking to prevent the couple from discharging debts exceeding $7.1 million; the couple agreed to waive their bankruptcy discharge prior to the civil trial.

Financial Fraud

The Program has been an active member of the President's Financial Fraud Enforcement Task Force (FFETF) since 2009, and our offices participate in more than 90 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. We conduct extensive training for federal, state, and local law enforcement personnel, USTP staff, and private bankruptcy trustees (more than 2,500 trained in FY 2014);

and publish internal resource documents and training videos. In addition, Program staff – including attorneys, bankruptcy analysts, and paralegals – are frequently called upon to assist with investigations and to provide expert or fact testimony at criminal trials.

Chapter 11 Oversight

As the USTP has stepped up its enforcement in the chapter 11 arena, it is increasingly clear that our role as watchdog is essential to vindicate congressional mandates in the Bankruptcy Code. Even when debtor companies and some of their major creditors agree on a course of action, the interests of other stakeholders often are implicated. The USTP's role as a watchdog of the bankruptcy system allows it to present issues for judicial decision even where parties either will not, or lack the financial wherewithal to, litigate. Although the USTP should never substitute its business judgment for that of economic stakeholders, it is our job to ensure that the Code and Rules are followed by all participants in the bankruptcy system. This view of our role has led us to oppose both debtors and creditors on issues such as payment of attorney fees, executive bonuses, and matters of corporate governance. In addition to monitoring and taking action on financial reports, disclosure statements, applications to employ professionals, and carrying out other chapter 11 statutory duties required by 28 U.S.C. § 586(a), the U.S. Trustee has responsibility for ensuring accountability by company management and professionals employed in chapter 11 cases in such areas as:

Attorney Fee Guidelines: The USTP polices compliance with statutory standards for awarding attorney and other professional fees in chapter 11 cases. In particular, the USTP has advanced major reforms in large chapter 11 case attorney billing practices by issuing new guidelines that require greater transparency and market-driven rates. The guidelines, which became effective November 1, 2013, reflect almost two years of consultation and review, and incorporate input from judges, professional organizations, practitioners, academics, and the public. The USTP conducted extensive outreach on the new guidelines to ensure that practitioners understood the expected disclosures and other provisions of the guidelines, and will consistently and prudently enforce the guidelines in districts throughout the country. Although the emphasis will be to promote compliance and avoid unnecessary litigation, the Program will vindicate the principles underlying the guidelines through enforcement actions where necessary, including appeals of adverse court decisions.

Executive Bonuses: The USTP reviews executive bonuses and other compensation for compliance with section 503(c) and is often the only participant in the bankruptcy case that is willing or well-positioned to seek enforcement of that section. In the 2005 bankruptcy reform law, Congress sought to curtail the practice of chapter 11 debtors' executives awarding themselves lavish bonuses during the bankruptcy case, which were often styled as "retention programs" that ostensibly dissuaded those executives from seeking employment elsewhere. In many cases, the U.S. Trustee's formal or informal objections have resulted in substantial voluntary changes to the debtor's proposed executive compensation programs. Other cases required formal court action. For example, in the highly publicized case of American Airlines (*In re AMR Corp.*, 497 B.R. 690 (Bankr. S.D.N.Y. 2013)) in a series of rulings during FY 2013, the Bankruptcy Court for the Southern District of New York sustained the objections by the U.S. Trustee's Manhattan office to a severance payment of nearly $20 million for its departing chief executive officer.

Independent Trustees and Examiners: The Program's responsibilities in business reorganization cases also include such matters as the appointment of trustees when there are grounds to suspect that current management has participated in gross mismanagement, fraud, dishonesty, or other improper activity. The U.S. Trustee also seeks the appointment of examiners when independent investigations are needed. By way of example, the U.S. Trustee appointed chapter 11 trustees in cases such as *New England Compounding Pharmacy, Inc*., (company's tainted products resulted in the death of at least 39 people as well as the infection of more than 600 individuals with fungal meningitis), and *Money Centers of America, Inc.* (alleged malfeasance by principals of company providing check-cashing services in American Indian casinos).

Appellate Practice and Challenges to the Bankruptcy Code

One of the Program's most important roles has been to develop consistent case law. The USTP is the only participant in the bankruptcy system with a national perspective and a responsibility to develop coherent case law in all jurisdictions. The USTP has been handling an increasing number of appeals, many of which may have a profound and long-standing effect on the bankruptcy system. In FY 2014, the Program participated in 110 appeals beyond the bankruptcy court, including nearly two dozen cases at the United States court of appeals level.
In addition, the Program devotes significant resources to ensure parties adhere to the Bankruptcy Code and other applicable statutes. Sophisticated parties in the larger bankruptcy cases frequently develop creative strategies to achieve their intended goals. Occasionally, these strategies run afoul of the Code and can sometimes place other stakeholders with fewer available resources at a significant disadvantage. The Program exercises discretion and does not seek to intervene in every instance, but Program attorneys will object to actions that undermine the integrity of the bankruptcy system. For example, the USTP recently won an appeal in the case of *U.S. Trustee v. Elliot Mgmt. Corp. (In re Lehman Brothers Holdings Inc.)*, No. 13-2211, slip op. (S.D.N.Y. Mar. 31, 2014), *motion to certify interlocutory appeal under 28 U.S.C. § 1292(b) filed Apr. 25, 2014*. In that decision, the United States District Court for the Southern District of New York agreed with the Program's position and vacated a bankruptcy court order awarding $26 million to individual members of the unsecured creditors' committee for their personal attorneys' fees associated with their committee work. The ruling is significant, particularly in the chapter 11 context, because it reaffirms—in the words of the district court—that "interested parties and bankruptcy courts" cannot "tweak the law to fit their preferences." The implications of this decision go far beyond the issue of fees. The district court correctly observed that confirming a plan that contravenes the Code can lead to "serious mischief," and gave as an example plan terms providing for "gifting" to junior creditors in contravention of the order of payment priority established by Congress.

Trustee Administration

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 a debtor's assets that are not exempt from creditors, liquidate the assets, and distribute the proceeds to creditors. Chapter 12 and chapter 13 trustees evaluate the financial affairs of a debtor, make recommendations to the court regarding confirmation of a debtor's repayment plan, and administer the court-approved plan by collecting payments from the debtor and disbursing the funds to creditors.

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

At the end of FY 2014, the Program supervised the activities of 1,031 chapter 7 trustees, 41 chapter 12 trustees, and 179 chapter 13 trustees. In FY 2014, chapter 7 trustees administered about 64,100 asset cases that generated $3.0 billion in funds, while chapter 12 and chapter 13 trustees administered over 1.2 million cases and disbursed more than $7 billion.

B. Performance Tables

1. PERFORMANCE AND RESOURCE TABLE											
Appropriation: United States Trustee Program											
Decision Unit: Administration of Cases											
DOJ Strategic Goal/Objective: 2.6 Protect the federal fisc and defend the interests of the United States.											
		Target		**Actual**		**Projected**		**Changes**		**Requested (Total)**	
WORKLOAD/ RESOURCES		**FY 2014**		**FY 2014**		**FY 2015**		**Current Services Adjustments & FY 2016 Program Changes**		**FY 2016 Request**	
Number of Chapter 7 Cases Filed Number of Chapter 11 Cases Filed Number of Chapter 12 Cases Filed Number of Chapter 13 Cases Filed **Total Filings** /1											
Total Costs and FTE		**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**
TYPE / Strategic Objective	**Performance /Resources**	1,174	$224,400	**1,130**	**$224,400**	1,174	$225,908	10	$2,199	1,184	$228,107
Program Activity	**1. Civil Enforcement**	**FTE** 450	**$000** 85,923	**FTE** 433	**$000** 85,923	**FTE** 450	**$000** 86,500	**FTE** 3	**$000** 842	**FTE** 453	**$000** 87,342
Efficiency Measure	No. of 707(b) inquiries per successful outcome	7.0		4.8		7.0		0.0		7.0	
WORKLOAD/ RESOURCES											
Program Activity	**2. Case and Trustee Administration**	**FTE** 724	**$000** 138,477	**FTE** 697	**$000** 138,477	**FTE** 724	**$000** 139,408	**FTE** 7	**$000** 1,357	**FTE** 731	**$000** 140,765
Outputs	Number of successful actions related to consumer protection	2,400		2,829		2,400		0		2,400	
	Number of successful discharge complaints	600		410		600		-60		540	
	Potential Additional Returns to Creditors through Civil Enforcement and Related Efforts	$950,000,000		$1,070,940,703		$950,000,000		$0		$950,000,000	
1/ The Program has discontinued reporting the number of bankruptcy case filings on the performance and resource table. The decision to discontinue reporting this measure was made in collaboration with JMD as the measure was established as workload measure and is not a performance measure.											

Data Definitions:

Chapter 7: A liquidation case. A trustee is appointed to sell the debtor's non-exempt assets and distribute the proceeds to creditors. Generally, absent fraud or abuse, the remaining debts are discharged.

Chapter 11: A reorganization case. The debtor usually remains in possession of its assets, continues to operate its business, and repays and/or readjusts debts through a plan that must be approved by creditors and the bankruptcy court. Chapter 11 cases are generally business cases.

Chapter 12: A debt adjustment case by a family farmer or family fisherman. The debtor usually remains in possession of its assets, continues to operate its business, and repays creditors, in part or in whole, through a court-approved chapter 12 plan over a period not to exceed 5 years.

Chapter 13: A debt adjustment case by an individual with regular income. The debtor retains property, but repays creditors, in whole or in part, through a court-approved chapter 13 plan over a period not to exceed 5 years.

PERFORMANCE MEASURE TABLE									
Appropriation: United States Trustee Program									
Decision Unit: Administration of Cases									
Performance Report and Performance Plan Targets		**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**		**FY 2015**	**FY 2016**
		Actual	**Actual**	**Actual**	**Actual**	**Target**	**Actual**	**Target**	**Target**
Efficiency Measure	No. of 707(b) inquiries per successful outcome	5.5	4.4	4.4	4.7	7.0	4.8	7.0	7.0
Outputs	Number of successful actions related to consumer protection	3,280	3,335	3,259	4,018	2,400	2,829	2,400	2,400
	Number of successful discharge complaints	517	586	557	551	600	410	600	540
	Potential Add'l. Returns to Creditors	$2,415 M	$2,539 M	$1,982 M	$1,659 M	$950 M	$1,071 M	$950 M	$950 M

C. Performance, Resources, and Strategies

1. Performance Plan and Report for Outcomes

In FY 2014, the USTP took more than 35,000 civil enforcement actions and made more than 2,000 criminal referrals to U.S. Attorneys and law enforcement. The Program participated in 110 appeals beyond the bankruptcy court, including nearly two dozen cases at the United States court of appeals level. Program staff reviewed approximately 128,000 trustees' final reports before funds were distributed to creditors. On-site audits and field reviews of 447 chapter 7, 12, and 13 trustee operations were scheduled to ensure the trustees were compliant in their fiduciary responsibilities. The USTP filed 3,379 motions to convert or dismiss chapter 11 cases, and new guidelines pertaining to the compensation of attorneys in large chapter 11 cases were issued after a complex and sophisticated analysis and extensive outreach to bankruptcy stakeholders and the courts.

In FY 2014, the Program met three of four performance goals. The Program fell 190 cases short of its target of 600 successful discharge complaints. These complaints result in denial or revocation of a discharge of debt, constitute the most serious civil remedy available to the Program in its effort to prevent fraud and abuse in the bankruptcy system, and is taken to resolve issues such as hidden assets, unreported income, and exaggerated expenses. The decline in FY 2014 is attributable to several factors, including fewer staff on-board and reduced bankruptcy filings. In addition, the government shutdown at the beginning of FY 2014 negatively impacted staff resources available to investigate and prosecute 727 actions, particularly during the first quarter of FY 2014. While the performance target may have to be adjusted downward to address some of the factors beyond the Program's control, the Program is focusing its efforts in this core enforcement area for FY 2015.

2. Resources: The U.S. Trustee System Fund

Since 1997, the Program has been fully funded through 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 for chapters 7, 11, 12, and 13, and the second category is the quarterly fee paid by chapter 11 debtors. All fees are deposited in the Fund as offsetting collections and are available to the USTP as specified in Appropriations Acts.

The following table reflects actual and projected revenue collected by source, for the period FY 2010 – FY 2016.

Bankruptcy Fees by Source	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	FY 2015 Enacted Est./1	FY 2016 Request Est./2	FY 2015 Current Est./1	FY 2016 Current Est./2
Bankruptcy Filing Fees	$121,696	$110,529	$ 94,073	$ 81,374	$ 69,518	$ 82,275	$ 63,200	$ 63,000	$ 57,300
Chapter 11 Quarterly Fees	$155,210	$155,810	$139,289	$126,948	$110,623	$117,268	$ 98,100	$ 99,800	$ 88,900
Interest on Earnings on Investments	$ 798	$ 1,005	$ 652	$ 902	$ 744	$ 1,000	$ 900	$ 1,000	$ 900
Other	$ 183	$ 197	$ 123	$ 142	$ 178	$ 115	$ 150	$ 150	$ 150
Total Deposits	$277,887	$267,541	$234,137	$209,366	$181,063	$200,658	$162,350	$163,950	$147,250

/1 The current FY 2015 revenue estimate differs from the FY 2015 President's Budget. The estimate was revised from the FY 2015 President's Budget estimate of $200.7 million to $164.0 million to reflect current estimates and trends.

/2 The FY 2016 revenue estimate was updated from the estimate of $162.4 million to $147.3 million to reflect current estimates and trends.

The USTP appropriation has been fully covered by the Fund since 1997. Consistent with the purpose of the Fund, excess fees are deposited during periods of increasing bankruptcy case filings and fee collections, and funds are withdrawn to cover the Program's appropriation during periods of declining case filings. Offsetting collections from bankruptcy fees have exceeded the Program's appropriation in most fiscal years. Between FY 2006 and FY 2008, the Fund was drawn down from $258 million to $93 million, while from FY 2009 to FY 2012 the Fund grew by $125 million.

Bankruptcy filings have been declining in recent years and have not followed traditional patterns. USTP's official estimates of future filings, which are based primarily on recent year trends, project a continued decline in bankruptcy filings and associated fees in FY 2015 and FY 2016. Offsetting collections in FY 2015 and FY 2016 are projected to cover approximately 65 to 70 percent of the Program's appropriation, with the remainder being drawn from the Fund. As a result, the balance in the Fund is projected to decline from $172 million at the end of FY 2014 to $29 million in FY 2016.[3] Absent any legislative changes made to the fee amounts paid to the Fund, the Program is predicted to exhaust the balance of the Fund in FY 2017.

To address the offsetting collection shortfall, the USTP plans to propose a temporary increase to chapter 11 quarterly fees that will not impact consumers or small businesses. Under the current fee structure, the proportion of disbursements paid in quarterly fees by consumers and small business chapter 11 cases is much higher than in large chapter 11 cases. To ensure that small

[3] The projected FY 2015 and FY 2016 ending Fund balances are based on the current revenue estimates of $164 million and $147 million, respectively. These estimates differ from the FY 2015 enacted estimate of $201 million and the FY 2016 request estimate of $162 million. Estimates were revised to reflect current estimates and trends.

businesses do not pay additional fees, cases with quarterly disbursements under $1 million would be excluded from the temporary increase in chapter 11 quarterly fees.

The proposed fee structure would sunset after three years. This would allow the USTP to address the near term issues with the Fund, while concurrently assessing the efficacy of the revised quarterly fee structure, and future filing and revenue pattern developments.

3. Strategies to Accomplish Outcomes

The USTP mission is included in the DOJ Strategic Plan under Goal 2: Prevent Crime, Protect the Rights of the American people, and Enforce Federal Law, and Strategic Objective 2.6: Protect the federal fisc and defend the interests of the United States. The USTP achieves this objective through the following Program strategies.

a. Enforce compliance with federal bankruptcy laws and take civil actions against parties who abuse the law or seek to defraud the bankruptcy system.

The USTP's anti-fraud and abuse efforts focus on wrong-doing both by debtors and by those who exploit debtors. The USTP protects consumer debtors from wrongdoing by attorneys, bankruptcy petition preparers, creditors, and others by seeking a variety of remedies, including disgorgement of fees, fines, and injunctive relief.

Debtor Abuse. The USTP 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 Bankruptcy Code violations. Civil enforcement actions include taking steps to dismiss abusive filings, deny discharges to ineligible or dishonest debtors, and limit improper refilings.

Creditor Abuse. Addressing violations of the Bankruptcy Code by creditors, including national mortgage servicers, remains a top Program priority. The Program takes action to ensure the accuracy of creditor claims, the protection of consumer personal information, and other compliance with the Bankruptcy Code and Rules. The USTP investigates and takes civil enforcement action in cases involving allegations that mortgage servicers file inaccurate claims that debtors owe more money than they actually owe, that a default has occurred when there has been no default, or that the mortgage servicers have been adding additional and undisclosed charges that are not permitted under the terms of the loan contract. The USTP serves as the Department's representative and co-chair on the NMS Monitoring Committee comprised of representatives from the DOJ, HUD and state attorneys general.

b. Pursue violations of federal criminal laws pertaining to bankruptcy by identifying, evaluating, referring, and providing investigative and prosecutorial support of cases.

The integrity of the bankruptcy system depends upon the honesty and truthfulness of all participants and deterring those who would abuse the system to defraud others. Integral to protecting the system is the USTP's statutory responsibility to refer potential criminal activity to the U.S. Attorney and to provide assistance to law enforcement when appropriate, including serving as Special Assistant U.S. Attorneys. In addition, Program staff dedicate significant time to assisting our law enforcement partners in the investigation and prosecution of bankruptcy fraud and related crimes. Referrals from the USTP cover a broad spectrum of criminal activity including bankruptcy fraud, mortgage rescue fraud, money laundering, investor fraud, identity theft, bank fraud, mail fraud, and wire fraud.

c. Promote the effectiveness of the bankruptcy system by appointing and regulating private trustees who administer bankruptcy cases expeditiously and maximize the return to creditors.

Pursuant to the Bankruptcy Code, the U.S. Trustee appoints and supervises private trustees to administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12, and 13. Trustees have a fiduciary responsibility to the bankruptcy estate. It is a fundamental duty of the U.S. Trustee to regulate and monitor the activities of these private trustees to ensure the effective distribution of funds and compliance with standards put in place to safeguard those funds. The USTP selects and trains trustees and evaluates their overall performance and financial operations to ensure that cases are handled efficiently, effectively, and in accordance with applicable law and Program policy.

d. Ensure financial accountability, compliance with the Bankruptcy Code, and prompt disposition of chapter 11 bankruptcy cases.

The USTP monitors and takes enforcement actions in reorganization cases within its jurisdiction, ranging from small, single proprietorships to multi-billion dollar international conglomerates. Without substituting its judgment for that of parties with a monetary stake, the USTP focuses its attention on areas such as the following: filing motions and appointing trustees to replace management that engaged in egregious or improper activity; filing motions and appointing independent examiners to investigate the financial affairs of a debtor company; prescribing and monitoring financial reports to ensure that the debtor is not dissipating assets; filing enforcement motions to dismiss or convert to chapter 7 liquidation cases that are failing; reviewing applications to employ attorneys and other professionals to identify disqualifying conflicts of interest and objecting to employment if appropriate; appointing official committees of creditors to serve as fiduciaries acting on behalf of other creditors to negotiate a plan of reorganization; and reviewing and objecting to professional applications to ensure that fees do not exceed market rates and comply with other statutory requirements.

V. Program Increases by Item

The USTP is not proposing program increases in FY 2016.

VI. Program Offsets by Item

The USTP is not proposing program offsets in FY 2016.

Exhibits