



UNITED STATES TRUSTEE PROGRAM
ANNUAL REPORT OF SIGNIFICANT ACCOMPLISHMENTS
FISCAL YEAR 2009

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MESSAGE FROM THE DIRECTOR

The United States Trustee Program (USTP or Program) is the component of the Department of Justice whose mission it is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public. Despite the challenges presented by the second consecutive year in which total bankruptcy filings rose overall by more than 30 percent—reaching 1.34 million in USTP districts—the Program has demonstrated great agility and responsiveness in carrying out its statutory mandates and in addressing emerging issues and threats to the integrity of the bankruptcy system.

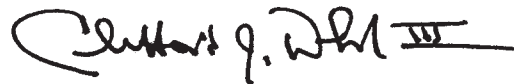
Most notably, the Program has focused its efforts on threats from various forms of mortgage fraud and abuse. Acting on our own and with others across the government as part of an interagency Financial Fraud Enforcement Task Force, the USTP is stepping in to protect homeowners and others from those who seek to defraud. There are three prongs to our enforcement efforts. First, we combat mortgage servicer violations of the Bankruptcy Code by holding servicers to the same standard of completeness and accuracy in their filings that we do the debtors who owe them money. Second, we address foreclosure rescue fraud. When these frauds are furthered by the filing of a bankruptcy case, then we are in a position to act to protect the debtor. Finally, we combat fraud and abuse committed by debtors, sometimes in conjunction with brokers, appraisers, and other third parties.

In FY 2009, United States Trustees initiated approximately 4,500 actions and inquiries to address conduct by creditors and bankruptcy petition preparers, including many involving mortgage fraud and abuse. The Program also increased criminal referrals relating to mortgage fraud by approximately 60 percent, after more than doubling such referrals in the prior fiscal year.

Beyond our mortgage fraud enforcement efforts and the fulfillment of our statutory duties, the Program also has worked diligently to ensure greater accountability by management of companies seeking chapter 11 relief through such actions as the enforcement of restrictions on executive bonuses and the appointment of trustees and examiners in appropriate cases. In FY 2009, great strides also were made in the Program's implementation of its Language Assistance Plan, the primary element of which is to provide interpreter services at the mandatory section 341 meetings. Our goal is to ensure that all debtors are given the same opportunity to hear questions and provide answers in their native language. The service is free to debtors and is available in as many as 196 languages at about 250 meeting room locations. In 2009, the tele-interpreter service was utilized more than 10,000 times.

MESSAGE FROM THE DIRECTOR

The successes the Program has achieved are a testament to the highly professionalized corps of dedicated staff in our offices throughout the country who have exhibited extraordinary diligence and commitment to public service. I invite you to learn more about the Program's activities by reading our *Fiscal Year 2009 Annual Report of Significant Accomplishments*.



Clifford J. White III
Director, Executive Office for
United States Trustees

CHAPTER 1. MISSION, ORGANIZATION, AND ADMINISTRATION

MISSION

The mission of the U.S. Trustee Program has remained constant during the Program's 30 years as the primary bankruptcy component of the U.S. Department of Justice—to enhance the integrity and efficiency of the bankruptcy system. U.S. Trustees serve as neutral enforcers of the Bankruptcy Code, as the “watchdogs” of the bankruptcy system. By statute, the Program has standing to participate in every bankruptcy case within its jurisdiction.

The Program oversees the administration of all bankruptcy cases filed by individual and business debtors in every federal judicial district except for those in Alabama and North Carolina. The U.S. Trustee's specific duties in a case depend on the chapter under which a debtor files a bankruptcy petition and the facts of the case.

ORGANIZATION AND ADMINISTRATION

To carry out its mission, the Program has a headquarters office in Washington, D.C., led by a Director; 21 regions managed by U.S. Trustees; and 95 field offices supervised by Assistant U.S. Trustees. At the conclusion of FY 2009, the Program had 1,261 employees, consisting primarily of attorneys, financial analysts, paralegals, and support staff. More than 91 percent of the Program's employees are located in its field offices.

The Program is funded through user fees paid by bankruptcy debtors. All revenues are deposited into the United States Trustee System Fund and remain available for expenditure, as specified in appropriations acts. Deposits to the U.S. Trustee System Fund consist of filing fees, chapter 11 quarterly fees, and interest on investments and other miscellaneous revenue. In FY 2009, Congress appropriated \$217,416,000 for the Program.

EMPLOYEES' ACHIEVEMENTS HONORED

At the 57th Annual Attorney General's Awards Ceremony, three Program employees were recognized for their exceptional achievements and contributions to the Justice Department during FY 2009. Zana Scarlett, a Trial Attorney in the Miami office, received the Attorney General's Award for Outstanding Contributions by a New Employee for her outstanding skill and dedication in pursuing creditors who abuse the bankruptcy system. Peggy Taylor, the Administrative Officer for Region 7 (the Southern and Western Districts of Texas), received the Attorney General's Award for Excellence in Administrative Support for her more than 20 years of dedicated service to the Program and her efforts to maintain the health, safety, and operations of the region and its staff during Hurricane Dolly in July 2008. Christi Flanagan, a Legal Clerk in the Program's Dallas office, received the Attorney General's Award for Excellence in Legal Support for her exemplary service to the Dallas office and the important role she has played in improving the office's administration of bankruptcy cases.

CHAPTER 1. MISSION, ORGANIZATION, AND ADMINISTRATION

U.S. TRUSTEE PROGRAM NATIONWIDE OFFICE LOCATOR

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

**REGIONAL AND FIELD
OFFICES (BY STATE)**

Alaska
Anchorage

Arizona
Phoenix

Arkansas
Little Rock

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

Colorado
Denver

Connecticut
New Haven

Delaware
Wilmington

Florida
Miami
Orlando
Tallahassee
Tampa

Georgia
Atlanta
Macon
Savannah

Hawaii
Honolulu

Idaho
Boise

Illinois
Chicago
Peoria

Indiana
Indianapolis
South Bend

Iowa
Cedar Rapids
Des Moines

Kansas
Wichita

Kentucky
Lexington
Louisville

Louisiana
New Orleans
Shreveport

Maine
Portland

Maryland
Baltimore
Greenbelt

Massachusetts
Boston
Worcester

Michigan
Detroit
Grand Rapids

Minnesota
Minneapolis

Mississippi
Jackson

Missouri
Kansas City
St. Louis

Montana
Great Falls

Nebraska
Omaha

Nevada
Las Vegas
Reno

New Hampshire
Manchester

New Jersey
Newark

New Mexico
Albuquerque

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

Ohio
Cincinnati
Cleveland
Columbus

Oklahoma
Oklahoma City
Tulsa

Oregon
Eugene
Portland

Pennsylvania
Harrisburg
Philadelphia
Pittsburgh

Puerto Rico
San Juan

Rhode Island
Providence

South Carolina
Columbia

South Dakota
Sioux Falls

Tennessee
Chattanooga
Memphis
Nashville

Texas
Austin
Corpus Christi
Dallas
Houston
San Antonio
Tyler

Utah
Salt Lake City

Virginia
Alexandria
Norfolk
Richmond
Roanoke

Washington
Seattle
Spokane

West Virginia
Charleston

Wisconsin
Madison
Milwaukee

Wyoming
Cheyenne

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

CHAPTER 2. BANKRUPTCY CODE AND BANKRUPTCY FILINGS

BANKRUPTCY CODE

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

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

BANKRUPTCY FILINGS

More than 1.4 million bankruptcy cases were filed nationwide in FY 2009. This represented an increase of more than 34 percent over FY 2008, which had experienced an increase of more than 30 percent over FY 2007. Chapter 11 filings rose at an even more rapid pace than overall filings, increasing by 68 percent between FY 2008 and FY 2009, after a 49 percent climb upward the previous year.

In the 88 judicial districts covered by the Program, 1,341,185 bankruptcy cases were filed in FY 2009.

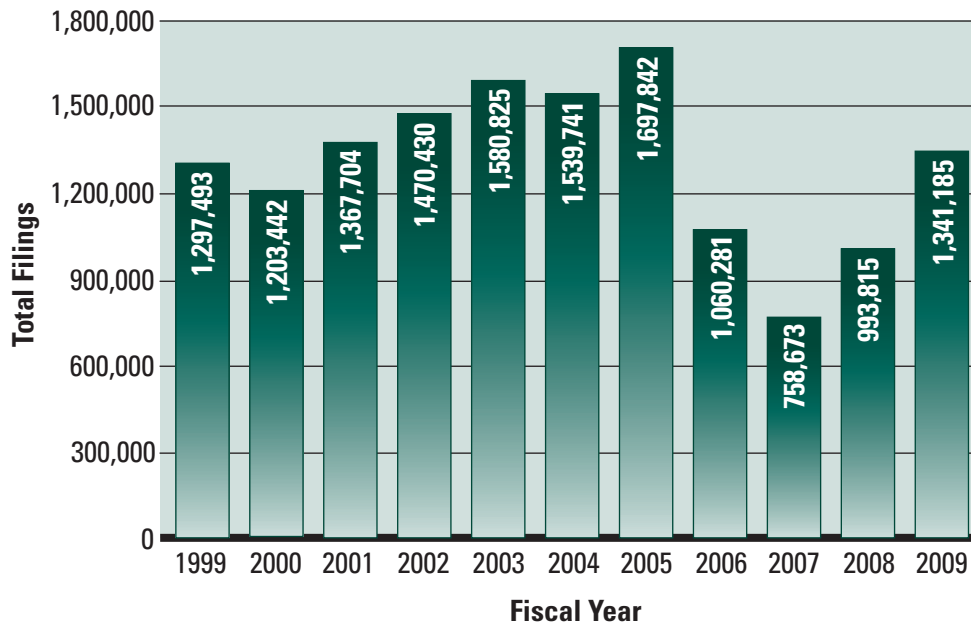
CHAPTER 2. BANKRUPTCY CODE AND BANKRUPTCY FILINGS

Table 2.1. Bankruptcy Filings by Chapter

Bankruptcy Chapter	Filings in USTP Districts
All Chapters	1,341,185
Chapter 7	961,025
Chapter 11	14,295
Chapter 12 and Other Cases	611
Chapter 13	365,254

Source: Administrative Office of the U.S. Courts

**Figure 2.1. Total Bankruptcy Filings in USTP Districts
Fiscal Years 1999-2009
(Totals do not include Alabama and North Carolina)**



Source: Administrative Office of the U.S. Courts

CHAPTER 3. CIVIL ENFORCEMENT

COMBATING FRAUD AND ABUSE

At the core of the Program's mission is combating bankruptcy fraud and abuse. The Program investigates and takes action against creditors who engage in abusive conduct that violates the Bankruptcy Code and/or harms consumer debtors in bankruptcy. The Program also investigates and takes action against debtors who have a demonstrated ability to pay a portion of their debts out of disposable income, conceal their assets, file incomplete or inaccurate financial information, or otherwise fail to satisfy their obligations under the Bankruptcy Code. Further, the Program engages in civil enforcement activities against attorneys who engage in unethical conduct or provide substandard representation, and against non-attorney bankruptcy petition preparers who prey upon bankruptcy debtors or use the bankruptcy system to carry out illegal schemes.

The Program's civil enforcement activity consists of actions and inquiries that are designed to address abuses of the bankruptcy system. Actions brought in bankruptcy court include objections to claims filed by creditors without adequate documentation, objections to a debtor's discharge, motions to dismiss a debtor's case, motions against attorneys or bankruptcy petition preparers seeking disgorgement of fees, and similar enforcement activities. Inquiries are enforcement activities that do not require court resolution, such as written and verbal inquiries made to creditors and their counsel, to debtors and their counsel, and to bankruptcy petition preparers.

The Program's primary civil enforcement activities are described in this chapter. The amounts of money reflected as not discharged represent funds potentially available for distribution to creditors due to successful actions or inquiries. Throughout this chapter, in charts describing U.S. Trustee actions, the numbers of actions filed and actions decided during FY 2009 are not identical because some actions were filed before the reporting period, some actions were decided afterward, and some actions were withdrawn by the U.S. Trustee.

ABUSIVE CONDUCT BY MORTGAGE SERVICERS AND OTHER CREDITORS

One of the Program's top priorities is to identify and remedy violations of the Bankruptcy Code by national mortgage servicing firms. These cases generally involve homeowners who have fallen behind on their mortgage payments and file for relief under chapter 13 of the Bankruptcy Code. Under chapter 13, debtors who have enough regular income can keep their homes by paying past due payments over three to five years and making future mortgage payments on time.

Increasingly, the Program has pursued allegations that mortgage servicers file inaccurate papers claiming that debtors owe more money than is actually due, or add

CHAPTER 3. CIVIL ENFORCEMENT

charges that are not permitted under the terms of the loan contract. In some cases, debtors made all payments required by chapter 13 and, after emerging from bankruptcy, received a new bill from the mortgage servicer for charges that were previously not disclosed. These homeowners met their obligations in chapter 13, and the bankruptcy laws were designed to give them a “fresh start.”

Improper conduct by mortgage servicers includes, but is not limited to, recording excessive charges for late fees, unwarranted inspection fees, and other fees and charges; chronically misapplying payments by, for example, applying payments to fees that were disallowed; charging unreasonable and excessive attorneys’ fees; losing debtors’ payments; filing electronically prepared documents attesting to missed payments, rather than certifications that have been individually reviewed for accuracy; issuing default notices and commencing foreclosure proceedings against debtors who have just received a bankruptcy discharge; and disclosing debtors’ personally identifiable information such as Social Security numbers.

In one action arising from improper mortgage servicer activity, the District Court for the Southern District of Florida found that the U.S. Trustee had standing to appear in the debtor’s case and could seek sanctions for a nationwide mortgage servicer’s past misconduct, including injunctive relief to prevent future harm caused by the servicer’s practices and conduct. The bankruptcy court had dismissed an action filed by the Miami office, but the district court reversed.

Abusive conduct by creditors also encompasses conduct not related to mortgage servicing. For example, creditors who are not mortgage servicers may also file false, inaccurate, or improper claims; abuse the debt reaffirmation procedures; improperly use personally identifying information; and/or violate the automatic stay or discharge injunction.

The Bankruptcy Court for the District of New Hampshire approved a settlement agreement between the Program and a national bank to resolve complaints involving the bank’s improper disclosure of Social Security numbers on approximately 3,000 proofs of claims filed in bankruptcy courts in 48 states and 87 judicial districts. Under that agreement, the bank notified affected debtors, filed appropriate papers to correct the court filings, and took remedial steps to prevent a recurrence of these impermissible breaches of privacy. The Manchester office pursued the matter after determining that a significant number of the bank’s proofs of claims improperly disclosed the debtors’ Social Security numbers.

CHAPTER 3. CIVIL ENFORCEMENT

Table 3.1. Abusive Conduct by Mortgage Servicers and Other Creditors

Actions & Inquiries	FY 2009
Filed	318
Decided	288
Success Rate	96.9%
Inquiries	3,207

Source: Executive Office for U.S. Trustees

DENIAL OF DEBTOR'S DISCHARGE

U.S. Trustees may file complaints to deny or revoke a bankruptcy discharge under 11 U.S.C. § 727 if the debtor engaged in improper conduct such as concealing assets, withholding information on his/her bankruptcy papers, destroying property to hinder or defraud a creditor or trustee, knowingly making a false oath, or refusing to obey a court order. The debtor may voluntarily waive discharge under the same statutory section.

Table 3.2. Denial or Revocation of Discharge under § 727

Actions & Inquiries	FY 2009
Filed	2,006
Decided	1,726
Success Rate	99.0%
Inquiries	3,765
Amount Not Discharged	\$505,747,895

Source: Executive Office for U.S. Trustees

CHAPTER 3. CIVIL ENFORCEMENT

A debtor waived the discharge of \$617,987 in unsecured debt in response to an investigation by the Seattle office that revealed concealed assets. The debtor and his wholly owned corporation filed chapter 7 bankruptcy, but failed to disclose numerous assets and transfers, including a \$40,000 income tax refund, a new car purchased on the bankruptcy filing date, tens of thousands of dollars in cash on hand and in bank accounts, and transfers of cash to related entities. The Bankruptcy Court for the Western District of Washington approved the debtor's waiver of discharge.

DISMISSAL OF CASE FOR ABUSE

U.S. Trustees may file motions to dismiss for abuse under section 707(b) if the application of the "means test" calculation shows that the debtor's chapter 7 filing is presumed abusive and the debtor demonstrates no special circumstances to rebut that presumption. The U.S. Trustee may decline to seek dismissal, despite the existence of presumed abuse, if the debtor demonstrates that dismissal is not appropriate due to job loss or other factors. In addition, U.S. Trustees may seek dismissal under section 707(b) if the case would be abusive considering the "totality of the circumstances of the debtor's financial situation," including the debtor's ability to repay, or under a "bad faith" analysis.

In FY 2009, approximately 12 percent of chapter 7 debtors had income above their state median. Of the cases filed by debtors with income above the state median, 9 percent were "presumed abusive" under the means test. However, after considering a debtor's special circumstances—most frequently, job loss—the Program exercised its statutory discretion to decline to seek dismissal in about 60 percent of the presumed abusive cases in which the debtor did not voluntarily convert or dismiss the case.

Table 3.3. Dismissal for Abuse under § 707(b)

Actions & Inquiries	FY 2009
Filed	3,912
Decided	2,649
Success Rate	97.1%
Inquiries	24,817
Amount Not Discharged	\$394,186,390

Source: Executive Office for U.S. Trustees

CHAPTER 3. CIVIL ENFORCEMENT

The Bankruptcy Court for the Northern District of Texas granted a couple's motion to convert to chapter 13, preventing the chapter 7 discharge of \$308,242 in unsecured debt. The Dallas office requested documents after the unemployed debtors indicated their intent to retain their \$659,519 home with its \$3,585 monthly mortgage, a motorcycle with a monthly payment of \$649, and four other vehicles.

DEBTOR IDENTIFICATION ISSUES

U.S. Trustees take action against debtors who intentionally use false names or Social Security numbers on bankruptcy documents. False filings may occur in an effort to avoid Bankruptcy Code restrictions on refiling bankruptcy within a particular time period, or to discharge debts that were falsely incurred using the identity of another individual. U.S. Trustees also assist, under certain circumstances, when an individual has a bankruptcy case falsely filed in his or her name. Assistance may include helping the individual obtain a court order that expunges the bankruptcy case from the court record or finds that the individual did not file the case.

Table 3.4. Debtor Identification

Actions & Inquiries	FY 2009
Filed	38
Decided	22
Success Rate	100.0%
Problems Identified	2,109
Petitions Amended or Form B21 (Statement of Social Security Number) Filed	2,011

Source: Executive Office for U.S. Trustees

The Bankruptcy Court for the Eastern District of California approved a married couple's waiver of the chapter 7 discharge of \$266,708 in unsecured debt, after the Sacramento office objected to their discharge. The debtors filed bankruptcy using individual Taxpayer Identification numbers styled to look like Social Security numbers. On a referral by the chapter 7 trustee, the Sacramento office investigated the matter. The debtors admitted that they used false Social Security numbers in the past and that most, if not all, of their debt was based on such false information.

CHAPTER 3. CIVIL ENFORCEMENT

IMPROPER CONDUCT BY ATTORNEYS

U.S. Trustees initiate actions against attorneys who engage in unethical conduct or provide substandard representation. Actions include asking courts to prohibit an attorney from appearing in bankruptcy cases, referring cases to state court disciplinary counsel or other regulatory bodies to pursue disciplinary proceedings, requesting reduction or disgorgement of attorneys' fees, and seeking sanctions. U.S. Trustees also enforce sections 526, 527, and 528 of the Bankruptcy Code, which govern "debt relief agencies." Among other things, those provisions require attorneys to make certain disclosures to clients who are consumer debtors.

Table 3.5. Attorney Fee Disgorgements under § 329

Actions & Inquiries	FY 2009
Filed	542
Decided	461
Success Rate	92.6%
Inquiries	1,464
Amount Disgorged	\$1,775,787

Source: Executive Office for U.S. Trustees

Table 3.6. Other Attorney Misconduct

Actions & Inquiries	FY 2009
Motions for Sanctions Filed	41
Decided	39
Success Rate	94.9%
Inquiries	430
Sanctions	\$219,971
Referrals to State Bar	13
Disciplinary Rulings Issued	5

Source: Executive Office for U.S. Trustees

In orders entered by the Bankruptcy Court for the Western District of Oklahoma, an attorney who represented consumer bankruptcy filers agreed to a one-year suspension from the practice of bankruptcy law and the disgorgement of attorneys' fees and costs in eight chapter 7 cases. The Oklahoma City office investigated the attorney after receiving complaints from his clients. The attorney's conduct included

CHAPTER 3. CIVIL ENFORCEMENT

failing to file clients' cases until nine months after accepting fees from them, failing to file required documents such as credit counseling certificates and pay advices, and directing clients to attend non-existent section 341 meetings of creditors.

VIOLATIONS BY BANKRUPTCY PETITION PREPARERS

U.S. Trustees bring actions under 11 U.S.C. § 110 against non-attorney bankruptcy petition preparers who violate the Bankruptcy Code by, for example, falsely advertising "legal" services, charging excessive fees, collecting clients' payments for court filing fees, or engaging in unfair, deceptive, or fraudulent conduct.

Sometimes, the operators of foreclosure rescue schemes present themselves as bankruptcy petition preparers. In one common scenario, the scheme operator reviews public records of pending foreclosures and solicits distressed homeowners with offers of assistance. The scheme operator offers to renegotiate the terms of a mortgage and help the homeowner avoid foreclosure, often instructing the homeowner to make mortgage payments directly to the operator. Instead of sending the payment to the mortgage company, however, the scheme operator retains the money and performs no services.

The scheme operator may file a bankruptcy petition in the homeowner's name, without the homeowner's knowledge. This temporarily prevents foreclosure, causing the homeowner to believe the scheme operator has worked out the homeowner's mortgage problems. Ultimately, the bankruptcy case is dismissed because the homeowner fails to pursue it and the house is foreclosed upon. Homeowners are defrauded of their mortgage payments and, finally, their homes.

Table 3.7. Bankruptcy Petition Preparers under § 110

Actions & Inquiries	FY 2009
Filed	301
Decided	211
Success Rate	98.1%
Inquiries	667
Fines Imposed	\$2,873,703
Fees Recovered	\$210,041
Injunctions	71

Source: Executive Office for U.S. Trustees

CHAPTER 3. CIVIL ENFORCEMENT

The San Diego office filed actions that included requests for injunctive relief in a consolidated proceeding involving 71 cases, after discovering that a petition preparer was targeting Spanish-speaking individuals who were in jeopardy of losing their homes to foreclosure. The petition preparer claimed he could assist the homeowners with loan modification. As part of the scheme, the petition preparer filed chapter 13 bankruptcy cases in the homeowners' names, and instructed some homeowners not to disclose his assistance with their bankruptcy cases or the amount of fees they had paid him. Because the homeowners did not understand the obligations of a chapter 13 debtor, their cases were ultimately dismissed, making them once again vulnerable to foreclosure. After the U.S. Trustee's case was presented, the Bankruptcy Court for the Southern District of California entered default judgments against the petition preparer, fining him more than \$100,000, directing him to pay a total of \$35,252 to multiple debtors, permanently enjoining him from serving as a bankruptcy petition preparer in the district, and finding that he had committed fraudulent, unfair, or deceptive actions pursuant to section 110 by failing to disclose his identity as a petition preparer.

Based on a bankruptcy petition preparer's conduct in numerous matters, the Greenbelt office, in cooperation with the Baltimore office, filed a complaint in 45 bankruptcy cases in the District of Maryland. After a one-day trial, the bankruptcy court determined that the petition preparer "solicited those in financial peril, advised and steered most of them who could afford its fees toward bankruptcy, dangled 'benefits' before them and then sold, for a hefty price, a Workbook that was the functional equivalent to bankruptcy Schedules and Statements of Financial Affairs." The court stated that the petition preparer used classic bait-and-switch tactics, and that its "bankruptcy option" of having a law firm file the bankruptcy paperwork was an attempt to escape the requirements of section 110. In the final judgment, the court ordered the petition preparer to disgorge \$46,253 in fees paid by 45 consumer bankruptcy filers, pay \$97,204 in statutory damages to those consumer bankruptcy filers, and pay \$22,500 in fines to the U.S. Trustee.

DEBTOR AUDITS

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

CHAPTER 3. CIVIL ENFORCEMENT

The Program designates for “random audit” a specified uniform percentage of consumer bankruptcy cases within each judicial district, and designates for “exception audit” additional cases in which the debtor’s income or expenses deviate from a statistical norm of the district in which the case is filed. For budgetary reasons, since May 2008 random audits have been conducted in one out of every 1,000 cases, rather than one out of every 250 cases, filed in a judicial district. By statute, debtors are required to cooperate with the audit firms, and a debtor’s discharge may be revoked for failure to explain either a lack of cooperation with the audit firm or a material misstatement reported by the audit firm.

The Central Islip office filed a complaint objecting to a debtor’s discharge in a matter arising from a random debtor audit. The U.S. Trustee investigated allegations contained in the audit report, conducted discovery, and determined that the debtor under-reported her income by almost \$6,300 per month. The Bankruptcy Court for the Eastern District of New York approved the debtor’s waiver of the chapter 7 discharge of \$341,641 in unsecured debt.

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

CHAPTER 4. CRIMINAL ENFORCEMENT

PURSUING BANKRUPTCY-RELATED CRIMES

By law, the Program is required to refer possible crimes to the U.S. Attorneys' offices and, if requested, to assist the U.S. Attorneys in carrying out prosecutions of such cases. The Program also makes criminal referrals to other law enforcement agencies such as the Federal Bureau of Investigation, the Internal Revenue Service–Criminal Investigation, and the Offices of the Inspector General for the Department of Housing and Urban Development and the Social Security Administration.

In some judicial districts, Program attorneys are designated as Special Assistant U.S. Attorneys who assist with the prosecution of bankruptcy fraud cases. Nationwide, Program employees—whether attorneys, bankruptcy analysts or paralegals—also testify as witnesses before grand juries and during criminal trials. The Program works closely with law enforcement agencies, and more than 75 Program offices participate in bankruptcy fraud working groups and/or mortgage fraud working groups across the country.

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

CRIMINAL REFERRALS

In FY 2009, the Program made 1,611 bankruptcy and bankruptcy-related criminal referrals, a 9.5 percent increase over the 1,471 criminal referrals made during FY 2008. Each referral may contain multiple allegations. The most common allegations in referrals made during FY 2009 were false oath/false statement (602 referrals), concealment of assets (481), tax fraud (331), bankruptcy fraud scheme (317), and mortgage fraud/real estate fraud (306).

The Program's annual report on criminal referrals, outcomes of referrals, and efforts to prevent bankruptcy fraud and abuse is posted on the Program's Internet site at www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm.

The following are examples of criminal matters occurring during FY 2009.

Four defendants in the District of Maryland—two brothers, a bankruptcy petition preparer, and a mortgage broker—pleaded guilty to charges arising from their operation of a foreclosure rescue scheme. One brother aired television commercials promising to help people facing foreclosure and eviction. Homeowners were invited to attend meetings and

CHAPTER 4. CRIMINAL ENFORCEMENT

were put on the defendant's "financial diet," which involved making no mortgage payments for a year and signing blank chapter 13 bankruptcy forms. Using the pre-signed forms, the co-conspirators filed chapter 13 petitions in the homeowners' names. The homeowners were told that the second brother would use "his good credit" to refinance their homes temporarily, and that the homes could be repurchased in one year. Actually, the co-conspirators used the refinancing to take all of the home equity out in cash for themselves. To remain in their homes, the homeowners had to make rental payments larger than their original mortgage payments. Most of the homeowners defaulted, were evicted by the co-conspirators, and lost their homes. The Greenbelt and Baltimore offices referred these matters and worked closely with the U.S. Attorney's office on the investigation and prosecution. Civil enforcement actions were also pursued in connection with this case. The Baltimore office filed civil complaints against the co-conspirators for violations of section 110, resulting in a court order imposing \$938,216 in damages and fines against the co-conspirators and enjoining them from further violations.

A defendant in the Middle District of Florida was sentenced to more than 22 years in prison after pleading guilty to conspiracy to defraud a federal agency, commit wire fraud, and obstruct an agency proceeding; failure to collect and remit payroll taxes; and obstruction of an agency proceeding. The defendant was also ordered to pay almost \$182 million in restitution to the Internal Revenue Service. Through an entity the defendant controlled, he acquired several companies that provided payroll and benefits services to businesses. Based on suspected fraud and irregularities in bankruptcy cases filed by several companies controlled by the defendant, the Tampa and Orlando offices referred the matter to the U.S. Attorney. The investigation revealed the payroll and benefits services companies had failed to remit more than \$180 million in payroll taxes they had collected from customers, some of which were companies controlled by the defendant. A trial attorney in the Tampa office served as a Special Assistant U.S. Attorney during the investigation.

A former chief executive officer and co-owner of a corporation that filed bankruptcy in the Western District of Texas was sentenced to 37 months in prison after pleading guilty to making false statements to the Federal Trade Commission (FTC). In connection with FTC litigation about the corporation's marketing claims for a diet product, the CEO falsely stated under oath that assets he owned and controlled were valueless. The San Antonio office referred the matter and assisted in the investigation, and the Regional Criminal Coordinator from Chicago acted as a Special Assistant U.S. Attorney during the investigation and prosecution.

CHAPTER 4. CRIMINAL ENFORCEMENT

The Jackson office referred a case involving a disbarred bankruptcy attorney from the Southern District of Mississippi. The attorney was sentenced to 32 months in prison and was ordered to make restitution of \$154,925 after pleading guilty to concealment of assets, money laundering, and wire fraud. The attorney concealed funds of approximately \$21,000 from a bankruptcy estate, trustee, and creditors. He also obtained funds from clients, ostensibly for use in reducing their debts. He transferred the clients' money from his trust account to his personal account and converted the money for his own use.

A father and son in the Southern District of West Virginia were sentenced to 57 months and 24 months, respectively, in connection with charges arising from their actions during the chapter 11 bankruptcy case of an oil and gas business they controlled. During the chapter 11 case, the defendants diverted assets and income from the debtor corporation to other corporations they owned. Both men pleaded guilty to charges that included fraudulent receipt of property in a bankruptcy case. The Charleston, West Virginia, office referred the matter and assisted with the case.

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

U.S. TRUSTEES' DUTIES

U.S. Trustees perform many duties in chapter 11 cases to help ensure that cases move as expeditiously as possible, parties comply with Bankruptcy Code requirements, and the interests of all parties, as well as the public interest, are taken into account. Some of the U.S. Trustee's primary responsibilities are described in this chapter.

Throughout this chapter, in charts describing actions by the U.S. Trustee, the numbers of actions filed and actions decided during FY 2009 are not identical because some actions were filed before the reporting period, some actions were decided afterward, and some actions were withdrawn by the U.S. Trustee.

APPOINTMENT OF TRUSTEES AND EXAMINERS

U.S. Trustees seek appointment of a trustee if certain statutory conditions are met. The trustee is responsible for managing the property of the bankruptcy estate and the debtor's business operations; if appropriate, the trustee may also file a plan of reorganization. The U.S. Trustee may move for the appointment of a trustee, and the court shall order that appointment, if cause exists or if the appointment is in the best interest of creditors, equity holders, and others with an interest in the estate. "Cause" includes fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management. In addition, the Bankruptcy Code requires the U.S. Trustee to seek a trustee's appointment based upon reasonable grounds to suspect that the debtor's board or top management participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or its public financial reporting.

U.S. Trustees may seek appointment of an examiner to conduct an investigation of a debtor as appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the debtor's affairs.

**Table 5.1. Motions to Appoint Trustee or
Examiner under § 1104**

Actions & Inquiries	FY 2009
Filed	125
Decided	102
Success Rate	94.1%

Source: Executive Office for U.S. Trustees

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

The Bankruptcy Court for the Northern District of California ordered the appointment of a trustee in the chapter 11 case of a company that provided consumer financing to members of the military. The court ruled for the Oakland office over the objections of the debtor and the unsecured creditors' committee, which opposed the appointment of a trustee. Before filing bankruptcy, the debtor company was under investigation by the States of Tennessee and California for alleged violations of state consumer protection laws. The court found that the debtor company's failure to obtain required licenses, its shifting of business to non-debtor entities, and its history of failing to comply with state court orders was cause for appointment of a trustee.

In the District of Delaware, the Wilmington office supported a motion, filed by the State of Idaho, seeking the appointment of an examiner in the case of a debtor that filed chapter 11 bankruptcy with many of its affiliates. The Bankruptcy Court for the District of Delaware granted the motion and the U.S. Trustee appointed the examiner, who was charged with investigating the debtors' transactions and transfers. The examiner's preliminary report concluded that the debtors' financial records could not be relied upon and demonstrated how the proceeds of a \$90 million notes offering had been diverted from their intended use to fund operating losses and pay interest on other obligations. Based on the preliminary report, the U.S. Trustee immediately sought the appointment of a chapter 11 trustee, which the unsecured creditors' committee supported. As a result, the debtors stipulated to the appointment of a trustee.

EMPLOYMENT OF PROFESSIONALS

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

Table 5.2. Employment of Professionals under §§ 327 & 1103

Actions & Inquiries	FY 2009
Filed	751
Decided	614
Success Rate	90.9%
Inquiries	1,024

Source: Executive Office for U.S. Trustees

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

A law firm in the Western District of Missouri agreed to withdraw as chapter 11 debtor's counsel and disgorge its fees and expenses after the Kansas City office indicated its intent to file an objection. When the debtor company filed bankruptcy, it sought the bankruptcy court's approval to employ the law firm. The law firm stated in an affidavit filed with the court that it had no adverse interests and was disinterested. The U.S. Trustee's investigation revealed undisclosed conflicts of interest, including the law firm's pre-bankruptcy representation of the debtor's insiders and affiliates. The U.S. Trustee's settlement with the law firm required the firm to withdraw from representing the debtor, repay all pre- and post-petition fees and expenses related to the bankruptcy filing, and waive all claims against the debtor. The settlement also barred the law firm from representing insiders and affiliates in matters related to the bankruptcy case.

COMPENSATION OF PROFESSIONALS

U.S. Trustees monitor and, when appropriate, object to payment of the fees and expenses of professionals such as attorneys, accountants, turnaround specialists, and others who are compensated from bankruptcy estate funds. The Bankruptcy Code permits reasonable compensation for actual, necessary services rendered by professionals, as well as reimbursement for actual, necessary expenses.

Table 5.3. Professional Fee Requests under § 330

Actions & Inquiries	FY 2009
Filed	511
Decided	445
Success Rate	91.9%
Inquiries	656
Fees Reduced/Withdrawn	\$28,524,879

Source: Executive Office for U.S. Trustees

In 16 jointly administered cases involving a rental car business, the Bankruptcy Court for the District of Minnesota approved a settlement disallowing \$348,946 in fees and expenses requested by the law firm for the unsecured creditors' committee. The Minneapolis office objected to the law firm's request for more than \$1 million in fees and expenses. The U.S. Trustee argued that the law firm failed to disclose a conflict of interest arising from its merger with another law firm, and that it incurred unnecessary fees and expenses that failed to benefit creditors and instead increased the cost of liquidating the estate.

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

COMPENSATION OF DEBTOR'S MANAGEMENT

Debtor companies are restricted in their ability to pay bonuses to senior executives through executive compensation plans including “key employee retention plans” (KERPs) and severance plans. Congress changed the Bankruptcy Code in 2005 to prevent the same management that brought the company into bankruptcy from paying itself large cash awards while shareholders and employees suffered financially. Where appropriate, U.S. Trustees file objections to KERPs or, in the alternative, persuade debtors to modify their compensation schemes to avoid objections. Often, the U.S. Trustee is the only party in interest in the bankruptcy case that seeks to enforce these restrictions. The U.S. Trustees’ challenges to management bonuses address various factual and legal issues, including the definition of “insider” and the standard for distinguishing a permissible incentive payment from an impermissible retention bonus.

Sustaining objections filed by the Wilmington office and the United Auto Workers union, the Bankruptcy Court for the District of Delaware denied a debtor company’s motion for approval of an employee incentive program designed to pay bonuses of up to \$8.1 million to 12 senior executives. The proposed program was equally weighted based on two milestones: achievement of \$112.6 million in earnings before interest, taxes, depreciation, and amortization (EBITDA) for the second half of 2009, and emergence from bankruptcy. The evidence showed the debtor company was aware that it was on track to meet or exceed the EBITDA requirement when it set the EBITDA milestone for the incentive program. The court found that both milestones were primarily retentive and therefore ran afoul of the Bankruptcy Code.

MOTIONS TO CONVERT OR DISMISS

When there appears to be little likelihood of a successful reorganization or the debtor fails to exercise its fiduciary obligations and/or comply with the law, U.S. Trustees seek to have a chapter 11 case converted to a chapter 7 liquidation case or dismissed entirely.

Table 5.4. Case Conversion or Dismissal under § 1112

Actions & Inquiries	FY 2009
Filed	3,459
Decided	3,053
Success Rate	98.7%
Inquiries	1,187

Source: Executive Office for U.S. Trustees

CHAPTER 5. LITIGATION IN CHAPTER 11 BUSINESS REORGANIZATIONS

The Bankruptcy Court for the Western District of Louisiana granted a motion filed by the Shreveport office to dismiss a chapter 11 case on grounds that included the failure to comply with applicable disclosure requirements. The U.S. Trustee presented evidence of two cease and desist orders from the Louisiana Department of Insurance and a certificate of bad standing from the Louisiana Secretary of State. The U.S. Trustee also presented evidence that the debtor's principal had filed multiple bankruptcy cases and that her most recent case, which listed many of the same creditors and debts as the chapter 11 case, had been dismissed.

OBJECTIONS TO DISCLOSURE STATEMENTS AND TO PLAN CONFIRMATION

Disclosure statements filed in chapter 11 cases must provide sufficient information about the debtor, its plan of reorganization, and future operations to allow creditors to make an informed decision on whether to vote in favor of the debtor's plan. U.S. Trustees object to disclosure statements filed by parties to a case if the disclosure statements do not provide adequate information and meet statutory requirements.

Table 5.5. Disclosure Statements under § 1125

Actions & Inquiries	FY 2009
Filed	489
Decided	366
Success Rate	98.9%
Inquiries	292

Source: Executive Office for U.S. Trustees

The debtor's plan of reorganization must comply with specific requirements set forth in 11 U.S.C. § 1129. U.S. Trustees object to confirmation of proposed plans of reorganization if the proposed plans do not meet statutory requirements.

Table 5.6. Plan Confirmations under § 1129

Actions & Inquiries	FY 2009
Filed	291
Decided	202
Success Rate	93.1%
Inquiries	170

Source: Executive Office for U.S. Trustees

CHAPTER 6. APPELLATE ACTIVITIES

APPELLATE CASELOAD

The Program participates in appeals of bankruptcy-related matters to help foster the uniform application of the nation's bankruptcy laws and to protect the integrity and efficiency of the bankruptcy system. Program attorneys participate in appeals brought before the district courts, the bankruptcy appellate panels, and the courts of appeals. In FY 2009, the Program participated in 110 appeals. The Program prevailed in 52 appeals and lost in nine.

In FY 2009 the Program also helped the Department of Justice's Office of the Solicitor General address important issues raised in four bankruptcy appeals that the U.S. Supreme Court accepted for review. The Solicitor General represents the United States government in cases before the Supreme Court.

The Program's appellate activity is coordinated by its appellate practice unit, located in the Executive Office for U.S. Trustees. This unit works with Program offices, appellate staff in various divisions of the Department of Justice, the Office of the Solicitor General, and others as appropriate in each case.

NOTEWORTHY CASES

Appeals handled in FY 2009 dealt with a variety of issues, such as: debtors' claims for non-existent expenses in chapter 13 cases; mortgage servicers' inappropriate charges in chapter 13 cases; requests for management bonuses and for professional compensation in chapter 11 cases; and an attorney's motion to withdraw from a chapter 7 case. Noteworthy appeals included the following.

In a case before the United States Court of Appeals for the Seventh Circuit, the Program's appellate practice unit helped the Indianapolis office obtain the reversal of a bankruptcy court order that allowed a chapter 13 debtor to reduce payments to creditors artificially by claiming a "phantom" mortgage expense payment. The debtor would never incur the mortgage expense, because the debtor was surrendering the mortgaged property in the bankruptcy case. The Seventh Circuit agreed with the position of the U.S. Trustee and held that courts may ignore phantom expenses when determining how much debtors can repay creditors in their chapter 13 plans.

In another chapter 13 case, the Program's appellate practice unit helped the New Orleans office successfully defend a bankruptcy court order granting equitable relief against a national mortgage servicer creditor that had abused the bankruptcy system. The bankruptcy court ruled that this creditor improperly accounted for debtors' mortgage payments in violation of confirmed chapter 13 repayment plans and

CHAPTER 6. APPELLATE ACTIVITIES

charged fees for unwarranted, nonexistent, and inflated expenses, including a home inspection it allegedly made during Hurricane Katrina. The United States District Court for the Eastern District of Louisiana agreed with the position of the U.S. Trustee. It held that the bankruptcy court had the authority to impose monetary and equitable remedies, including an order requiring the creditor to audit all proofs of claim previously filed with the bankruptcy court, to notify debtors of any errors, and to amend the claims as necessary.

Also in a chapter 13 case, the Program's appellate practice unit helped the Miami office successfully appeal a bankruptcy court order that dismissed the U.S. Trustee's lawsuit against a national mortgage servicer creditor. The U.S. Trustee filed the lawsuit to call the mortgage servicer to account for abusing the bankruptcy system in its dealing with debtors and the bankruptcy courts. On appeal from the bankruptcy court's order, the United States District Court for the Southern District of Florida agreed with the position of the U.S. Trustee and reinstated the lawsuit. The district court held that the U.S. Trustee had standing to file the suit and the bankruptcy court had the authority to impose appropriate relief to prevent the creditor from committing similar abuses in the future.

In a chapter 11 case, the Program's appellate practice unit assisted the Wilmington office in appealing a bankruptcy court order that enabled nine top executives of a large corporate debtor to pay themselves significant "incentive" bonuses in addition to payments received from a previously undisclosed bonus plan. The U.S. Trustee objected to those pay-outs on the ground that they violated federal law. In an effort to keep the pay-outs, the corporate debtor tried to have the U.S. Trustee's appeal dismissed on a procedural ground, arguing that it was too late to get the money back from the senior executives. The United States District Court for the District of Delaware agreed with the position of the U.S. Trustee that it was not too late, and allowed the U.S. Trustee's appeal to proceed.

The Program's appellate practice unit also helped the Wilmington office successfully defend a bankruptcy court order that allowed only \$2,533 in administrative expense compensation for an attorney who requested almost \$900,000 in legal fees and other expenses in a chapter 11 case. The United States District Court for the District of Delaware agreed with the position of the U.S. Trustee, holding that the bankruptcy court did not err when it found that the attorney did not substantially contribute to the proceedings or provide an actual benefit to the bankruptcy estate, and was not qualified to recover fees under the Bankruptcy Code.

CHAPTER 6. APPELLATE ACTIVITIES

In a chapter 7 case, the Program's appellate practice unit helped the Eugene office successfully defend a bankruptcy court order that limited an attorney's ability to stop representing his client, a chapter 7 debtor, in an upcoming trial. The bankruptcy court permitted the attorney to withdraw from the case only if the attorney returned his fee so the debtor could afford to retain a new lawyer. The U.S. Trustee had objected to the attorney's motion to withdraw because it would prejudice the debtor's ability to mount an effective defense. The United States District Court for the District of Oregon agreed with the position of the U.S. Trustee, concluding that the compromise fairly balanced the rights of the debtor and the attorney.

The Program's appellate practice unit also assisted the Chicago office in successfully defending a bankruptcy court order prohibiting a medical doctor and his accountant spouse from discharging their debts in chapter 7 after they failed to disclose assets in their bankruptcy schedules and materially misled their creditors about their financial condition. The United States District Court for the Northern District of Illinois agreed with the position of the U.S. Trustee, ruling that the debtors could not receive bankruptcy relief after engaging in such misconduct.

CHAPTER 7. TRUSTEE OVERSIGHT

PRIVATE TRUSTEES

Pursuant to the Bankruptcy Code, 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. In FY 2009, the Program supervised the activities of 1,100 chapter 7 trustees, 42 chapter 12 trustees, and 185 chapter 13 trustees. During that period, chapter 7 trustees administered 50,530 asset cases, which generated almost \$2.5 billion in funds, while chapter 12 and chapter 13 trustees administered over 1.1 million cases, disbursing almost \$5 billion in chapter 13 and \$27 million in chapter 12.

Chapter 7 trustees are often referred to as “panel trustees” because they are appointed by the U.S. Trustee to a panel in each judicial district, for a one-year renewable term. Once the trustees are appointed to the panel, chapter 7 cases generally are assigned through a blind rotation process. The chapter 7 trustee collects the debtor’s assets that are not exempt from the reach of creditors, liquidates the assets, and distributes the proceeds to creditors.

Chapter 12 and chapter 13 trustees are called “standing trustees” because, pursuant to statute, they have a standing appointment from the U.S. Trustee to administer cases within a particular geographic area. Standing trustees evaluate the financial affairs of the debtor, make recommendations to the court regarding confirmation of the debtor’s repayment plan, and administer the court-approved plan by collecting payments from the debtor and disbursing the funds to creditors.

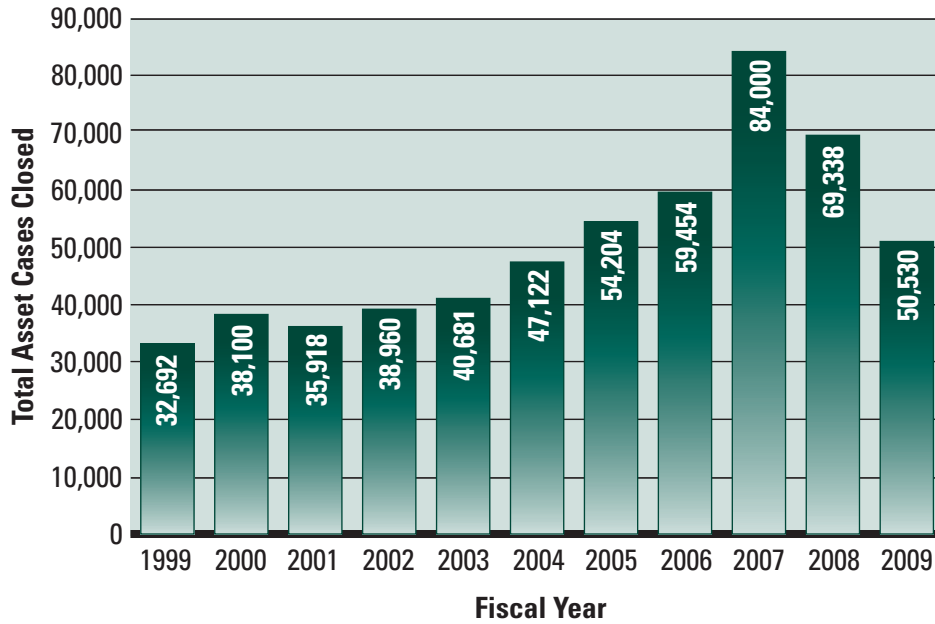
The Program provides policy guidance to the trustees concerning their duties to debtors, creditors, other parties in interest, and the U.S. Trustee; trains trustees and evaluates their performance; reviews their financial operations; ensures the effective administration of estate assets; and intervenes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

SUPERVISION OF CASE ADMINISTRATION

In chapter 7 cases, Program staff review trustees’ final reports before funds are distributed to creditors, and review final accounts after distribution is complete. Program staff reviewed 101,060 such reports for asset cases closed in FY 2009. In addition, chapter 7 trustees receive performance reviews at least every other year. These reviews focus on numerous facets of a trustee’s work, including the conduct of section 341 meetings of creditors, the pursuit of assets, case administration, and the supervision of professionals. In FY 2009, Program staff prepared about 550 performance reviews of chapter 7 trustees.

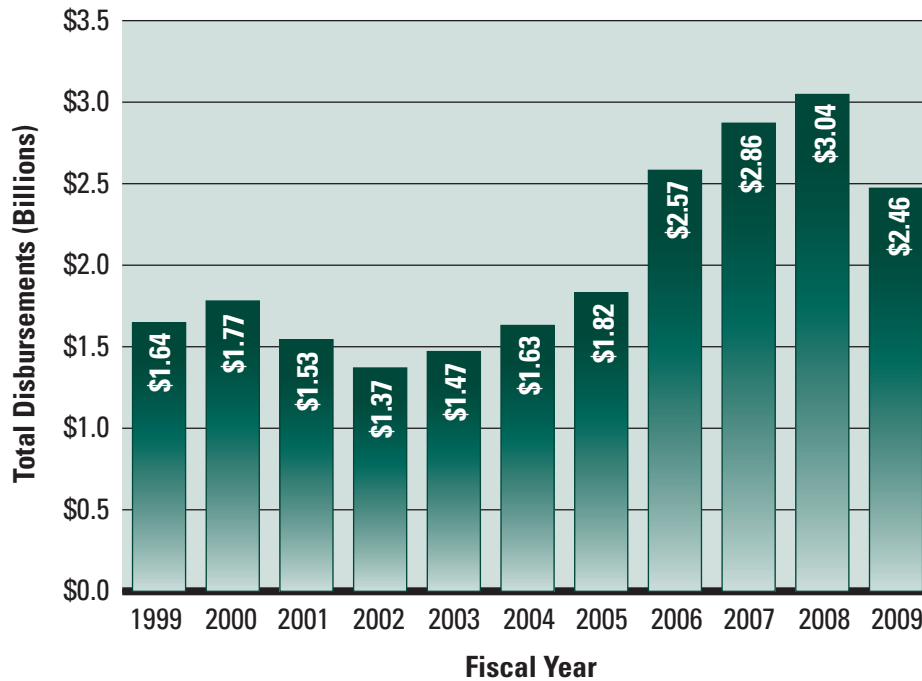
CHAPTER 7. TRUSTEE OVERSIGHT

**Figure 7.1. Chapter 7 Asset Cases Closed
Fiscal Years 1999-2009**



Source: Executive Office for U.S. Trustees

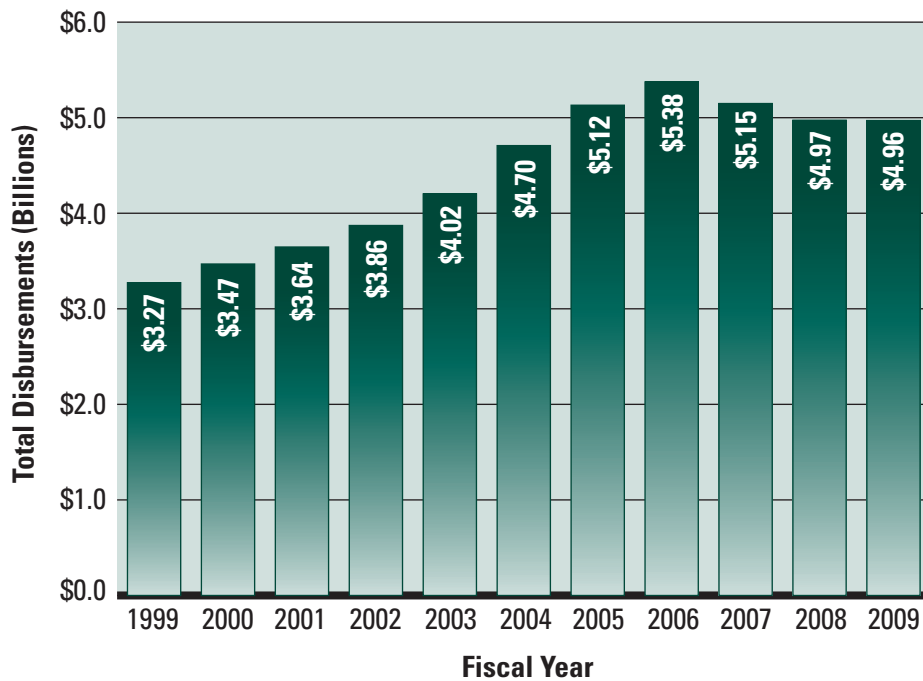
**Figure 7.2. Chapter 7 Cases — Total Disbursements
Fiscal Years 1999-2009**



Source: Executive Office for U.S. Trustees

In chapter 13 cases, Program staff review monthly reports, as well as specialized reports received from trustees, to determine if cases in the aggregate are being administered efficiently and effectively. Program staff also may periodically visit trustees to review procedures in more detail. Chapter 12 and chapter 13 trustees receive performance evaluations at least every other year. These reviews focus on matters such as the conduct of section 341 meetings of creditors, case administration, public complaints, and reporting of information. Program staff prepared 67 performance reviews of chapter 12 and chapter 13 trustees in FY 2009.

**Figure 7.3. Chapter 13 Cases — Total Disbursements
Fiscal Years 1999-2009**



Source: Executive Office for U.S. Trustees

GUIDELINES FOR REVIEWING MORTGAGE CLAIMS

Under the Bankruptcy Code, chapter 13 standing trustees examine creditors' proofs of claim and object to the allowance of improper claims. Through their scrutiny of mortgage-related proofs of claim, chapter 13 trustees play a vital role in identifying and remedying abusive conduct by mortgage creditors. In FY 2009, the Program worked with the chapter 13 trustees to establish minimum guidelines for trustee review of mortgage-related proofs of claim, with the common goal of ensuring that debtors are not harmed by creditors who file improper proofs of claim.

CHAPTER 7. TRUSTEE OVERSIGHT

The guidelines are designed to provide consistency in the claims review process without placing an unreasonable burden on the trustees or unnecessarily interfering with local court or trustee practices. Among other things, the guidelines provide for chapter 13 trustees to verify that copies of documents supporting the creditor's security interest are attached to the proof of claim and that an itemization of pre-petition fees, costs, and other charges is attached to the proof of claim. The guidelines also require the trustees to take appropriate action if proper documentation is not provided with proofs of claim.

SUPERVISION OF FINANCIAL OPERATIONS

Chapter 7 trustee operations are reviewed by Program staff and independent certified public accountants on a four-year cycle. During FY 2009, almost 300 audits and field reviews were conducted. In addition, each trustee submits an annual report covering all open asset cases. The annual reports are reviewed by Program staff to assure that cases are progressing toward closure and that the trustee has properly accounted for bankruptcy estate funds. About 1,100 annual reports were reviewed during FY 2009.

Chapter 13 trustees are audited by independent audit firms every year, and chapter 12 trustees are reviewed by Program staff or independent audit firms every three years. During FY 2009, 204 chapter 12 and chapter 13 trustees were audited. Program staff review the audit reports and work with the trustees to resolve any identified deficiencies. They also review the monthly reports in which trustees describe financial activity within the trust operation.

FEDERAL RULEMAKING

Under federal law, the Program was required to develop uniform final report forms to be used by trustees when closing cases under chapters 7, 12, and 13. After extensive consultation with bankruptcy trustees and others in the bankruptcy community, the Program published the final rule and forms on October 7, 2008. The new forms took effect for all cases closing on or after April 1, 2009. Based on feedback from trustees and Program personnel, the Program proposed changes in the forms to accommodate common local variations and allow more flexibility, without compromising national uniformity. The changes took effect on September 1, 2009.

Federal law also required the development of procedures by which a chapter 13 standing trustee who disputes a decision made by the U.S. Trustee with regard to the trustee's budget may obtain judicial review of the U.S. Trustee's decision. In August 2009, the Program published a Notice of Proposed Rulemaking outlining the proposed procedures for such an administrative review. Comments on the notice of proposed rulemaking will be addressed in the final rule.

CHAPTER 7. TRUSTEE OVERSIGHT

LANGUAGE ASSISTANCE PLAN

Individuals who have sufficient English language skills to communicate basic information may, nonetheless, lack sufficient skills to communicate or understand detailed information regarding their bankruptcy cases. Under Executive Order 13166, as interpreted by Department of Justice guidance, those individuals may be entitled to language assistance under certain circumstances.

At the section 341 meeting of creditors, which is mandated under 11 U.S.C. § 341, the debtor may be questioned under oath by the trustee, U.S. Trustee, or creditors about his or her financial affairs. In FY 2009, the Program began offering, free of charge, telephonic interpreter services for persons with limited English proficiency at nearly 250 of its section 341 meeting sites.

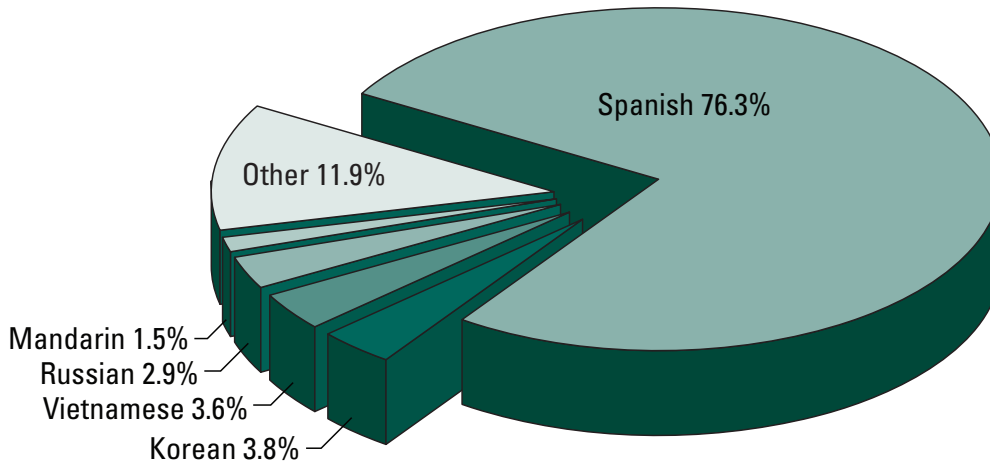
The Program purchased conference-quality speaker phones and contracted with three telephonic interpreter service providers. When a debtor or debtor's attorney advises a trustee that interpreter assistance is required, the trustee contacts the provider using the conference-quality speaker phone. An interpreter is generally able to join the call within minutes, and the section 341 meeting can proceed.

The Program engaged in extensive training and outreach to ensure that Program personnel, trustees, and trustees' staff members understand how the telephone interpreter service works. The Program developed a training video for Program employees and chapter 7, 12, and 13 trustees. Program offices also informed their local courts and members of the bar about the availability of the service. A number of bankruptcy courts assisted in these efforts by modifying the notice of the section 341 meeting to advise debtors of the service, posting notices in the bankruptcy clerk's office, and/or linking to the Program's Web page for individuals with limited English proficiency, at www.justice.gov/ust/eo/public_affairs/lep/index.htm.

The interpreter services were used 10,097 times in FY 2009. Based on data from the interpreter service companies, during that period 76.3 percent of the services requested were in Spanish, followed by Korean (3.8 percent), Vietnamese (3.6 percent), Russian (2.9 percent), and Mandarin (1.5 percent), with the remaining 11.9 percent divided among 53 other languages. The Program will continue to expand the number of section 341 meeting rooms where interpreter services are available and assess community needs to determine how to refine and improve services.

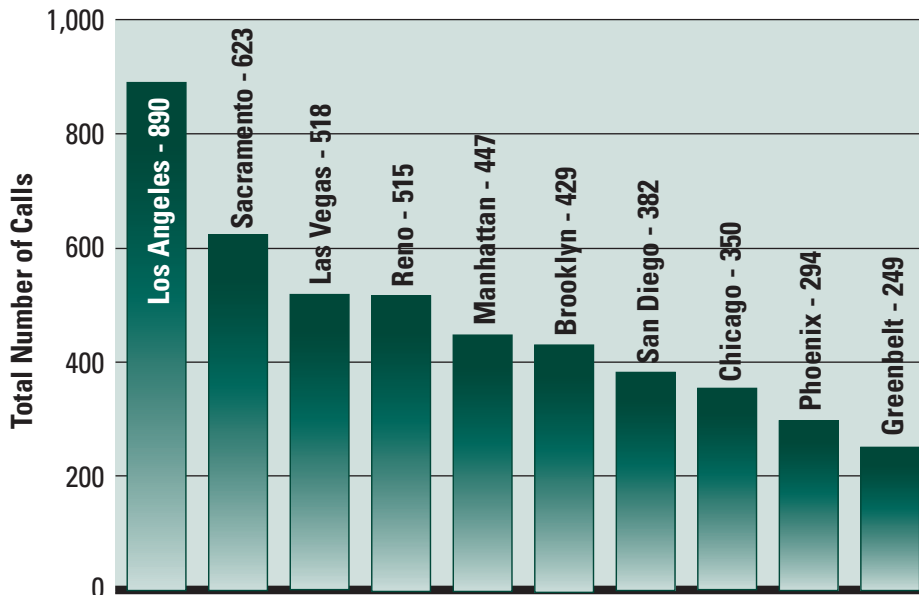
CHAPTER 7. TRUSTEE OVERSIGHT

Figure 7.4. Telephone Interpreter Usage by Language, FY 2009
Total Number of Calls - 10,097



Source: Executive Office for U.S. Trustees

Figure 7.5. Telephone Interpreter Usage by Location
May 2009 - September 2009
(Top 10 locations, based on number of calls, for the period)



Between May 2009 and September 2009, 8,947 calls were made to the telephone interpreter services by bankruptcy trustees.

Source: Executive Office for U.S. Trustees

CHAPTER 8. CREDIT COUNSELING AND DEBTOR EDUCATION

APPROVAL OF PROVIDERS

Under the Bankruptcy Code, the U.S. Trustee is responsible for approving eligible providers of pre-bankruptcy credit counseling and post-bankruptcy debtor education. Consumer debtors generally must seek credit counseling and debtor education from these providers as a condition of filing bankruptcy and receiving a discharge of debts. Certificates are issued upon completion of credit counseling or debtor education services.

An entity seeking approval as a credit counseling agency or debtor education provider must apply for approval by the Program, pursuant to criteria set forth in the Bankruptcy Code. Application information and materials are posted on the Program's Web site at www.justice.gov/ust/eo/bapcpa/ccde/index.htm.

Table 8.1. Approved Providers at Year-End, FY 2009

Type of Provider	Number Approved	In-Person Locations
Credit Counseling Agencies	157	776
Debtor Education Providers	260	965

Source: Executive Office for U.S. Trustees

FEES AND DELIVERY OF SERVICES

While the Bankruptcy Code permits credit counseling agencies and debtor education providers to charge a reasonable fee for services, it also requires them to provide services without regard to ability to pay. Most credit counseling agencies and debtor education providers charge a fee, but offer a full or partial waiver upon a debtor's showing of inability to pay. Approximately 50 chapter 13 trustees provide free debtor education to the chapter 13 debtors whose cases they administer.

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

Type of Service	Cost for Individuals	Cost for Couples
Credit Counseling	\$50	\$50
Debtor Education	\$50	\$65

Source: Executive Office for U.S. Trustees

CHAPTER 8. CREDIT COUNSELING AND DEBTOR EDUCATION

Table 8.3. Percentage of Certificates Issued at No Cost or Reduced Cost

Type of Service	No Cost	Reduced Cost
Credit Counseling	11%	22%
Debtor Education	12%	14%

Source: Executive Office for U.S. Trustees

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

Table 8.4. Delivery Method for Services Received, FY 2009

Type of Service	In-Person	Internet or Internet/ Telephone	Telephone
Credit Counseling	6%	70%	24%
Debtor Education	8%	80%	12%

Source: Executive Office for U.S. Trustees

QUALITY OF SERVICES

In 2009, the Program completed 11 quality of service reviews of approved credit counseling agencies and debtor education providers. These reviews allow the Program to corroborate the information submitted in the application for approval, observe credit counseling and debtor education sessions, and evaluate the operations of the credit counseling agency or debtor education provider to ensure the safekeeping of client funds and protect consumers.

In addition, the Program investigated approximately 200 consumer complaints against approved agencies and providers. The most common complaints involved authenticity of credit counseling certificates, counseling or instruction through authorized representatives pursuant to powers of attorney, timely issuance of credit counseling certificates, and erroneous issuance of a single certificate to joint debtors.

FEDERAL RULEMAKING

The EOUST's Notices of Proposed Rulemaking on the application procedures and criteria for approval of providers of personal financial management courses (the debtor education rule) and pre-bankruptcy credit counseling agencies (the credit counseling rule) were published for public comment, and final rules are forthcoming.



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