U.S. Department of Justice

United States Trustee Program Annual Report Fiscal Year 2010

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Message from the Director

The mission of the United States Trustee Program (USTP or Program) is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders–debtors, creditors, and the public. Nationwide, bankruptcy filings have nearly doubled in the past three years. As the "watchdog" of the bankruptcy system, the USTP forged ahead in FY 2010 to ensure that all parties adhere to the bankruptcy laws, to protect homeowners, and to accomplish other critical goals.

One of the USTP's top priorities is to pursue mortgage servicers that engage in misconduct against homeowners in bankruptcy by inflating claims, imposing impermissible fees, and charging fees for services they do not perform or do not document. Our enforcement efforts are addressing pervasive and longstanding problems regarding mortgage loan servicing. These problems are not merely "technical" but cause real harm to homeowners in bankruptcy. We began our enforcement efforts some years ago by obtaining relief for homeowners in individual bankruptcy cases, but we soon saw there were broader, long-standing problems. During FY 2010, we continued our substantial and sustained efforts to address these issues.

Most notably, working together, the USTP and the Federal Trade Commission reached a historic settlement with a major nationwide mortgage servicer to compensate homeowners, including many homeowners in chapter 13 bankruptcy, who were victimized by improper mortgage servicing practices. Under the settlement, the mortgage servicer agreed to pay $108 million into a fund to compensate homeowners harmed by the violations, and to change internal practices, undergo independent compliance review, and end the practice of charging "hidden fees."

Moreover, in the fall of 2010, we launched an initiative to enhance enforcement in approximately one-fifth of our 95 field offices, where we review 100 percent of claims and contested motions for relief from stay filed in chapter 13 cases by selected mortgage servicers. Our enforcement actions have been met with stiff resistance, but we are committed to helping homeowners in bankruptcy obtain the "fresh start" they deserve.

In another mortgage-related area, the critical role of the bankruptcy system in efforts to address mortgage fraud and abuse was made clear in FY 2010 in an official Intelligence Assessment issued jointly by the USTP and the Federal Bureau of Investigation. The report described a wide variety of mortgage fraud scams and concluded that an increase in mortgage loan defaults and foreclosures would provide wrongdoers with opportunities to exploit the bankruptcy system.

In addition, the USTP stepped up its role in the President's Financial Fraud Enforcement Task Force, composed of federal, state, and local agencies working to address the multi-faceted aspects of white collar fraud, including bankruptcy fraud and mortgage fraud. The USTP made a major contribution to the Task Force's "Operation Stolen Dreams," a nationwide sweep of mortgage fraud cases that involved 1,500 criminal defendants and 200 civil cases.

The Program also continued to fulfill its many other responsibilities in trustee supervision, oversight of chapter 11 cases, approval of pre-bankruptcy credit counseling agencies and post-bankruptcy debtor education providers, and other areas.

As always, I wish to express my sincere appreciation of the employees in our offices across the nation, whose dedication to the Program's mission brought about these successful outcomes. Please accept my invitation to learn more about the USTP's activities by reading our *Fiscal Year 2010 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 United States Trustee Program is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders–debtors, creditors, and the public.

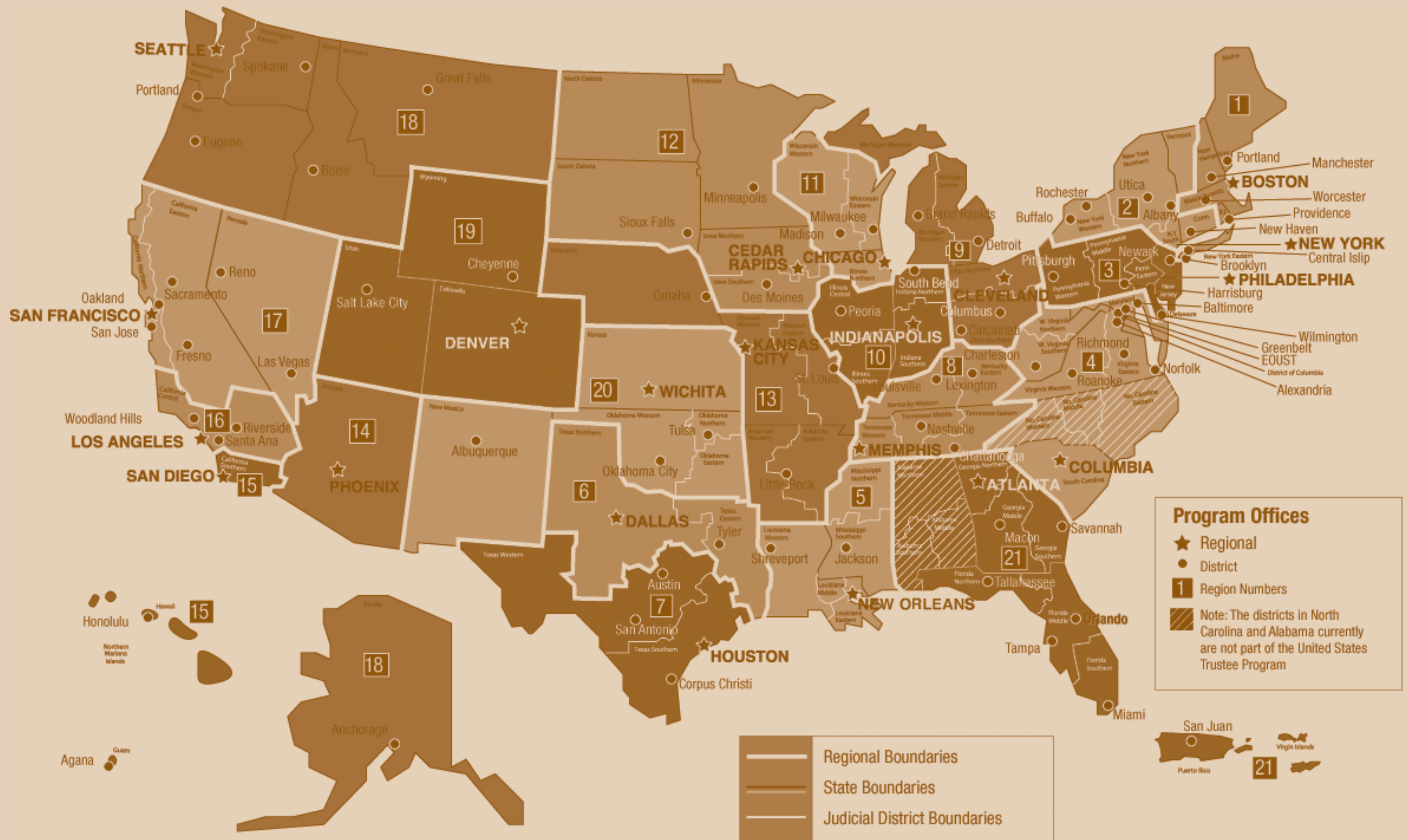
By statute, the Program has standing to participate in every bankruptcy case within its jurisdiction. The Program oversees the administration of all bankruptcy cases filed by individual and business debtors in every federal judicial district except for those in Alabama and North Carolina. The U.S. Trustee's 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

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 2010, the Program had 1,284 employees, consisting 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 United States Trustee System Fund consist of filing fees, chapter 11 quarterly fees, and interest on investments and other miscellaneous revenue. In FY 2010, the Program received funding of $224.5 million, consisting of $219.3 million in appropriations and $5.2 million in carry-over funding from the previous fiscal year.

U.S. Trustee Program Map of Regions and Offices



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

Bankruptcy filings continued to rise in FY 2010, although at a less rapid pace than in the previous two years. More than 1,596,000 bankruptcy cases were filed nationwide in FY 2010, representing an increase of almost 14 percent over FY 2009.

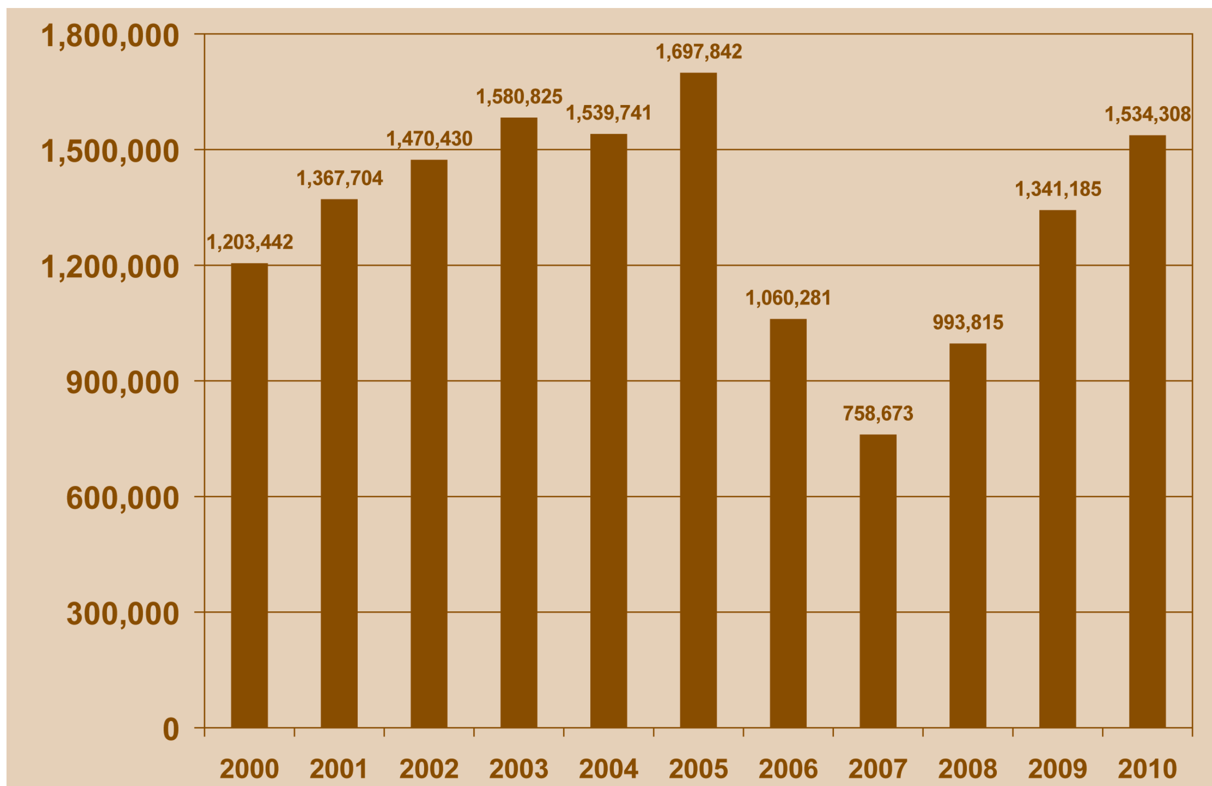
In the 88 judicial districts covered by the Program, 1,534,308 bankruptcy cases were filed in FY 2010.

Table 2.1. Bankruptcy Filings by Chapter

Bankruptcy Chapter	Filings in USTP Districts
All Chapters	1,534,308
Chapter 7	1,116,745
Chapter 11	13,680
Chapter 12 and Other Cases	784
Chapter 13	403,099

Source: Administrative Office of the U.S. Courts

Figure 2.1. Total Bankruptcy Filings in USTP Districts FY 2000-2010



Source: Administrative Office of the U.S. Courts

Chapter 3. Civil Enforcement

Consumer Protection Activities

Protecting consumers from bankruptcy-related fraud and abuse is one of the Program's highest priorities. The Program engages in civil enforcement activity to protect consumers from improper conduct by creditors, including lenders, mortgage servicers, collection agencies, and others; non-attorney petition preparers, including foreclosure rescue scheme operators; attorneys; and individuals or entities who misuse identifying information such as Social Security numbers. In FY 2010, the Program's civil enforcement consumer protection activity included more than 9,200 actions, inquiries, and problems identified.

In general, actions are formal motions, complaints, and objections filed in a court or other tribunal; inquiries are enforcement activities that do not require court resolution, such as written and verbal inquiries made to creditors and their counsel; and problems identified are debtor identification issues addressed in partnership with the private trustees. Throughout this chapter, in charts describing U.S. Trustee actions, the numbers of actions filed and actions decided during FY 2010 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.

Table 3.1. Consumer Protection Activity

Actions & Inquiries	FY 2010
Filed	1,493
Decided	1,326
Success Rate	97.5%
Inquiries and Problems Identified	7,751

Source: Executive Office for U.S. Trustees

Note: Table 3.1 combines data shown in Tables 3.2 through 3.6.

Combating Creditors' Abusive Conduct

The Program investigates and takes action against creditors who engage in abusive conduct that violates the Bankruptcy Code and/or harms consumers in bankruptcy. Over the years, the Program has taken civil enforcement actions against national mortgage servicing firms that engaged in abusive practices against homeowners who fell behind on their mortgage payments and filed for chapter 13 bankruptcy relief.

A number of these enforcement actions were resolved by a historic settlement reached in FY 2010 that included the largest monetary remedy ever obtained by the Program–the payment of $108 million in compensation to homeowners. In June 2010, the Director of the Executive Office for U.S. Trustees joined the Chairman of the Federal Trade Commission (FTC) at a news conference announcing a comprehensive settlement of an FTC complaint and USTP litigation against Countrywide Home Loans and BAC Home Loans Servicing LP (collectively, Countrywide). The agreement, which resulted from unprecedented cooperation between the FTC and the USTP over a two-year period, was designed to redress and prevent future violations of homeowners' rights.

Many of the homeowners covered by the settlement had sought relief in chapter 13 bankruptcy. The USTP alleged that Countrywide inflated claims, charged impermissible fees, and sometimes hid those fees until the homeowners emerged from bankruptcy court protection. These improper accounting and billing practices could be catastrophic to debtors, who could emerge from bankruptcy only to be required to pay previously undisclosed charges or risk foreclosure. These practices also could be unfair to other creditors, who could receive less than their fair share from the bankruptcy estate because the mortgage company claimed more than it was entitled to receive.

To correct these widespread and improper business practices, the settlement with Countrywide contained three major provisions pertaining to homeowners who filed chapter 13 bankruptcy.

First, Countrywide paid $108 million into a fund to be administered by the FTC to compensate homeowners who were harmed by the company's violations. Chapter 13 debtors will share in a significant portion of that fund. In addition to being the largest monetary remedy in the history of the USTP, it is one of the largest monetary remedies in the history of the FTC.

Second, Countrywide will establish internal procedures to ensure that the charges it imposes and the claims it files in bankruptcy court are accurate and permissible. In addition, Countrywide will pay for an independent third party to verify compliance with the prescribed internal controls.

Third, Countrywide will provide adequate notice of its charges and monthly payment amounts. This will help ensure that trustees, debtors, and the bankruptcy courts can evaluate the legitimacy of the claims. It also will ensure that debtors who emerge from bankruptcy are not required to pay previously undisclosed charges or risk foreclosure.

In addition to successfully concluding its national litigation against Countrywide, throughout FY 2010 the Program continued to take civil enforcement actions against other mortgage servicers that filed inaccurate papers claiming debtors owed more money than was actually due, or added charges that were not permitted under the loan contract terms.

Further, the Program continued to pursue abusive conduct by creditors other than mortgage servicers that 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 Los Angeles office helped a debtor obtain enforcement of a court order directing a collection agent to pay more than $5,800 in sanctions for violating the automatic stay in bankruptcy. The collection agent, acting for a credit card issuer, improperly made numerous attempts to collect from the debtor during the bankruptcy case. The Bankruptcy Court for the Central District of California ordered the sanctions on a motion by the debtor, but the collection agent failed to pay and continued to demand payment on the debt. Upon inquiry by the U.S. Trustee, the collection agent paid the sanctions to the debtor and changed its procedures to prevent future stay violations.

Table 3.2. Abusive Conduct by Mortgage Servicers and Other Creditors

Actions & Inquiries	FY 2010
Filed	122
Decided	86
Success Rate	98.8%
Inquiries	2,780

Source: Executive Office for U.S. Trustees

Violations by Bankruptcy Petition Preparers

To protect consumers from improper conduct by non-attorney bankruptcy petition preparers, U.S. Trustees bring actions under 11 U.S.C. § 110, which governs the preparers' activities.

Table 3.3. Bankruptcy Petition Preparers under 11 U.S.C. § 110

Actions & Inquiries	FY 2010
Filed	520
Decided	491
Success Rate	99.2%
Inquiries	965
Fines Imposed	$4,218,977
Fees Recovered	$622,025
Injunctions	198

Source: Executive Office for U.S. Trustees

In some cases, the USTP takes action under section 110 against the operators of foreclosure rescue schemes. 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 action temporarily halts foreclosure activity, which causes the homeowner to believe the scheme operator has worked out the homeowner's mortgage problems. Ultimately, however, the bankruptcy case is dismissed because the homeowner fails to pursue it and the house is eventually foreclosed upon. Homeowners are defrauded of their mortgage payments and, finally, their homes.

More than $106,000 in fee disgorgements and sanctions were imposed by the Bankruptcy Court for the District of New Jersey against an individual bankruptcy petition preparer and his company in response to motions filed by the Newark office in three chapter 13 cases. In one case, the U.S. Trustee's motion was supported by a certification from a chapter 13 debtor who, in response to an advertisement, paid the petition preparer $7,300 in an attempt to save her home from foreclosure. The petition preparer forged the debtor's signature, filed bankruptcy for the debtor without her knowledge, and failed to identify himself as the petition preparer on the bankruptcy documents. The petition preparer was sanctioned $48,900 in that matter. In the two other cases, the bankruptcy court sanctioned the petition preparer $29,800 and $27,375 for his conduct. As a result of the petition preparer's failure to comply with the orders, the U.S. Trustee ultimately obtained a national preliminary injunction barring him from engaging in further petition preparation and foreclosure advisory services.

In other cases, the USTP takes action against bankruptcy petition preparers who violate section 110 by, for example, engaging in unfair, deceptive, or fraudulent conduct; falsely advertising "legal" services; or charging excessive fees. The Reno office obtained two orders from the Bankruptcy Court for the District of Nevada, which imposed a total of $124,000 in sanctions, damages, and fee disgorgements upon a bankruptcy petition preparer for his continued violations of section 110, including failing to disclose his role in preparing petitions, charging excessive fees, and failing to disclose his fees. The petition preparer was ordered to repay debtor clients his fees in over 350 cases, to pay debtors a total of $10,450 in fines, to pay six debtors $2,000 each as damages, and to pay the U.S. Trustee $6,150 as reasonable attorneys' fees and costs. He was also permanently barred from preparing bankruptcy petitions.

Resolving 10 actions brought by the Albuquerque office, the Bankruptcy Court for the District of New Mexico permanently enjoined an individual from conducting business as a bankruptcy petition preparer and ordered her to pay a total of $20,000 in statutory damages to debtors, to pay $63,600 in fines to the U.S. Trustee, and to disgorge fees totaling $3,510. The petition preparer engaged in the unauthorized practice of law by giving legal advice, deliberately failed to disclose her role in preparing petitions, and failed to disclose the fees she charged.

Improper Conduct by Attorneys

U.S. Trustees take action against attorneys who engage in unethical conduct or provide substandard representation. For example, the U.S. Trustee may ask the court to prohibit an attorney from appearing in bankruptcy cases; refer the matter to a state court disciplinary board or other regulatory body; request reduction or disgorgement of attorneys' fees; and seek other appropriate 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 3.4. Attorney Fee Disgorgements under 11 U.S.C. § 329

Actions & Inquiries	FY 2010
Filed	667
Decided	598
Success Rate	96.2%
Inquiries	1,438
Amount Disgorged	$2,466,425

Source: Executive Office for U.S. Trustees

Table 3.5. Other Attorney Misconduct

Actions & Inquiries	FY 2010
Motions for Sanctions Filed	142
Decided	121
Success Rate	96.7%
Inquiries	364
Sanctions	$230,189
Referrals to State Bar	39
Disciplinary Rulings Issued	6

Source: Executive Office for U.S. Trustees

The District Court for the Northern District of New York approved a stipulation between an attorney and the Utica office that required the attorney to pay a total of almost $50,000 to a group of 46 victims and to resign permanently from practice before the district court and the bankruptcy court. The attorney took attorneys' fees and filing fees from dozens of bankruptcy clients, but he either never filed the clients' cases or substantially delayed the filings, leading to substantial harm to the clients. The U.S. Trustee also made a criminal referral to the district attorney, which led to a state court conviction for scheming to defraud clients and grand larceny.

In a case out of the Woodland Hills office, the Bankruptcy Court for the Central District of California ordered two attorneys to disgorge $19,000 in fees and to pay $9,500 in sanctions for their actions in a foreclosure rescue operation. Homeowners turned to the attorneys and their companies to help save their homes from foreclosure. The court found that one of the attorneys placed 19 clients in bankruptcy solely for the purpose of delaying foreclosure. The filings exhibited a pattern of false statements and lack of disclosure. The court ordered the attorney to disgorge all payments he received for those cases, sanctioned him under the Bankruptcy Rules, and referred him to the district's disciplinary panel, which suspended him from bankruptcy practice for one year. In addition, the court concluded that the second attorney performed no services for the clients, but had merely referred them to the other attorney, and that collectively the two attorneys failed to disclose their fee arrangement. The court ordered the second attorney to disgorge all fees he received, and also noted that the State Bar had recently declared the attorney ineligible to practice law.

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 to obtain a court order that expunges the bankruptcy case from the court record or asking the court to make a finding that the individual did not file the case.

Table 3.6. Debtor Identification

Actions & Inquiries	FY 2010
Filed	37
Decided	26
Success Rate	96.2%
Problems Identified	2,171
Petitions Amended or Form B21 (Statement of Social Security Number) Filed	2,184

Source: Executive Office for U.S. Trustees

In the Eastern District of New York, several chapter 13 cases were filed in the name of one man without his knowledge or consent. The cases were filed by other individuals, apparently in connection with a mortgage fraud scheme. The Brooklyn office helped the victim of the false filings obtain court orders expunging the bankruptcy cases from his record.

Enforcement Against Abusive Conduct by Debtors

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. The most common of these actions are objections to a debtor's bankruptcy discharge and motions to dismiss a debtor's bankruptcy case.

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 or 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 3.7. Denial or Revocation of Discharge under 11 U.S.C. § 727

Actions & Inquiries	FY 2010
Filed	1,966
Decided	1,694
Success Rate	99.2%
Inquiries	3,733
Amount Not Discharged	$976,044,029

Source: Executive Office for U.S. Trustees

The Boston office obtained a default judgment from the Bankruptcy Court for the District of Massachusetts that denied a debtor's chapter 7 discharge of nearly $1.3 million in unsecured debt. The U.S. Trustee contended that, by arranging sham real estate transactions involving at least 30 properties, the debtor applied for and received $1.2 million in mortgage loans that she subsequently tried to discharge in bankruptcy. The U.S. Trustee also alleged that the debtor concealed her interest in multiple corporations, the receipt of profits from the mortgage rescue scheme, and approximately 50 revenue-generating vending machines.

Following a trial, the Bankruptcy Court for the Eastern District of Wisconsin denied a debtor's chapter 7 discharge of $231,774 in unsecured debt. The Milwaukee office filed a complaint to deny discharge alleging, among other things, that in the months before filing bankruptcy the debtor fraudulently transferred a Harley Davidson motorcycle to his elderly mother and a home to his brother. The court further found that the debtor failed to disclose his 2006 Cadillac DTS, the sale of four properties, sale proceeds of more than $200,000, and rental income.

Dismissal of Case for Abuse

U.S. Trustees may file a motion to dismiss for abuse under 11 U.S.C. § 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. Even if a filing is presumed abusive, the U.S. Trustee may decline to seek dismissal 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 2010, 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, 7 percent were "presumed abusive" under the means test. However, after considering a debtor's special circumstances, the Program exercised its statutory discretion to decline to seek dismissal in about 63 percent of the presumed abusive cases in which the debtor did not voluntarily convert or dismiss the case.

Table 3.8. Dismissal for Abuse under 11 U.S.C. § 707(b)

Actions & Inquiries	FY 2010
Filed	3,809
Decided	2,765
Success Rate	98.1%
Inquiries	22,629
Amount Not Discharged	$474,772,679

Source: Executive Office for U.S. Trustees

The Bankruptcy Court for the Northern District of California granted a motion by the San Jose office to dismiss a debtor's case for abuse, which prevented his chapter 7 discharge of $308,773 in unsecured debt. The debtor was a sales executive who earned over $200,000 per year to support himself with no dependents. He failed to disclose regular sales commission income. In addition, his claimed expenses included more than $1,000 per month to maintain three automobiles, as well as $400 per month for recreation that included trips to Hawaii and New York and frequent dining out. The U.S. Trustee calculated that the debtor had almost $3,000 in monthly disposable income available to repay his creditors.

Debtors were prevented from obtaining a chapter 7 discharge of $409,810 in unsecured debt when the Bankruptcy Court for the District of Minnesota granted a motion to dismiss filed by the Minneapolis office. The debtors listed $382,251 in unsecured debt on 18 credit card accounts, and sought to retain four cars. The court rejected the debtors' argument that special circumstances rebutted the presumption of abuse in their case.

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.

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. In FY 2010, random audits were conducted in one out of every 1,000 cases filed in a judicial district. 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.

A debtor in the Central District of California waived her chapter 7 discharge of $414,000 in unsecured debt after an independent audit resulted in the Santa Ana office filing an objection to her discharge. After her case was selected for random audit, the debtor had amended her bankruptcy documents to list a previously undisclosed $30,000 savings account. She had also attempted to keep $10,000 of the undisclosed $30,000, asserting that it was exempt property and thus protected from the reach of creditors. The U.S. Trustee questioned the debtor under oath and obtained her bank records, which revealed that the savings account was set up 17 days before the bankruptcy case was filed. The debtor waived her discharge after the U.S. Trustee filed a complaint to deny discharge.

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 Web site at www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm.

PURSUING BANKRUPTCY-RELATED CRIMES

The USTP made significant contributions to law enforcement efforts against bankruptcy-related crimes in FY 2010, particularly in the areas of mortgage fraud and real estate fraud. 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 November 2009, President Obama established the Financial Fraud Enforcement Task Force (FFETF), which is composed of federal, state, and local agencies working together to address the multi-faceted aspects of white collar fraud. The Program is an active member of the FFETF, and made a major contribution to the task force's "Operation Stolen Dreams"–a nationwide sweep of mortgage fraud cases announced by the Attorney General in June 2010. Starting on March 1, more than 1,500 criminal defendants were charged and more than 190 civil enforcement actions were taken by federal agencies, regulatory authorities, inspectors general, and state and local law enforcement agencies. The USTP referred 28 criminal cases and contributed more than 35 civil cases to Operation Stolen Dreams.

The Program also worked with the FBI in FY 2010 to produce an Intelligence Assessment for law enforcement agencies entitled "US Bankruptcy System Exploited to Perpetrate Foreclosure Rescue Schemes." The Assessment, issued by the FBI in May 2010, described a wide variety of mortgage and real estate-related scams uncovered by the FBI and the USTP, including advance-fee foreclosure rescue schemes, fractional transfer schemes, and sale-leaseback-repurchase schemes. The Assessment concluded that the increasing number of mortgage loan defaults and foreclosures will continue to provide opportunities to exploit the bankruptcy system. An unclassified version of the Assessment is available on the Program's Web site at www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm.

CRIMINAL REFERRALS

The Program made 1,721 bankruptcy and bankruptcy-related criminal referrals in FY 2010, a 6.8 percent increase over the 1,611 criminal referrals made the prior year. Each referral may contain multiple allegations. The most common allegations in referrals made during FY 2010 were false oath/false statement (38.2 percent), concealment of assets (30.2 percent), tax fraud (24.2 percent), bankruptcy fraud scheme (20.7 percent), identity theft or use of false or multiple Social Security numbers (17.1 percent), and mortgage fraud or real estate fraud (11.9 percent). 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 Web site at www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm.

While most bankruptcy-related crimes are prosecuted by Assistant U.S. Attorneys, approximately 25 USTP attorneys in field offices across the country are designated as Special Assistant U.S. Attorneys who assist in prosecutions. In addition, Program employees–including attorneys, bankruptcy analysts, and paralegals–regularly provide expert testimony or fact testimony at criminal trials. Moreover, the Program participates in more than 70 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country that focus on investigating suspected bankruptcy crimes, preparing referrals, and providing training.

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.

USTP Participation in Cases

The following are examples of criminal matters in which the USTP worked with law enforcement in FY 2010.

Several USTP offices collaborated on a case in which two California men operated a foreclosure rescue scam that involved the filing of at least 119 fraudulent bankruptcy cases in Kansas, Maryland, Tennessee, and California. Ultimately, the two defendants were sentenced in the District of Kansas to five years in prison and 18 months in prison, respectively, following their convictions for conspiracy and mail fraud. They were also ordered to forfeit more than $1 million in proceeds from the scheme, in addition to $931,015 that had already been seized. The defendants represented that, for a monthly fee, they could stop the home foreclosure process and homeowners would not have to file bankruptcy. As part of a complex scheme, the defendants caused bankruptcy petitions to be filed in the names of nonexistent individuals. The bankruptcy petitions postponed the home foreclosure process, but only temporarily. The U.S. Trustees' offices in Wichita, Kansas; Baltimore, Maryland; Memphis and Knoxville, Tennessee; and Los Angeles, Sacramento, San Jose, and Woodland Hills, California, assisted in the criminal investigation, prosecution, and sentencing. A bankruptcy analyst from the Wichita office testified multiple times, including at the criminal forfeiture hearing.

A Montana cattle dealer who filed chapter 7 bankruptcy was sentenced to 11 years in prison and ordered to pay more than $6 million in restitution after a jury convicted him of bankruptcy fraud, bank fraud, wire fraud, money laundering, and aggravated identity theft. The evidence at trial demonstrated that the cattle dealer defrauded a bank out of more than $5 million by claiming ownership of 7,000 head of cattle when, in reality, only 60 head of cattle could be located. Before filing bankruptcy, the cattle dealer transferred $235,000 into a bank account from which he wrote cashier's checks to himself and others. He failed to disclose that bank account during his bankruptcy case. The Great Falls office referred the matter for prosecution.

Two co-conspirators were sentenced in the Southern District of Indiana in connection with a mortgage fraud scheme involving the sale of 34 homes. One defendant was sentenced to 71 months–nearly six years–in prison and ordered to pay $2.3 million in restitution to 13 defrauded lenders, after she was convicted at trial for wire fraud. The other defendant was sentenced to 63 months–more than five years–in prison and ordered to pay $5.6 million in restitution to 21 lenders, after she pleaded guilty to wire fraud and bankruptcy fraud. The scheme involved using the credit of "straw buyers" to purchase homes for prices ranging from $300,000 to $1.4 million, providing a false Social Security number to a lender, generating false verifications of employment and rent, and submitting false income amounts. In addition, one defendant used names of her acquaintances without their permission on false residential leases submitted to lenders. The bankruptcy fraud charges arose from the filing of five bankruptcy cases in the name of another individual to stop pending foreclosure actions. The case was referred by the Indianapolis office; the Bankruptcy Fraud Working Group for the Southern District of Indiana, which includes the U.S. Trustee's office, collaborated on the prosecution.

A bankruptcy debtor in the Northern District of Illinois, Western Division, was sentenced to more than three years in prison and fined $25,000 after being convicted on three counts of concealing property from the bankruptcy trustee and one count of bankruptcy fraud. Shortly after the debtor filed chapter 7 bankruptcy, a relative of the debtor died, leaving a substantial estate to the debtor and his brother. They then engaged in a scheme involving the use of false documents to make it appear that the debtor's inheritance passed to the brother, when the debtor actually received his entire inheritance. The Madison, Wisconsin, office referred the matter, and a trial attorney from that office provided expert testimony. The debtor's brother was also convicted of bankruptcy fraud.

An investment advisor was sentenced in the Northern District of Florida to more than four years in prison followed by five years of supervised release, and ordered to pay restitution of $496,610 to the Internal Revenue Service and $171,280 to a bank, after pleading guilty to bankruptcy fraud, tax fraud, and bank fraud. The bankruptcy counts related to making false statements and failing to disclose assets in his bankruptcy case; transferring, post-petition, an undisclosed glass sculpture and a Harley Davidson motorcycle; transferring most of the proceeds from the sculpture and motorcycle to another individual; and providing a false tax return to the U.S. Trustee. The non-bankruptcy counts related to making false statements on a loan application and on federal income tax returns. The Tallahassee office assisted with the investigation and preparation of the criminal case for trial. Previously, the U.S. Trustee obtained the investment adviser's waiver of the chapter 7 discharge of over $2.4 million in unsecured debt.

An attorney who had filed bankruptcy was sentenced in the Southern District of California to 30 months in prison and three years of supervised release, and ordered to pay more than $190,000 in restitution, after pleading guilty to bankruptcy fraud and filing false tax returns. The attorney/debtor devised a scheme to defraud his creditors by concealing funds in bank accounts in Switzerland and the People's Republic of China. The San Diego office and the Regional Bankruptcy Fraud Coordinator provided assistance with the criminal case.

Chapter 5. Litigation in Chapter 11 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 2010 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 orders 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 11 U.S.C. § 1104

Actions	FY 2010
Filed	150
Decided	136
Success Rate	90.4%

Source: Executive Office for U.S. Trustees

Granting a motion by the Miami office, the Bankruptcy Court for the Southern District of Florida approved the appointment of a chapter 11 trustee in the jointly administered cases of two limited partnerships that operated as hedge funds. Pre-petition, the hedge funds solicited more than $1 billion in funds, most of which were invested with a company operated by a convicted Ponzi schemer. The U.S. Trustee asserted that the primary purpose of the bankruptcy filing was to obtain approval of a settlement between the debtors and their general partners that prevented third parties from suing the general partners for their conduct relating to the debtors, regardless of the resulting harm. The U.S. Trustee further alleged that the debtors' professionals had conflicts of interest because they represented multiple parties. Ultimately, the chapter 11 trustee and a major creditor obtained confirmation of a reorganization plan that did not release the general and limited partners from liability. They also negotiated settlements with the debtors' accountants and the general partners that resulted in a return of approximately $15 million to the estates.

The Wilmington office's request for the appointment of an examiner was granted by the Bankruptcy Court for the District of Delaware in the chapter 11 case of a media company. Less than three months later, the examiner filed a four-volume report, finding that the debtor's leveraged buyout was marred by dishonesty of one or more members of prior management and most likely rendered the company insolvent. The examiner's report resulted in significant revisions to the debtor's disclosure statement and reorganization plan, with enhanced recoveries proposed for certain creditor groups.

Employment of Professionals

U.S. Trustees monitor and, when appropriate, object to the employment of chapter 11 case professionals such as attorneys, accountants, turnaround specialists, and others who are paid from bankruptcy estate funds. U.S. Trustees review these professionals' applications for employment to ensure compliance with Bankruptcy Code prohibitions against conflicts of interest.

Table 5.2. Employment of Professionals under 11 U.S.C. §§ 327 & 1103

Actions & Inquiries	FY 2010
Filed	979
Decided	758
Success Rate	90.9%
Inquiries	1,162

Source: Executive Office for U.S. Trustees

Sustaining objections filed by the San Jose office based on lack of disclosure and conflict of interest, the Bankruptcy Court for the Northern District of California denied employment of an attorney in two chapter 11 cases and ordered the attorney to disgorge all funds paid to him by the debtors, for a total of $82,258. The attorney sought employment as counsel in both cases although the debtors were co-owners of eight rental properties. His employment applications failed to disclose that the debtors were co-owners of the properties, and that he intended to represent them simultaneously even though they could have conflicting interests.

Compensation of Professionals

U.S. Trustees monitor and, when appropriate, object to payment of the fees and expenses of chapter 11 case 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 11 U.S.C. § 330

Actions & Inquiries	FY 2010
Filed	629
Decided	541
Success Rate	94.5%
Inquiries	707
Fees Reduced/Withdrawn	$44,479,536

Source: Executive Office for U.S. Trustees

A consent order entered by the Bankruptcy Court for the District of Maryland directed an investment banking firm to disgorge 20 percent of its fees and repay them to a subsidiary of a chapter 11 debtor. The debtor had retained the investment banking firm to broker a sale of its largest asset, but later decided not to pursue the sale. The investment banking firm filed an application for $500,000 in fees. The Baltimore office objected to $100,000 of the fees, arguing that those fees were incurred for services performed after the contract was, or should have been, terminated.

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. Under the Bankruptcy Code, the management that brought the company into bankruptcy may not pay itself large cash awards while shareholders and employees suffer 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.

The Boston office's objection to a chapter 11 debtor's motion for approval of a key employee program was sustained by the Bankruptcy Court for the District of Massachusetts. The debtor company proposed to pay bonuses of $1.65 million to two senior executives if they stayed with the company through the completion of three pending sales or, if no sales were completed, for up to 90 days to implement a wind-down of business operations. The court found that the program was a hybrid incentive and retention plan and a transaction out of the ordinary course of business that violated 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 11 U.S.C. § 1112

Actions & Inquiries	FY 2010
Filed	4,400
Decided	3,842
Success Rate	98.1%
Inquiries	1,608

Source: Executive Office for U.S. Trustees

The Bankruptcy Court for the District of New Mexico converted the chapter 11 case of an alleged Ponzi scheme operator to chapter 7, resolving a motion filed by the Albuquerque office seeking either case conversion or appointment of a trustee. The U.S. Trustee alleged that, before filing bankruptcy, the individual debtor engaged in a Ponzi scheme resulting in claims of roughly $80 million from approximately 600 investors. Previously, the bankruptcy court had approved the appointment of a trustee for the debtor's company, which was also in chapter 11 bankruptcy.

Ruling for the Little Rock office, the Bankruptcy Court for the Eastern District of Arkansas dismissed an individual debtor's chapter 11 case, barring the debtor from refiling for one year due to his egregious conduct. The court agreed with the U.S. Trustee that the debtor's testimony, monthly operating reports, petition, schedules, and statements were not credible. The court found that the debtor failed to account for all funds taken in by his business operation, sold bankruptcy estate assets outside the ordinary course of business without court authority, obtained loans without court authority, and failed to disclose all of his creditors and assets.

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 11 U.S.C. § 1125

Actions & Inquiries	FY 2010
Filed	812
Decided	612
Success Rate	98.2%
Inquiries	422

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 11 U.S.C. § 1129

Actions & Inquiries	FY 2010
Filed	446
Decided	325
Success Rate	95.7%
Inquiries	246

Source: Executive Office for U.S. Trustees

A bankruptcy court's denial of chapter 11 plan confirmation was affirmed by the Seventh Circuit Court of Appeals, which upheld the U.S. Trustee's authority to object to a plan filed primarily to avoid taxes. The debtor company, whose only creditor was an insider, listed $3.2 million in net operating losses as its only asset. The Chicago office objected to the debtor's proposed reorganization plan. The appeals court noted that the U.S. Trustee's role was especially important in the case because the bankruptcy was non-adversarial. Concluding that the bankruptcy case was fraudulent, the appeals court ordered the debtor company to pay the U.S. Trustee's legal fees of approximately $22,500 and fined the debtor's attorney $5,000.

Chapter 6. Appellate Activities

Bankruptcy-Related Appeals

The Program participates in appeals of bankruptcy-related legal matters to clarify the law, advance national priorities, and ensure the fair and efficient resolution of bankruptcy cases.

Attorneys from the USTP participate in appeals brought before the district courts, bankruptcy appellate panels, and courts of appeals. The Program also assists the Department of Justice's Civil Appellate Division and Office of the Solicitor General in bankruptcy-related matters, including appeals that the U.S. Supreme Court has accepted for review. The Solicitor General represents the United States government in cases before the Supreme Court.

In total, the Program acted as a party or as *amicus curiae* (friend of the court) in 109 appeals during FY 2010. The Program also received written decisions in 55 appeals, winning in 47 and losing in eight.

U.S. Supreme Court Cases

In FY 2010, the U.S. Supreme Court decided four cases in which the USTP was involved. The Supreme Court ruled in favor of the government's position in three of those cases.

In *Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S. Ct. 1324 (2010), the Supreme Court held that the consumer protection provisions enacted under the Bankruptcy Abuse Prevention and Consumer Protection Act, codified at 11 U.S.C. §§ 526-528, apply to attorneys and do not violate the First Amendment of the U.S. Constitution. These provisions govern certain conduct by consumer debtors' attorneys, including requiring such attorneys to make specified written disclosures to their clients. Among other matters, the Supreme Court held that the statutory prohibition on attorneys advising their clients "to incur more debt in contemplation" of filing bankruptcy was not unconstitutionally over-broad or impermissibly vague. The Court reasoned that the statute required attorneys only to avoid advising clients to take on more debt in order to abuse the bankruptcy system.

In *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), the Supreme Court held that, when a bankruptcy court calculates a chapter 13 debtor's projected disposable income under 11 U.S.C. § 1325(b), the bankruptcy court may account for changes in the debtor's income or expenses that are known or virtually certain when the chapter 13 plan is confirmed. The Court rejected the argument that bankruptcy courts are limited to a mechanical calculation. Instead, the Court adopted the "forward-looking approach," under which the debtor's historical income and expenses are the default basis for the projected income analysis, but may be adjusted by the bankruptcy court under the appropriate circumstances.

In *Schwab v. Reilly*, 130 S. Ct. 2652 (2010), the Supreme Court held that, when a chapter 7 debtor lists a value for property exempt from creditors that falls within the range specified in the Bankruptcy Code, the chapter 7 trustee need not object in order to preserve the bankruptcy estate's interest in the value of those assets that exceeds the exempt interest. The debtor in *Schwab*, a caterer, claimed an exemption in business equipment that she valued at around $10,700; the trustee subsequently planned to sell the property for approximately $17,200 and to distribute the additional

$6,500–the amount above the claimed exemption–to creditors. The lower courts ruled that the debtor could exempt all the equipment from creditors' reach. On appeal, the Supreme Court rejected the argument that, because the trustee did not object to the exemption, the debtor could exempt the asset's full value even though it exceeded the value she disclosed in her schedules.

Finally, in the bankruptcy-related case in which the United States did not prevail, *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367 (2010), the Supreme Court held that the bankruptcy court's legal error in discharging a portion of a student loan in a chapter 13 plan confirmation order did not render the order, which had become final, legally void. The bankruptcy court had failed to make a finding of "undue hardship" before discharging the student loan debt. The Supreme Court held, among other things, that the statutory requirement for "undue hardship" established a pre-condition to obtaining a discharge of student loan debt, not a limitation on the bankruptcy court's jurisdiction to issue the order.

Other Noteworthy Cases

The dozens of appeals that were handled by the USTP in FY 2010 dealt with a variety of issues before the courts of appeal, bankruptcy appellate panels, and district courts. Noteworthy appeals included the following.

The Court of Appeals for the Eighth Circuit affirmed a bankruptcy court order approving the U.S. Trustee's appointment of a trustee for all of the debtor entities in a jointly administered chapter 11 case. The trustee had served as a receiver for the debtor entities due to criminal allegations against, and the subsequent conviction of, the owner, who had used the companies to orchestrate a multi-billion dollar fraud. The Eighth Circuit rejected the creditors' argument that the trustee's prior service as receiver meant the trustee was not "disinterested" as required by the Bankruptcy Code.

The Court of Appeals for the Fifth Circuit affirmed a bankruptcy court order imposing monetary sanctions against the principal of a chapter 11 debtor and an attorney for filing a chapter 11 petition in bad faith. To prevent foreclosure, the debtor's principal and the attorney helped transfer property to a shell corporation, which filed a "bare-bones" chapter 11 petition without additional financial information. The bankruptcy court imposed sanctions pursuant to Bankruptcy Rule 9011, which governs the signing and verification of papers. The debtor's principal and the attorney appealed, arguing that sanctions under Rule 9011 were for "criminal contempt" and could be imposed only by a district court, not a bankruptcy court. The Fifth Circuit rejected that argument, finding no basis for equating Rule 9011 sanctions with criminal contempt sanctions.

The District Court for the Middle District of Georgia agreed with the U.S. Trustee's position and affirmed a bankruptcy court order dismissing a debtor's chapter 7 bankruptcy case under 11 U.S.C. § 521(e)(2)(B), as well as under 11 U.S.C. § 707(a) for cause. Section 521(e)(2)(B) states that the court shall dismiss a case if the debtor fails to provide his or her federal tax return to the bankruptcy trustee before the section 341 meeting of creditors, unless the debtor's failure is due to circumstances beyond the debtor's control. In this case, the debtor did not produce a copy of her tax return or attend the section 341 meeting of creditors–conduct that the district court called "inexcusable."

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 2010, the Program supervised the activities of 1,100 chapter 7 trustees, 41 chapter 12 trustees, and 186 chapter 13 trustees.

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. Once the trustees are appointed to the panel, chapter 7 cases generally are assigned through a blind rotation process. The chapter 7 trustee collects the debtor's assets that are not exempt from creditors, liquidates the assets, and distributes the proceeds to creditors.

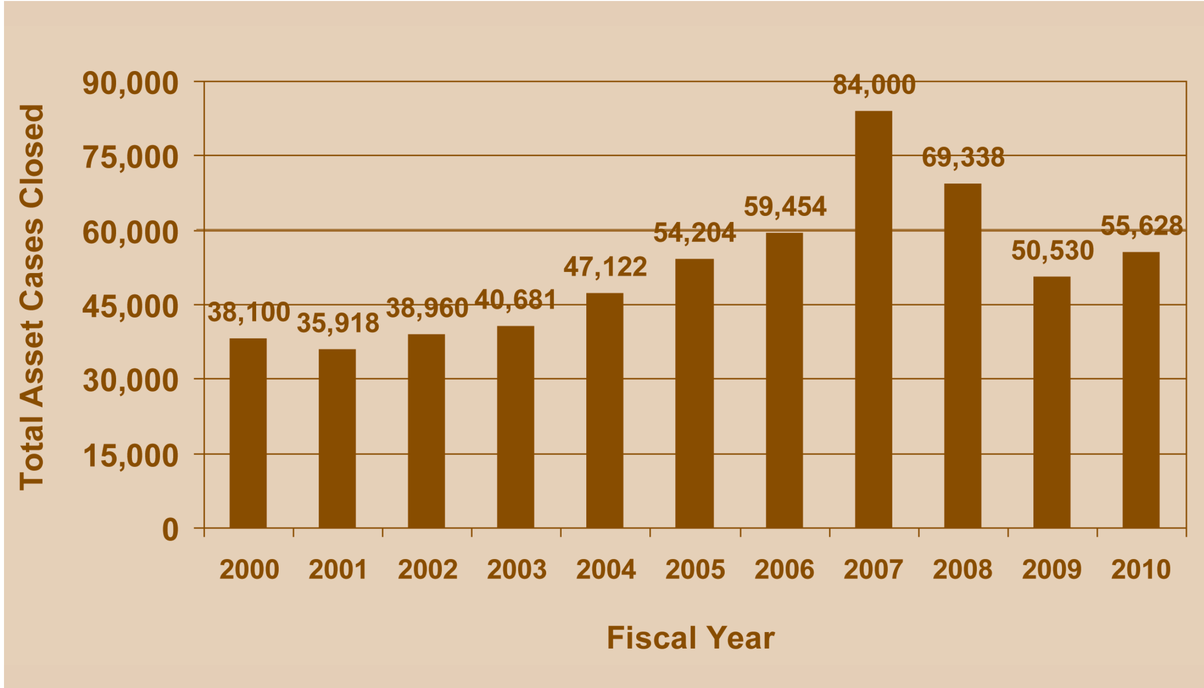
Chapter 12 and chapter 13 trustees are called "standing trustees" because, pursuant to statute, they have a standing appointment from the U.S. Trustee to administer cases within a particular geographic area. Standing trustees evaluate the financial affairs of the debtor, make recommendations to the court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

The Program 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.

Distributions by Trustees

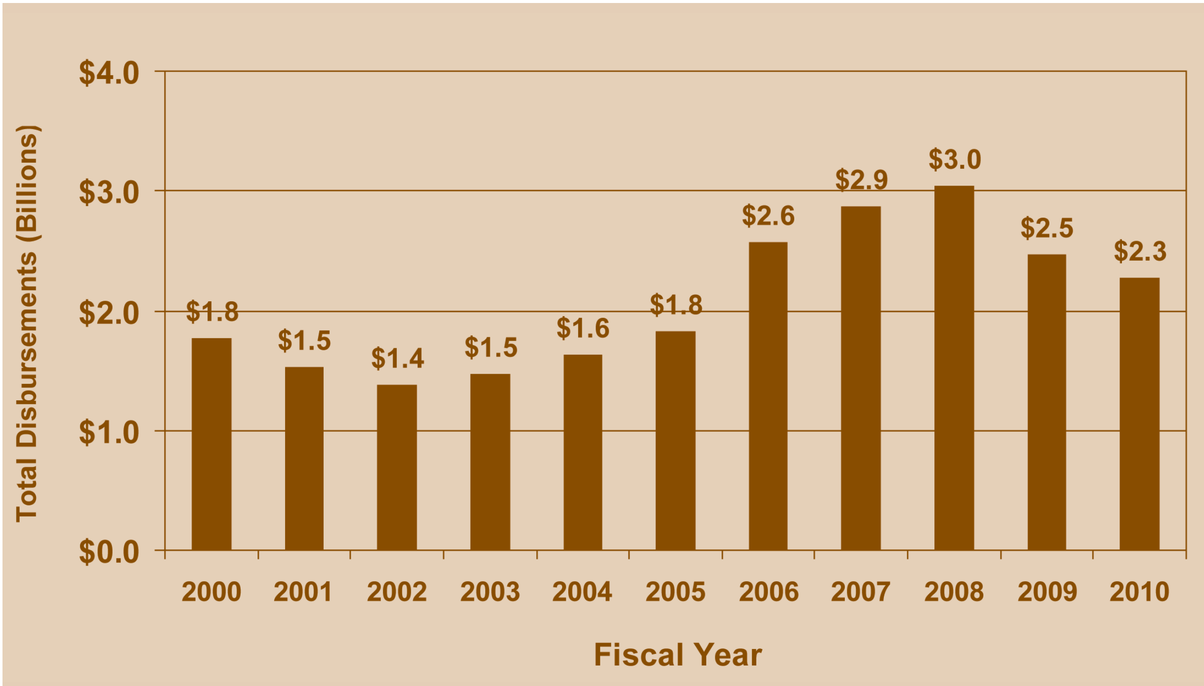
During FY 2010, chapter 7 trustees administered 55,628 asset cases that generated $2.3 billion in funds, while chapter 12 and chapter 13 trustees administered over 1.2 million cases and disbursed more than $5.5 billion in assets.

Figure 7.1. Chapter 7 Asset Cases Closed FY 2000-2010



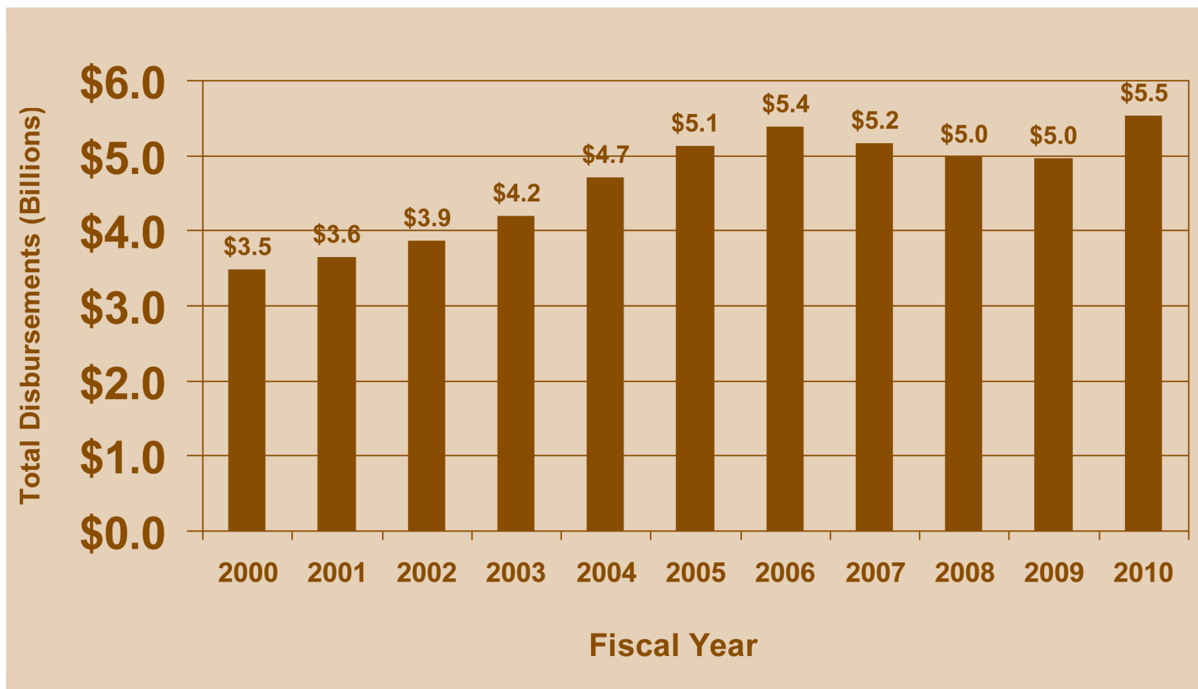
Source: Executive Office for U.S. Trustees

Figure 7.2. Chapter 7 Cases-Total Disbursements FY 2000-2010



Source: Executive Office for U.S. Trustees

Figure 7.3. Chapter 13 Cases-Total Disbursements FY 2000-2010



Source: Executive Office for U.S. Trustees

Certain chapter 7 and chapter 13 distribution statistics are available on the Program's Web site at http://www.justice.gov/ust/eo/public_affairs/index.htm and http://www.justice.gov/ust/eo/private_trustee/library/chapter13/index.htm, respectively. In addition, in FY 2010, the USTP began posting raw data on chapter 7 trustee distributions on www.data.gov and on the USTP's Web site at http://www.justice.gov/ust/eo/public_affairs/data_files/ch7_asset/index.htm.

Assistance for Homeowners in Bankruptcy

In FY 2010, the Treasury Department announced that homeowners in chapter 7 or chapter 13 bankruptcy who request mortgage loan modifications under the federal Home Affordable Modification Program (HAMP) must be considered for such modifications. Working with Treasury, the USTP took a number of steps to help homeowners in bankruptcy and their counsel become aware, through the chapter 7 and chapter 13 trustees, of the mortgage modification opportunities provided by HAMP.

HAMP is part of the Making Home Affordable Program (MHA), which was originally designed to help struggling homeowners modify or refinance their mortgage to make their monthly payments more affordable. MHA was subsequently expanded to include a second lien modification program, a foreclosure alternatives program for homeowners seeking a short sale or deed-in-lieu of foreclosure, a principal reduction alternative program for homeowners whose home is valued at significantly less than the home mortgage balance, and programs to help homeowners who are unemployed.

The Program's efforts to raise awareness of HAMP included creating a fact sheet in English and Spanish for distribution at section 341 meetings of creditors, so named because the meetings are mandated under 11 U.S.C. § 341; providing HAMP application forms in the section 341 meeting rooms; developing bankruptcy-specific Frequently Asked Questions (FAQs) relating to HAMP; and producing a training video to inform trustees about HAMP and how trustees can facilitate the HAMP process where appropriate. The fact sheet, FAQs, and video are available on the Program's Web site at http://www.justice.gov/ust/eo/public_affairs/consumer_info/index.htm under "Consumer Information: For Homeowners."

LANGUAGE ASSISTANCE PLAN

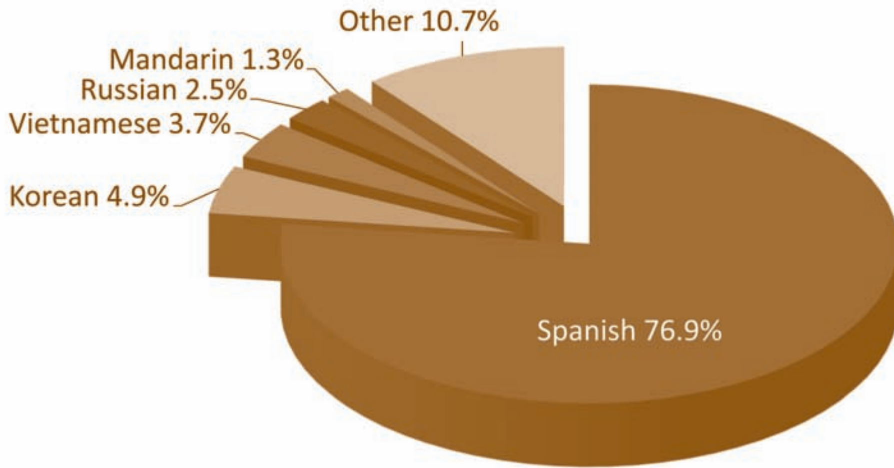
In FY 2010, the Program continued to improve and expand the free interpreter services first offered during the previous fiscal year. In FY 2009, the Program began offering free telephonic interpreter services at section 341 meetings of creditors, for persons with limited English proficiency. At the section 341 meeting, the debtor is questioned under oath by the trustee, U.S. Trustee, or creditors about his or her financial affairs. In FY 2009, the Program purchased conference-quality speaker phones and contracted with telephonic interpreter service providers. The Program also engaged in extensive training and outreach to ensure that Program personnel, trustees, and trustees' staff members understood how to use the telephone interpreter services, and to ensure that bankruptcy courts and debtors' counsel knew the services were available.

In FY 2010, the Program continued to provide interpreter services via conference-quality telephones in over 250 section 341 meeting rooms controlled by the USTP. In addition, the Program explored the use of alternative technologies to enhance the quality of interpreter services in section 341 meetings held in remote locations where telephone lines are not available.

Telephone interpreter services were used 33,023 times in FY 2010. Based on data from the interpreter service companies, during that period 76.9 percent of the services requested were in Spanish, followed by Korean (4.9 percent), Vietnamese (3.7 percent), Russian (2.5 percent), and Mandarin (1.3 percent), with the remaining 10.7 percent divided among 73 other languages.

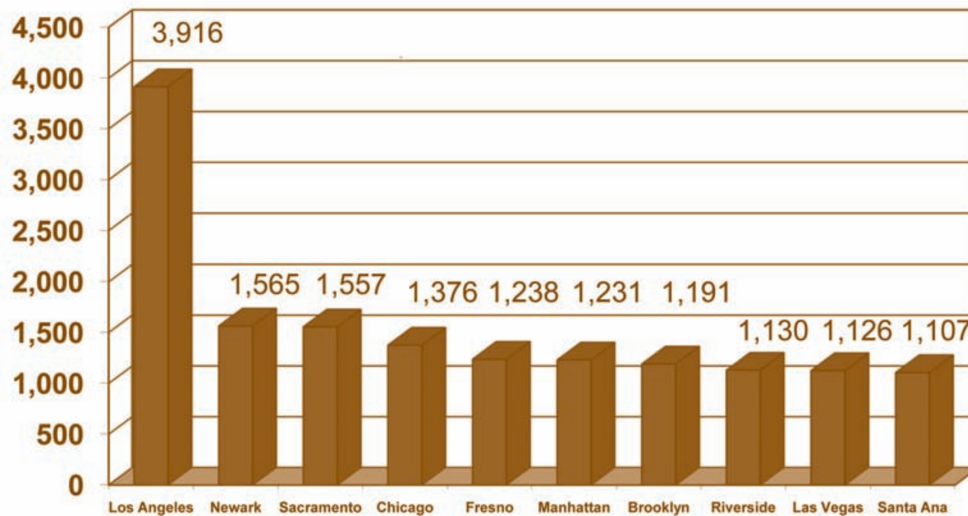
The data on the languages interpreted and the locations where services are provided are collected monthly by the USTP for oversight, billing, and statistical purposes. The USTP makes the data available to the public in delimited text files on the USTP s Web site at http://www.justice.gov/ust/eo/public_affairs/data_files/lap/index.htm and on the Web site www.data.gov. The data is also available on the USTP's "interactive dashboard" at http://www.justice.gov/ust/eo/public_affairs/data_files/lap/lap_statistics/index.htm, which allows the user to view compiled data graphically under three tabs displaying data by state, city, and language.

Figure 7.4. Telephone Interpreter Usage by Language, FY 2010
Total Number of Calls - 33,023



Source: Executive Office for U.S. Trustees

Figure 7.5. Telephone Interpreter Usage by City, FY 2010
(Top 10 Cities, Based on Number of Calls, for FY 2010)



During FY 2010, 33,023 calls were made to the telephone interpreter services by bankruptcy trustees.

Source: Executive Office for U.S. Trustees

Chapter 7. Trustee Oversight

Supervision of Case Administration

USTP staff monitor trustee case administration to ensure that cases are handled efficiently, effectively, and in accordance with applicable law and Program policy.

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 approximately 111,000 such reports in FY 2010. 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 2010, Program staff prepared about 550 performance reviews of chapter 7 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 155 performance reviews of chapter 12 and chapter 13 trustees in FY 2010.

Supervision of Financial Operations

Program staff also engage in oversight of trustees' financial operations to ensure compliance with mandatory safeguards of bankruptcy estate funds.

Chapter 7 trustee operations are either audited by independent certified public accountants or reviewed by Program staff every four years. During FY 2010, about 270 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 2010.

Chapter 13 trustees are audited by independent certified public accountants every year. Chapter 12 trustees are either audited by independent certified public accountants or reviewed by Program staff every three years. During FY 2010, 192 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.

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

Type of Provider	Number Approved
Credit Counseling Agencies	165
Debtor Education Providers	265

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 only 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	$60
Debtor Education	$50	$58

Source: Executive Office for U.S. Trustees

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

Type of Service	No Cost	Reduced Cost
Credit Counseling	7%	15%
Debtor Education	10%	12%

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

Type of Service	In-Person	Internet	Telephone	Internet/Telephone
Credit Counseling Agencies	5%	42%	18%	35%
Debtor Education Providers	7%	70%	10%	13%

Source: Executive Office for U.S. Trustees

Quality of Services

In FY 2010, the Program completed 12 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 180 complaints against approved agencies and providers. The most common complaints involved authenticity of credit counseling certificates, timely issuance of credit counseling certificates, counseling or instruction through authorized representatives pursuant to powers of attorney, and bankruptcy court inquiries regarding certificate validity and/or credit counseling agency approval to provide services.

Federal Rulemaking

The Executive Office for U.S. Trustees' proposed final rules for approval of pre-bankruptcy credit counseling agencies (the credit counseling rule) and providers of personal financial management courses (the debtor education rule) have been reviewed and revised, and await final approval and publication.

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