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# UNITED STATES TRUSTEE PROGRAM

## ANNUAL REPORT

### FISCAL YEAR 2011



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ANNUAL REPORT  
FISCAL YEAR 2011

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## MESSAGE FROM THE DIRECTOR


The U.S. Trustee Program's efforts to help consumer bankruptcy debtors who have been victimized by mortgage servicers took center stage during FY 2011, as the Program engaged in a concentrated effort to redress servicers' violations while participating in global settlement talks, led by the Associate Attorney General, that ultimately resulted in the largest federal-state settlement ever reached in the United States.

In the fall of 2010, the Program launched an initiative, designed in coordination with the President's Financial Fraud Enforcement Task Force (FFETF), to enhance enforcement against violations by mortgage servicers in approximately one-fifth of our 95 field offices. Over an eight-month period, USTP employees reviewed more than 37,000 documents filed by major mortgage servicers in bankruptcy courts, and took discovery in more than 175 cases across the country. These enforcement actions were met with stiff resistance throughout FY 2011, including litigation in more than 300 cases and 30 appeals of court orders requiring servicers to produce information on their policies and practices.

At the same time, under the leadership of Associate Attorney General Tom Perrelli, the USTP coordinated with other components of the Department of Justice, other federal agencies, and state Attorneys General to negotiate with the major mortgage servicers in an attempt to obtain redress for reckless and abusive mortgage practices. These efforts culminated, in February 2012, in a landmark agreement among the nation's five largest mortgage servicers, the federal government, and 49 states. The agreement required the payment of \$25 billion in penalties and assistance to homeowners, as well as adherence to a uniform and comprehensive set of mortgage servicing standards that address every type of servicer misconduct identified by the USTP. Attorney General Eric Holder, in his remarks announcing the settlement, recognized the USTP's "outstanding work" and noted that the USTP was one of the first federal agencies to investigate mortgage servicers' abuse of homeowners in financial distress. The Attorney General credited the information and evidence obtained from the Program's investigations and litigation as essential in reaching the historic settlement.

Even as Program employees pursued these labor-intensive investigations and litigation, the Program undertook its many other duties to protect the integrity of the bankruptcy system for all stakeholders – debtors, creditors, and the public. The Program took more than 17,650 formal civil enforcement actions, and contributed to the FFETF's "Operation Broken Trust," a nationwide law enforcement sweep that targeted civil and criminal investment fraud. The USTP maintained its robust oversight of chapter 11 cases, including the enforcement of statutory restrictions on the payment of bonuses to executives of companies seeking chapter 11 relief. The Program supervised the private trustees who disbursed more than \$9 billion in chapter 7 and chapter 13 cases during the year, and approved and reviewed the services of pre-bankruptcy credit counseling agencies and post-bankruptcy debtor education providers.

These accomplishments would not have been possible without the hard work and dedication of the employees in our offices across the nation. I invite you to read more about the USTP's activities in our *Fiscal Year 2011 Annual Report*.



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 2011, the Program had 1,239 employees, consisting of attorneys, financial analysts, paralegals, and support staff. More than 90 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 2011, the Program's total funding level was \$222.4 million, consisting of \$218.8 million in appropriations and \$3.6 million in carry-over funding from the previous fiscal year.

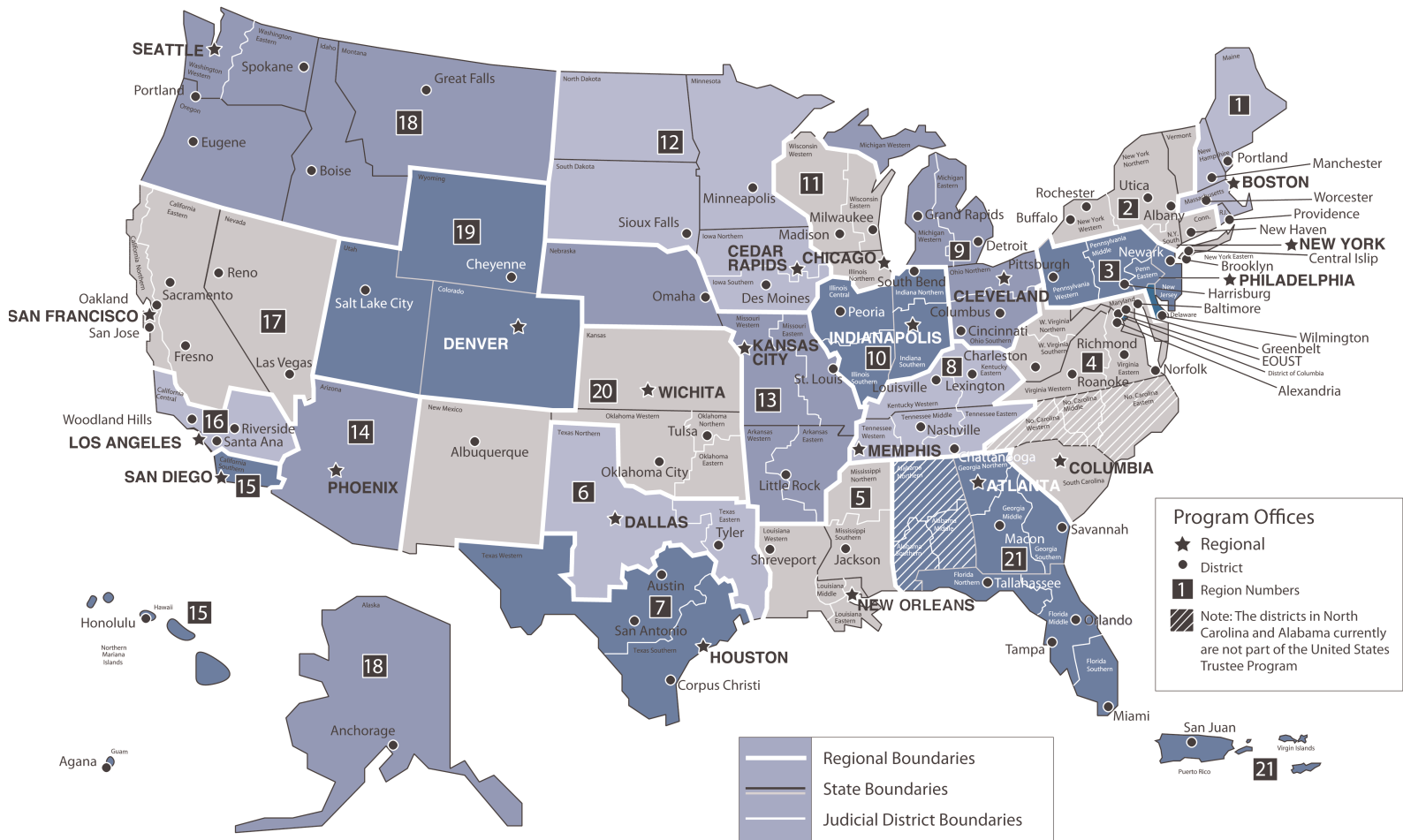
### ***Spotlight – Program Employees Receive Attorney General's Awards***

*Eight USTP employees were honored at the Attorney General's Awards Ceremony for their activities during FY 2011. Receiving the Attorney General's Award for Distinguished Service (Group Award), for their leadership in developing, implementing, and coordinating the Program's comprehensive nationwide initiative to address misconduct and abusive practices by mortgage servicers and other creditors in bankruptcy cases were Ramona Elliott, Deputy Director/General Counsel; Gail Geiger, Assistant U.S. Trustee, Eugene, Oregon; Diarmuid Gorham, Trial Attorney, Office of the General Counsel; Patrick Layng, U.S. Trustee, Region 11; Michael Ridgway, Associate General Counsel for Consumer Practice; Lisa Tingue, Trial Attorney, Worcester, Massachusetts; and Lisa Tracy, Deputy General Counsel. Susan Comisford, a Legal Clerk in the Columbus office, received the Attorney General's Award for Excellence in Administrative Support (Secretarial) for her superior organizational skills, professional attitude, and tireless efforts to improve office operations.*

*In addition, the FY 2010 Attorney General's Awards for Excellence in Administrative Support and for Excellence in Legal Support were received, respectively, by Debbie Chase of the Program's Regions 5 and 21 and by Rita Mierzwa of the Program's Chicago office. Ms. Chase's efforts were instrumental in helping displaced USTP employees during several hurricanes, and Ms. Mierzwa took on duties that included serving on the Chicago office's creditor abuse enforcement team and assisting with investigations.*

# CHAPTER 1. MISSION, ORGANIZATION, AND ADMINISTRATION

## U.S. TRUSTEE PROGRAM MAP OF REGIONS AND OFFICES





# 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](http://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 declined slightly in FY 2011, after three years of substantial increases. In the 88 judicial districts covered by the Program, more than 1.4 million bankruptcy cases were filed in FY 2011, representing an 8 percent decrease from FY 2010.

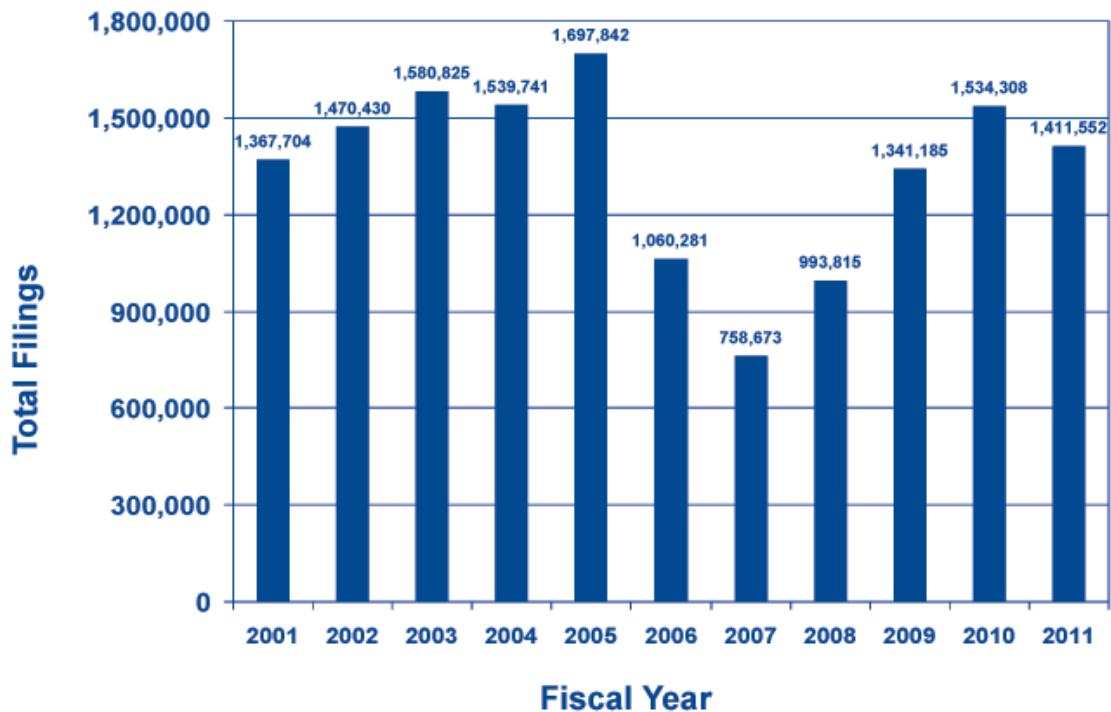
## CHAPTER 2. BANKRUPTCY CODE AND BANKRUPTCY FILINGS

**Table 2.1. Bankruptcy Filings by Chapter, FY 2011**

Bankruptcy Chapter	Filings in USTP Districts
All Chapters	1,411,552
Chapter 7	1,012,133
Chapter 11	11,499
Chapter 12 and Other Cases	754
Chapter 13	387,166

Source: Administrative Office of the U.S. Courts

**Figure 2.1. Total Bankruptcy Filings in USTP Districts, FY 2001-2011**



Totals do not include Alabama and North Carolina.

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 2011, the Program's civil enforcement consumer protection activity included more than 9,800 actions, inquiries, and problems identified.

Table 3.1 shows actions and inquiries in which the Program participated in FY 2011. In general, "actions" means formal motions, complaints, and objections filed in a court or other tribunal; "inquiries" means enforcement activities that do not require court resolution, such as written and verbal inquiries made to creditors and their counsel; and "problems identified" means 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 2011 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**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Filed	1,908
Decided	1,550
Success Rate	97.5%
Inquiries and Problems Identified	7,976

*Source: Executive Office for U.S. Trustees*

### *Combating Creditors' Abusive Conduct*

The Program investigates and takes action against mortgage servicers, credit card issuers, collection agencies, and other creditors that engage in abusive conduct that violates the Bankruptcy Code and/or harms consumers in bankruptcy. Such conduct may include filing false, inaccurate, or improper claims; abusing the debt reaffirmation procedures; improperly using personally identifiable information; and violating the automatic stay or the discharge injunction, which protect against collection activity.

## CHAPTER 3. CIVIL ENFORCEMENT

**Table 3.2. Abusive Conduct by Mortgage Servicers and Other Creditors**

Actions & Inquiries	FY 2011
Filed	559
Decided	315
Success Rate	99.0%
Inquiries	2,924

*Source: Executive Office for U.S. Trustees*

One of the Program’s highest priorities in FY 2011 was to investigate and pursue mortgage servicers’ violations of the Bankruptcy Code. In November 2010, the Program launched a concentrated enforcement effort that included 100 percent review, in selected jurisdictions, of mortgage-related proofs of claim and contested motions for relief from stay filed by selected mortgage servicers.

This concentrated effort was designed in coordination with the President’s Financial Fraud Enforcement Task Force, a nationwide group of federal, state, and local agencies working to address white collar fraud. The concentrated effort grew out of the Program’s previous investigations of mortgage servicer violations of the Bankruptcy Code. Over time, it became clear that mortgage servicers’ inaccurate proofs of claim and other accounting inaccuracies were an industry-wide, national problem that called for stepped-up enforcement activity.

Through this effort, the Program uncovered a large number of discrepancies requiring further investigation. These discrepancies include:

- Improper documentation, including “robo-signing” of documents.
- Double-dipping to recover twice on escrow amounts due.
- Excessive fees for services provided after a borrower defaults, such as drive-by inspections to ensure the property is maintained.
- Apparent mis-accounting relating to amounts claimed to be in default.
- Claiming amounts due without disclosing that the debtor is in a trial mortgage modification program that permits lower payments.

During 2011, the Program filed hundreds of requests for discovery against mortgage servicers to determine the cause of these continuing violations and the appropriate remedies. Although mortgage servicers sometimes demonstrated a willingness to provide some information on a case-by-case basis, they resisted providing information on national policies and procedures that would shed light on systemic problems. The servicers consistently opposed the USTP’s discovery requests, filing around 280 motions to quash in FY 2011. The USTP prevailed in almost all of the discovery disputes decided during the fiscal year, and obtained discovery in over 175 cases nationwide. In a number of judicial districts, United States Attorneys helped the Program carry out investigations and litigation.

## CHAPTER 3. CIVIL ENFORCEMENT

While pursuing the concentrated effort with 100 percent review of certain mortgage servicers' claims in selected jurisdictions, the Program also continued its enforcement actions against violations by mortgage servicers in all jurisdictions.

For example, in response to an inquiry by the Columbus office, a bank filed an amended proof of claim to reduce its mortgage arrearage claim by almost 94 percent – from \$52,042 to \$3,156 – in a chapter 13 case pending in the Southern District of Ohio. The bank's original proof of claim for missed payments and charges of \$52,042 appeared excessive, given the balance remaining on the mortgage.

The Program also actively participated in discussions, led by the Department of Justice, with major mortgage servicers regarding a comprehensive solution to mortgage servicer violations inside and outside of bankruptcy. A settlement was announced on February 9, 2012, under which the nation's five largest mortgage servicers agreed to pay \$25 billion and to adhere to a new set of rigorous servicing standards.

### *Trends – Creditor Abuse*

*The USTP's efforts to combat creditor abuse increased markedly in recent years. USTP actions and inquiries include those regarding false, inaccurate, and/or improper claims; reaffirmation abuse; violations of the automatic stay and/or the discharge injunction; motions for relief from the automatic stay; and improper creditor solicitation. As shown in Table 3.3, creditor abuse actions increased nearly tenfold over a five-year period.*

**Table 3.3. Trends – Creditor Abuse Actions and Inquiries by USTP, FY 2007-2011**

Fiscal Year	Actions	Inquiries
2007	57	44
2008	130	190
2009	318	3,207
2010	122	2,780
2011	559	2,924

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. In some cases, the USTP takes action under section 110 against the operators of foreclosure rescue or credit repair schemes. 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.

## CHAPTER 3. CIVIL ENFORCEMENT

**Table 3.4. Bankruptcy Petition Preparers under § 110**

Actions & Inquiries	FY 2011
Filed	504
Decided	481
Success Rate	98.8%
Inquiries	1,119
Fines Imposed	\$1,915,839
Fees Recovered	\$419,084
Injunctions	1156

*Source: Executive Office for U.S. Trustees*

Ruling for the Sacramento office after a hearing, the Bankruptcy Court for the Eastern District of California ordered an individual to pay nearly \$10,000 to clients who originally contacted her for credit repair services, and to pay \$3,750 in fines to the U.S. Trustee. The individual collected clients' financial information and prepared intake sheets that she transmitted to a bankruptcy petition preparer, who typed chapter 7 bankruptcy documents for the clients to file. The individual paid the petition preparer \$125 to type the bankruptcy documents, while charging the clients nearly \$3,000 in fees. The court found that the individual's actions in gathering and preparing information caused her to be subject to the requirements of section 110 governing bankruptcy petition preparers. The court concluded that she violated that statute by, among other things, failing to identify herself on the clients' bankruptcy papers, failing to disclose the fee she received from the debtors, and using "legal" in her advertisements.

### ***Spotlight – USTP Paralegal Discusses Petition Preparer Enforcement Actions***

*At a meeting of a local association of paralegals, Paralegal Specialist Donna Dupree of the Riverside, California, office discussed the U.S. Trustee's role in preventing unlawful conduct by bankruptcy petition preparers. Many paralegals in the audience wanted to expand their practices into the bankruptcy area and were unaware of the statutory restrictions designed to protect consumer bankruptcy filers. As part of the Riverside office's efforts to curb abusive conduct by bankruptcy petition preparers, Ms. Dupree explained that preparers are subject to sanctions if they perform services other than typing bankruptcy forms. She also reviewed the U.S. Trustee's guidelines for monitoring compliance with Bankruptcy Code section 110 and discussed the U.S. Trustee's enforcement actions against petition preparers.*

## CHAPTER 3. CIVIL ENFORCEMENT

### *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 3.5. Attorney Fee Disgorgements under § 329**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Filed	635
Decided	579
Success Rate	95.7%
Inquiries	1,443
Amount Disgorged	\$2,615,947

Source: Executive Office for U.S. Trustees

**Table 3.6. Other Attorney Misconduct**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Motions for Sanctions Filed	127
Decided	104
Success Rate	95.2%
Inquiries	366
Sanctions	\$178,533
Referrals to State Bar	22
Disciplinary Rulings Issued	8

Source: Executive Office for U.S. Trustees



## CHAPTER 3. CIVIL ENFORCEMENT

A bankruptcy court approved an agreed order barring an attorney from practicing bankruptcy law for two years and directing him to pay a \$25,000 fine, cooperate with former clients and their attorneys, and refrain from seeking further fees from clients. After the U.S. Trustee filed a complaint against the attorney, he acknowledged that he violated a federal bankruptcy rule through conduct that included a pattern of incompetence, gross negligence, failure to comply with ethical responsibilities, and failure to represent his debtor clients diligently. Based on the U.S. Trustee's enforcement action, the attorney also agreed with the state bar to be suspended from the practice of law for two years.

### *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 3.7. Debtor Identification**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Filed	36
Decided	27
Success Rate	100.0%
Problems Identified	2,085
Petitions Amended or Form B21 (Statement of Social Security Number) Filed	2,053

*Source: Executive Office for U.S. Trustees*

Ruling for the Chicago office, the Bankruptcy Court for the Northern District of Illinois dismissed the third *pro se* chapter 7 case that an individual had filed in her elderly mother's name in less than one year. The court also barred further refilings in the mother's name for one year, unless requested by a state court-appointed guardian on the mother's behalf. The mother did not authorize the bankruptcy filings, sign the bankruptcy documents, or appear at the section 341 meetings of creditors. Instead, the daughter appeared, claiming authority to file bankruptcy under a purported power of attorney – which did not comply with state law – and testifying that her mother had mental and physical disabilities. A reverse mortgage had been taken out on the mother's home prior to the bankruptcy filings, and the daughter could not adequately explain how the funds had been spent. In addition, in all three bankruptcy filings, the daughter failed to disclose key information. The U.S. Trustee sought dismissal of the case and the bankruptcy court appointed the Cook County Public Guardian to investigate the mother's well-being. After conducting a preliminary investigation, the public guardian supported dismissal of the case.

## CHAPTER 3. CIVIL ENFORCEMENT

### 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, or who 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 3.8. Denial or Revocation of Discharge under § 727**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Filed	1,937
Decided	1,805
Success Rate	99.11%
Inquiries	2,635
Amount Not Discharged	\$1,598,564,586

*Source: Executive Office for U.S. Trustees*

Ruling for the Portland office after a three-day trial, the Bankruptcy Court for the District of Oregon denied a chapter 7 debtor's discharge, resulting in the exception from discharge of \$1,870,481 in unsecured debt. The debtor owned multiple companies that were formed to buy, rehabilitate, and resell distressed properties. Among other things, the court found the debtor knew he had significant income and chose to conceal it.

#### *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. In some cases where abuse is presumed under the statute, the U.S. Trustee may decline to seek dismissal if the debtor rebuts the presumption by demonstrating that dismissal is not appropriate due to job loss or other factors. In addition, even if the filing is not presumed abusive, the U.S. Trustee 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.

## CHAPTER 3. CIVIL ENFORCEMENT

In FY 2011, approximately 13 percent of chapter 7 debtors had income above their respective states' medians. 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 3.9. Dismissal for Abuse under § 707(b)**

Actions & Inquiries	FY 2011
Filed	3,323
Decided	2,583
Success Rate	98.7%
Inquiries	17,654
Amount Not Discharged	\$477,191,501

*Source: Executive Office for U.S. Trustees*

The Bankruptcy Court for the Central District of California dismissed a debtor's case for bad faith and barred him from refiling bankruptcy for two years, preventing the chapter 7 discharge of \$210,681 in unsecured debt. The Los Angeles office alleged the debtor incurred at least \$115,665 in unsecured debt on seven of his 25 credit cards in a four-month period during which he testified he was unemployed. The debtor's credit card expenditures included \$44,993 to lease three luxury vehicles, \$39,379 for jewelry and luxury items, and \$31,929 for miscellaneous purchases including a \$10,000 cell phone. Documents subpoenaed by the U.S. Trustee revealed that, when the debtor applied for credit cards, he reported monthly income of \$10,500 even though his actual monthly income was approximately \$1,000. The debtor had no personal financial records and gave inconsistent explanations about what happened to the items he purchased.

## CHAPTER 3. CIVIL ENFORCEMENT

### *Trends – Declinations of Motions to Dismiss for Abuse*

*For the past three years, the USTP has declined to seek dismissal for abuse in more than 60 percent of consumer bankruptcy cases that are presumed abusive, often because the debtor's financial situation changed as a result of job loss, decreased income, or another reason. The declination rate for FY 2011, shown in Table 3.10, will increase slightly as cases filed during the year are completed.*

**Table 3.10. Trends – USTP Declinations of Motions to Dismiss for Abuse, FY 2007-2011**

Fiscal Year	Cases Presumed Abusive	Declinations	Percent of Cases with Declinations
2007	6,601	2,751	41.7%
2008	8,581	4,839	56.4%
2009	9,973	6,640	66.6%
2010	9,172	5,886	64.2%
2011	7,836	4,904	62.6%

*Source: Executive Office for U.S. Trustees*

### *Debtor Audits*

The Program is authorized by law to contract with independent firms to perform audits of consumer chapter 7 and chapter 13 cases. 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 where the case is filed. In a case designated for audit, the debtor is required to cooperate with the audit firm, 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. For budgetary reasons, the USTP suspended the designation of cases for audit for the remainder of FY 2011 on June 9, 2011.

In a case that came to the attention of the Cleveland office after a debtor audit, the Bankruptcy Court for the Northern District of Ohio entered an agreed order denying the debtors' chapter 7 discharge of \$879,858 in unsecured debt. The debtor audit report noted that the debtors under-reported their income and accounts receivable in their bankruptcy case. After the U.S. Trustee investigated facts disclosed in the audit report, the debtors agreed to waive their discharge.

## CHAPTER 3. CIVIL ENFORCEMENT

Annually, the Attorney General is required to make a public report of the audit results, 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](http://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 suspected 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 (FBI), United States Secret Service, United States Postal Inspection Service, Internal Revenue Service-Criminal Investigation, Office of the Inspector General for the Department of Housing and Urban Development, and Office of the Inspector General for the Social Security Administration.

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.

The Program is an active member of the President's Financial Fraud Enforcement Task Force, a coalition of federal, state, and local law enforcement, investigatory, and regulatory agencies working together to combat financial crimes. In FY 2011, the USTP participated in "Operation Broken Trust," a nationwide law enforcement sweep organized by the FFETF to target civil and criminal investment fraud. The Program's role in the sweep included filing or resolving objections to discharge in bankruptcy cases involving alleged participants in investment fraud, and referring a number of criminal cases to law enforcement. The USTP worked closely with agencies including the FBI, IRS, Securities and Exchange Commission (SEC), U.S. Postal Inspection Service, and Commodity Futures Trading Commission.

The Program also participates in more than 90 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country that focus on investigating and prosecuting suspected bankruptcy fraud and related crimes. In addition, the Program provides targeted training to staff, chapter 7 and chapter 13 trustees, and law enforcement.

#### ***Spotlight – USTP Bankruptcy Analysts Train FBI Staff***

*Two USTP bankruptcy analysts provided three days of training on bankruptcy-related mortgage fraud schemes to operations specialists from the FBI's headquarters in Washington, D.C. The training in Wichita, Kansas, was provided by Ed Walsh of the Wichita office and Todd Wright of the Lexington, Kentucky, office. The two bankruptcy analysts discussed the use of the bankruptcy system in mortgage fraud schemes and a multi-state foreclosure rescue scheme that was successfully prosecuted in the District of Kansas. USTP bankruptcy analysts are accountants who focus on the financial information provided in bankruptcy cases.*

## CHAPTER 4. CRIMINAL ENFORCEMENT

### CRIMINAL REFERRALS

In FY 2011 the Program made 1,968 bankruptcy and bankruptcy-related criminal referrals, a 14.4 percent increase over the 1,721 criminal referrals made the prior year. One referral often contains more than one allegation. The five most common allegations in referrals made during FY 2011 were tax fraud (35.8 percent), false oath/false statement (33.2 percent), concealment of assets (24.8 percent), bankruptcy fraud scheme (21.5 percent), and identity theft or use of false or multiple Social Security numbers (15.1 percent).

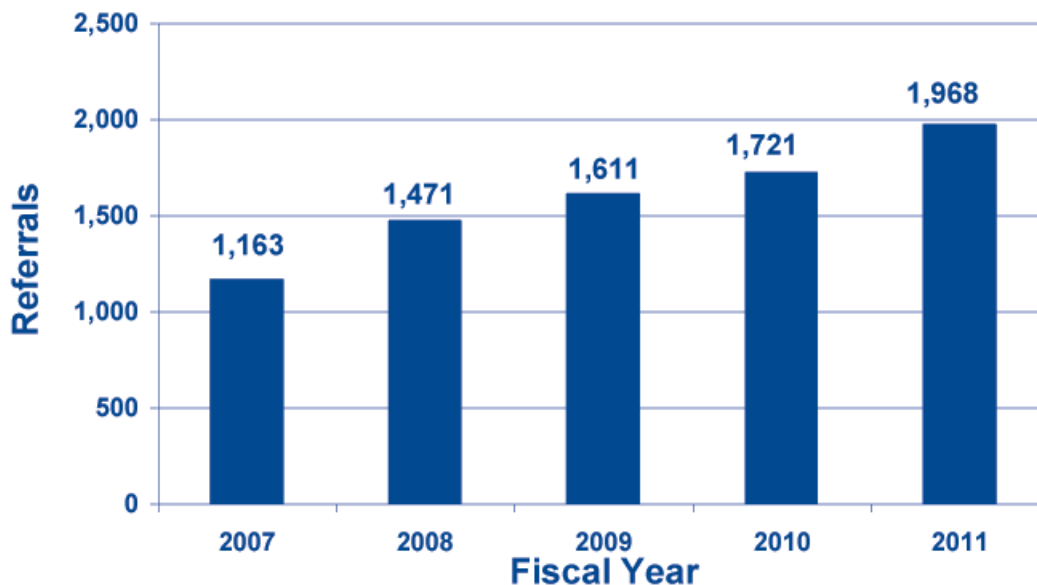
The Program’s annual report on criminal referrals, outcomes of referrals, and efforts to prevent bankruptcy fraud and abuse is posted on the Program’s Internet site at [www.justice.gov/ust/eo/public\\_affairs/reports\\_studies/index.htm](http://www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm).

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](mailto:USTP.Bankruptcy.Fraud@usdoj.gov).

#### *Trends – Criminal Referrals*

*The number of criminal referrals made by U.S. Trustees increased by 69 percent between FY 2007 and FY 2011. As shown in Figure 4.1, U.S. Trustees made nearly 8,000 criminal referrals over the last five years.*

**Figure 4.1. Trends – Criminal Referrals by USTP, FY 2007-2011**



Source: Executive Office for U.S. Trustees

## CHAPTER 4. CRIMINAL ENFORCEMENT

### USTP PARTICIPATION IN CASES

The following are examples of criminal matters in which the USTP worked with law enforcement in FY 2011.

A foreclosure scheme operator was sentenced in the Eastern District of Pennsylvania to more than 13 years in prison after pleading guilty to a scheme that involved over 200 homeowners and their properties, the loss of at least \$400,000, and other fraudulent activity. The scheme operator targeted financially distressed homeowners facing foreclosure; falsely promised to save their homes; had the homeowners transfer titles of the homes to either a trust, a straw purchaser, or himself; and rented the properties back to the homeowners. The scheme operator retained the rent proceeds; failed to pay the mortgage companies; and delayed foreclosure on the properties by filing bankruptcy petitions, often without the homeowners' knowledge or consent. The Philadelphia office referred the matter and assisted with the prosecution, and a trial attorney from that office served as a Special Assistant U.S. Attorney in the case.

The former owner of a luxury jewelry retailer was sentenced in the Southern District of New York to six years in prison, followed by three years of supervised release, for wire fraud, bankruptcy fraud, and concealment of assets. The owner and the company engaged in a scheme to embezzle and double-pledge assets with an estimated value of more than \$48 million. After the company and related debtors were placed in chapter 11 bankruptcy, the owner embezzled tens of millions of dollars in bankruptcy estate property, sold the property, and kept the proceeds for himself or to pay off other debts. He repeatedly lied to the bankruptcy court and to creditors in sworn deposition testimony, sworn affidavits, and other documents. The New York City office referred the matter for criminal prosecution.

A husband and wife were convicted of bankruptcy fraud and mail fraud after a six-day trial in the Northern District of Florida. The evidence showed the debtors made sham sales of assets to relatives with an understanding they would reacquire the assets from the relatives after filing bankruptcy. The assets included a vehicle, boats, household property, jewelry, stocks, and other investments worth approximately \$380,000. The evidence further established the debtors moved briefly from Iowa to Florida, where bankruptcy exemptions allow debtors to shield more property from the reach of creditors; filed bankruptcy; moved back to Iowa; and retrieved the assets from the relatives. The Cedar Rapids office referred the matter and assisted in the investigation and prosecution, and the Tallahassee Assistant U.S. Trustee testified as a bankruptcy expert at trial.

A man who fraudulently rented out the properties of homeowners in bankruptcy was sentenced in the District of Utah to three and a half years in prison and ordered to pay \$321,000 in restitution. The man admitted that, through two companies, he and a partner rented out homes in Idaho and Colorado without the knowledge or consent of homeowners who had vacated the properties after filing bankruptcy. The tenants were not told that the properties were being rented to them without the owners' consent. The Salt Lake City office referred the criminal matter.



## CHAPTER 4. CRIMINAL ENFORCEMENT

In the Northern District of Indiana, a participant in a mortgage fraud scheme was sentenced to eight years in prison and three years of supervised release, and ordered to pay a total of \$269,967 in restitution to six lenders. The man and his son caused residential home buyers to incur almost \$3.5 million in mortgage debt on at least 60 properties. Among other things, they brokered deals, falsified buyers' income and assets, forged signatures, refused to let buyers see the interiors of properties they were buying, and concealed from lenders the fact that buyers had simultaneously applied for other mortgage loans. After some of the home buyers filed bankruptcy, the South Bend office investigated the matter and referred it to the U.S. Attorney. The USTP's Regional Criminal Coordinator served as a Special Assistant U.S. Attorney in the criminal case, and the South Bend office assisted.

# CHAPTER 5. LITIGATION IN CHAPTER 11 REORGANIZATIONS

## U.S. TRUSTEES' DUTIES

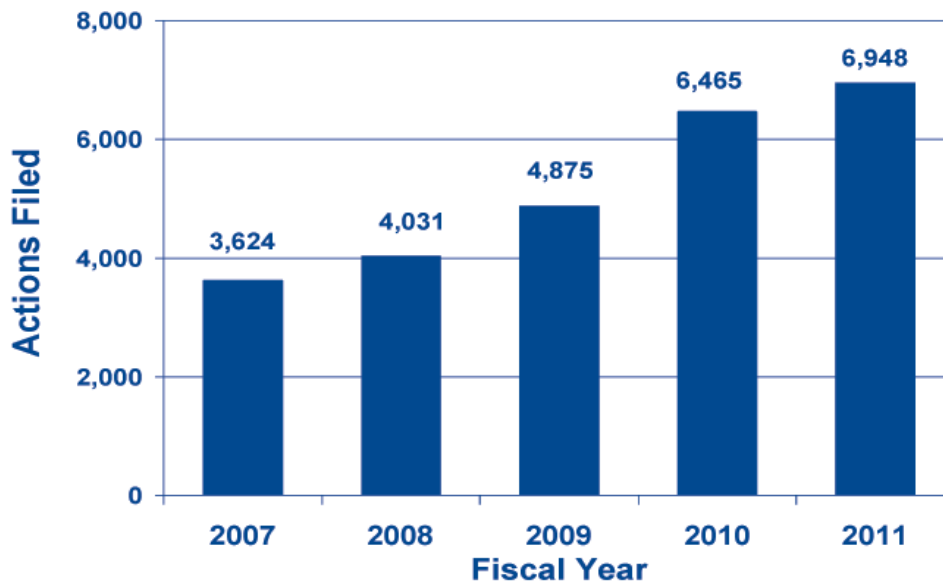
U.S. Trustees perform many duties in chapter 11 cases to help ensure that cases move as expeditiously as possible, parties comply with Bankruptcy Code requirements, and the interests of all parties, as well as the public interest, are taken into account. Some of the U.S. Trustee's primary responsibilities 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 2011 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.

### *Trends – Chapter 11 Filings and Actions*

*From FY 2007 through FY 2011, chapter 11 filings doubled, and actions filed by the USTP in chapter 11 cases increased by 92 percent. USTP actions include those filed under sections 1112(b), 1125, 1129, 1104, and 330, and objections to debtors' management compensation plans.*

**Figure 5.1. Trends – Chapter 11 Actions Filed by USTP, FY 2007-2011**



Source: Executive Office for U.S. Trustees

## 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

## CHAPTER 5. LITIGATION IN CHAPTER 11 REORGANIZATIONS

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**

<b>Actions</b>	<b>FY 2011</b>
Filed	107
Decided	93
Success Rate	93.5%

*Source: Executive Office for U.S. Trustees*

After a contested hearing on a motion by the Las Vegas office, the Bankruptcy Court for the District of Nevada ordered the appointment of a trustee in the chapter 11 case of a real estate development investment business. The company promised that investments were secured by collateral and that investors would receive high rates of return and the opportunity to reinvest in different projects. In reality, the company failed to inform some investors that the collateral purportedly securing their investments was in default; offered valueless security as collateral for some reinvestment transactions; and used reinvestment transactions to keep investors from understanding the status of their investments. When the company filed bankruptcy, it listed almost \$160 million in unsecured claims held primarily by investors. The SEC joined the U.S. Trustee’s motion for appointment of a trustee.

A motion by the Savannah office to appoint an examiner in the chapter 11 case of a construction and development company was granted by the Bankruptcy Court for the Southern District of Georgia. The U.S. Trustee alleged the company made significant monetary transfers to insiders before filing bankruptcy and made unauthorized transfers after filing bankruptcy.

## CHAPTER 5. LITIGATION IN CHAPTER 11 REORGANIZATIONS

### 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 the Bankruptcy Code.

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

Actions & Inquiries	FY 2011
Filed	930
Decided	752
Success Rate	89.2%
Inquiries	1,239

*Source: Executive Office for U.S. Trustees*

Sustaining the objections of the Wilmington office and the chapter 11 debtor, the Bankruptcy Court for the District of Delaware barred the retention of two law firms as counsel to the unsecured creditors' committee appointed in the case. After an evidentiary hearing, the court found the law firms breached their ethical duties; they actively assisted an individual who solicited creditors' proxies so he could attend the creditors' committee formation meeting and vote to select counsel. The court also found one of the law firms provided legal advice to creditors through the individual to encourage the firm's retention as counsel, but failed to comply with the disclosure requirements of the Bankruptcy Code and Bankruptcy Rules. The court concluded both law firms' improper business solicitations and failure to comply with disclosure requirements barred them from being retained as counsel.

### 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.

## CHAPTER 5. LITIGATION IN CHAPTER 11 REORGANIZATIONS

**Table 5.3. Professional Fee Requests under § 330**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Filed	684
Decided	593
Success Rate	95.1%
Inquiries	782
Fees Reduced/Withdrawn	\$99,449,290

*Source: Executive Office for U.S. Trustees*

The Bankruptcy Court for the Northern District of Texas reduced by nearly 40 percent – from \$1.5 million to \$912,450 – the transaction fee allowed to a financial advisor in the chapter 11 case of a major league baseball team. The Dallas office and other parties objected to the fee, arguing that the sale was attributable to previous financial advisors’ efforts and that the current advisor had hindered the competing auction bids. After a trial, the court found the evidence supported the fee reduction.

### 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. Although all parties in interest in the case have standing to object, the U.S. Trustee often is the only party that seeks to enforce these restrictions. The U.S. Trustees’ challenges to management bonuses address various factual and legal issues, including the standard for distinguishing a permissible incentive payment from an impermissible retention bonus.

**Table 5.4. Key Employee Retention Plans under § 503(c)**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Filed	23
Decided	20
Success Rate	75.0%
Inquiries	20

*Source: Executive Office for U.S. Trustees*

## CHAPTER 5. LITIGATION IN CHAPTER 11 REORGANIZATIONS

Based on objections by the Wilmington office and the unsecured creditors' committee, the Bankruptcy Court for the District of Delaware reduced by more than \$2 million a management incentive plan proposed by a chapter 11 debtor publishing company. An examiner's report implicated five company executives in pre-bankruptcy wrongdoing in connection with a leveraged buyout of the company. Eliminating those executives' bonuses saved approximately \$1.1 million. The U.S. Trustee's objection also prevented payment, under the proposed incentive plan, of a \$900,000 bonus to the debtor's chief executive officer, who resigned while the objection was pending.

### 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 5.5. Case Conversion or Dismissal under § 1112**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Filed	4,566
Decided	4,085
Success Rate	98.0%
Inquiries	1,706

*Source: Executive Office for U.S. Trustees*

On motion of the Brooklyn office, eight related chapter 11 cases were converted to chapter 7 by the Bankruptcy Court for the Eastern District of New York. The debtors represented themselves as operating companies providing bus services to school children. The U.S. Trustee's investigation revealed that the debtors' principals had transferred substantially all of the debtors' assets to non-debtor affiliates in the months before the bankruptcy filing. The U.S. Trustee obtained conversion of the cases based upon the debtors' gross mismanagement of their estates, failure to disclose numerous transfers, and violations of the Bankruptcy Code.

### 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/or do not meet statutory requirements.

## CHAPTER 5. LITIGATION IN CHAPTER 11 REORGANIZATIONS

**Table 5.6. Disclosure Statements under § 1125**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Filed	1,037
Decided	836
Success Rate	98.2%
Inquiries	540

*Source: Executive Office for U.S. Trustees*

The Bankruptcy Court for the Southern District of California held that a chapter 11 debtor's disclosure statement was inadequate and ordered the debtor to amend it. The San Diego office had objected to the disclosure statement in consultation with the SEC. The court found that the disclosure statement contained inaccurate and misleading statements regarding exemptions from SEC securities regulations, and insufficient detail regarding tax consequences and claims to be paid.

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 that do not meet statutory requirements.

**Table 5.7. Plan Confirmations under § 1129**

<b>Actions &amp; Inquiries</b>	<b>FY 2011</b>
Filed	531
Decided	410
Success Rate	94.6%
Inquiries	292

*Source: Executive Office for U.S. Trustees*

## CHAPTER 6. APPELLATE ACTIVITIES

### BANKRUPTCY-RELATED APPEALS

The Program participates in appeals of bankruptcy-related legal matters to help clarify the law, produce consistency within the bankruptcy system, and preserve the integrity of the bankruptcy system. Through its appellate practice, the Program strives to ensure that the system works fairly for all stakeholders – trustees, creditors, debtors, and professionals – and that all stakeholders fulfill their responsibilities.

The Program identifies important emerging issues, develops uniform legal positions, and advocates them as a party and as *amicus curiae* (friend of the court). The Program's appellate practice benefits from a nationwide team of attorneys who help litigate appeals at every appellate level, including bankruptcy appellate panels, district courts, courts of appeals, and the Supreme Court. Appellate attorneys in the Executive Office for U.S. Trustees in Washington, D.C., oversee the Program's appeals and coordinate with attorneys in the Program's 95 field offices in briefing and arguing appeals. The Program also assists the Department of Justice's Civil Appellate Division and the Office of the Solicitor General in bankruptcy-related matters, including appeals that the U.S. Supreme Court has accepted for review.

The Program acted as a party or as an *amicus curiae* in 126 appeals during FY 2011. The Program received written decisions in 56 appeals, winning 51 of them.

### U.S. SUPREME COURT CASES

In FY 2011, the Supreme Court decided two cases in which the Program was involved.

In *Ransom v. FIA Card Serv., N.A.*, 131 S. Ct 716 (2011), the Supreme Court agreed with the USTP's position and held that a chapter 13 debtor who does not make loan or lease payments may not claim a vehicle ownership expense deduction when determining how much the debtor can repay creditors under a repayment plan. The United States participated as *amicus curiae* before the Supreme Court. The USTP prepared the initial draft of the government's Supreme Court brief, and successfully briefed and argued the *Ransom* case before the U.S. Court of Appeals for the Ninth Circuit. Several Program attorneys were named as counsel on the government's Supreme Court brief.

In *Stern v. Marshall*, 131 S. Ct. 2594 (2011), the Supreme Court ruled that a bankruptcy court does not have constitutional authority to enter a final judgment on a debtor's state law counterclaim to a creditor's proof of claim. The Solicitor General argued as *amicus curiae* that the bankruptcy court did possess such constitutional authority. The Program assisted the Solicitor General's office in briefing the issue.

### APPEALS IN MORTGAGE SERVICER CASES

A number of appeals decided in FY 2011 arose from the USTP's efforts to curb mortgage servicers' abusive practices against homeowners in bankruptcy. As the USTP moved forward with litigation to hold mortgage servicers accountable for their actions, courts considered the scope of the U.S. Trustees' authority to investigate unlawful conduct. During FY 2011, certain mortgage servicers appealed the



## CHAPTER 6. APPELLATE ACTIVITIES

U.S. Trustees' requests for Bankruptcy Rule 2004 examination orders and related subpoenas across the country. After the Program convinced district courts to dismiss those appeals, the servicers filed appeals in several cases before the Sixth, Eighth, and Ninth Circuits. The Program convinced the circuit courts to dismiss the appeals, which allowed U.S. Trustees to conduct the Rule 2004 examinations necessary to determine whether debtors were being victimized by improper proofs of claims and stay relief motions.

Courts also considered the bankruptcy court's authority to provide relief against abuses by mortgage servicers. In *In re Taylor*, 665 F.3d 274 (3rd Cir. 2011), the U.S. Court of Appeals for the Third Circuit upheld sanctions against a bank and its law firm by noting that the bankruptcy court properly considered the effect sanctions may have on future conduct. The decision contained important language regarding the duty of a creditor's lawyer to make reasonable inquiry before representing facts to the bankruptcy court. The U.S. Trustee had appealed a district court ruling that reversed sanctions imposed by the bankruptcy court.

In contrast, in *Wells Fargo Bank, N.A. v. Stewart*, 647 F.3d 553 (5th Cir. 2011), the U.S. Court of Appeals for the Fifth Circuit struck down an injunction imposed by a bankruptcy court against a bank on the ground that, among other things, the debtor in that case had settled her dispute with the bank. The Program participated as *amicus curiae* in support of the injunction, which the bankruptcy court had imposed on its own accord.

### APPEALS INVOLVING DEBTOR CONDUCT

In other appeals, the Program sought to prevent debtors from improperly discharging their debts despite having engaged in fraud or other misconduct.

As an example, in *Stamat v. Neary*, 635 F.3d 974 (7th Cir. 2011), the U.S. Court of Appeals for the Seventh Circuit agreed with the Program and affirmed a bankruptcy court order denying the debtors' discharge for making false oaths. The debtors – a doctor and an accountant – failed to report ownership interests in various business assets, \$90,000 they had received from refinancing their home, and a payment under a litigation settlement. The Seventh Circuit rejected all of the debtors' arguments on appeal, allowing creditors to seek repayment of their debts.

## 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. At the end of FY 2011, the Program supervised the activities of 1,132 chapter 7 trustees, 41 chapter 12 trustees, and 180 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.

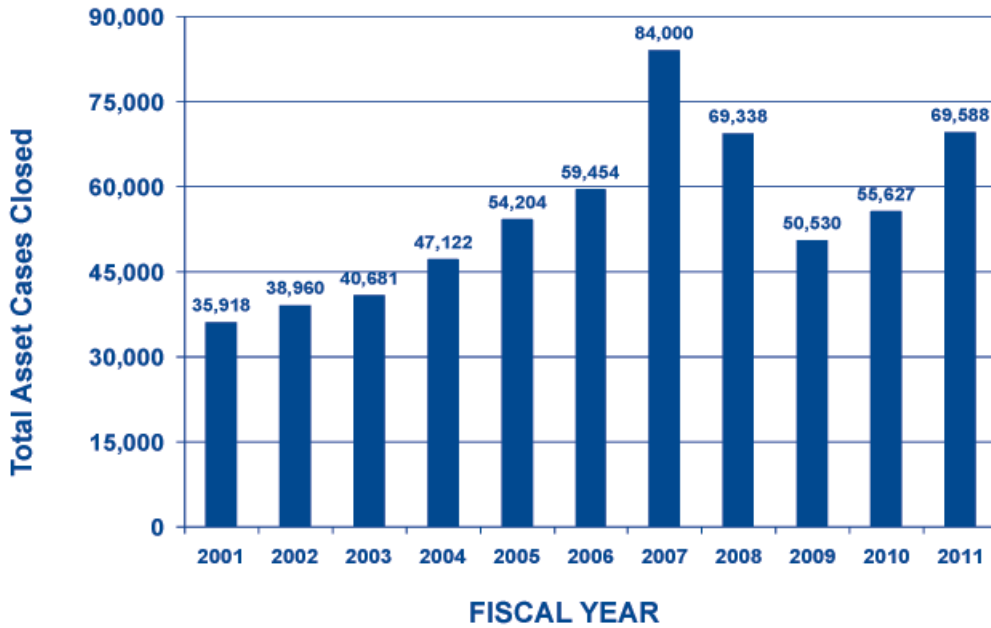
The Program provides policy guidance to the trustees concerning their duties to debtors, creditors, other parties in interest, and the U.S. Trustee; trains trustees and evaluates their performance; reviews their financial operations; ensures the effective administration of estate assets; and intervenes 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 2011, chapter 7 trustees administered 69,588 asset cases that generated more than \$2.6 billion in funds, while chapter 12 and chapter 13 trustees administered over 1.2 million cases and disbursed \$6.5 billion in assets.

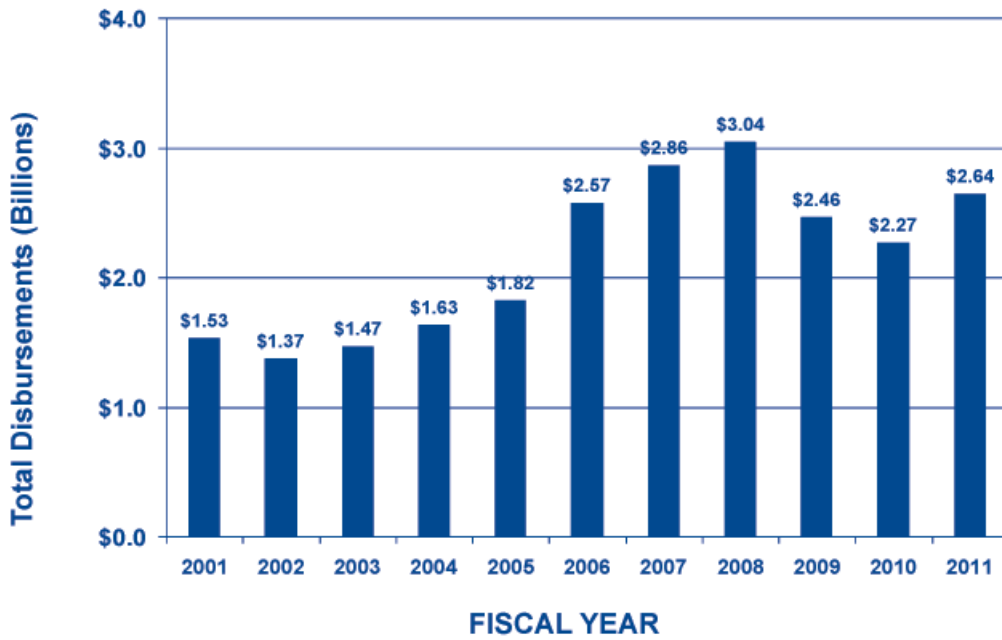
# CHAPTER 7. TRUSTEE OVERSIGHT

Figure 7.1. Chapter 7 Asset Cases Closed, FY 2001-2011



Source: Executive Office for U.S. Trustees

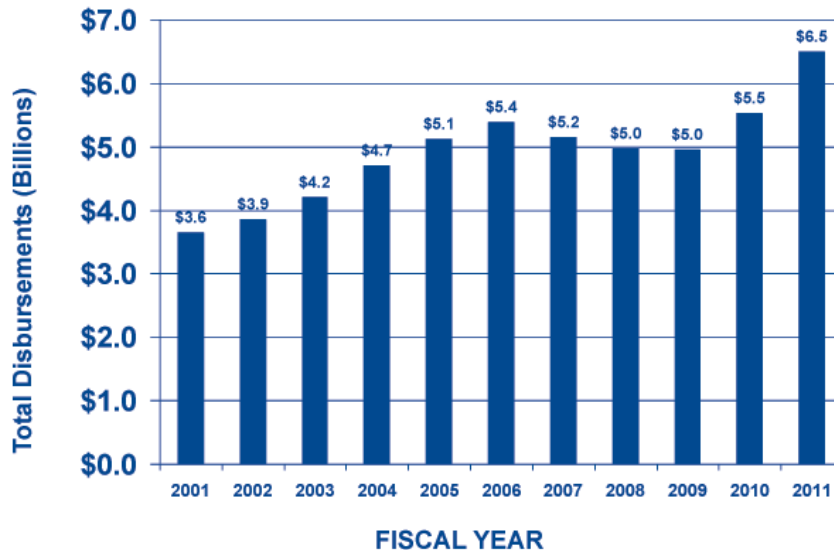
Figure 7.2. Total Disbursements in Chapter 7 Cases, FY 2001-2011



Source: Executive Office for U.S. Trustees

# CHAPTER 7. TRUSTEE OVERSIGHT

**Figure 7.3. Total Disbursements in Chapter 13 Cases, FY 2001-2011**



Source: Executive Office for U.S. Trustees

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](http://www.justice.gov/ust/eo/public_affairs/index.htm) and [http://www.justice.gov/ust/eo/private\\_trustee/library/chapter13/index.htm](http://www.justice.gov/ust/eo/private_trustee/library/chapter13/index.htm), respectively. In addition, raw data on chapter 7 trustee distributions are posted on [www.data.gov](http://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](http://www.justice.gov/ust/eo/public_affairs/data_files/ch7_asset/index.htm).

### ***Trends – Disbursements in Chapter 7 Cases***

*Most chapter 7 asset cases are completed between one and three years after the case is filed. Chapter 7 filings declined substantially after the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) took effect in October 2005, and therefore the number of closed asset cases declined between 2007 and 2009. As chapter 7 filings subsequently increased to pre-BAPCPA levels, the number of closed asset cases increased in 2010 and 2011. As shown in Table 7.4, more than \$13 billion has been disbursed in chapter 7 asset cases over the last five years.*

**Table 7.1. Trends – Total Disbursements in Chapter 7 Asset Cases, FY 2007-2011**

Fiscal Year	Asset Cases Closed	Disbursements (in \$ Billions)
2007	84,000	\$2.9
2008	69,338	\$3.0
2009	50,530	\$2.5
2010	55,628	\$2.3
2011	69,588	\$2.6

Source: Executive Office for U.S. Trustees

## CHAPTER 7. TRUSTEE OVERSIGHT

### FINAL RULE ON DENIAL OF TRUSTEE EXPENSES

During FY 2011, a new federal rule took effect that governs how a chapter 12 or chapter 13 standing trustee may obtain review of a U.S. Trustee's denial of the trustee's expense claim.

Each year, chapter 12 and chapter 13 standing trustees submit their proposed budgets for U.S. Trustee review. Only the actual, necessary expenses of the standing trustee operation may be approved by the U.S. Trustee. If the U.S. Trustee denies an expense, the Bankruptcy Code requires the chapter 12 or chapter 13 trustee to pursue remedies within the USTP before asking a court to review the expense denial. In 2009, the Executive Office for U.S. Trustees published a proposed rule developing the procedures for administrative review.

The final rule was codified in FY 2011 at 28 C.F.R. § 58.11. The rule ensures that the process for administratively reviewing a denial of trustee expenses is fair and has clear deadlines.

### LANGUAGE ASSISTANCE PLAN

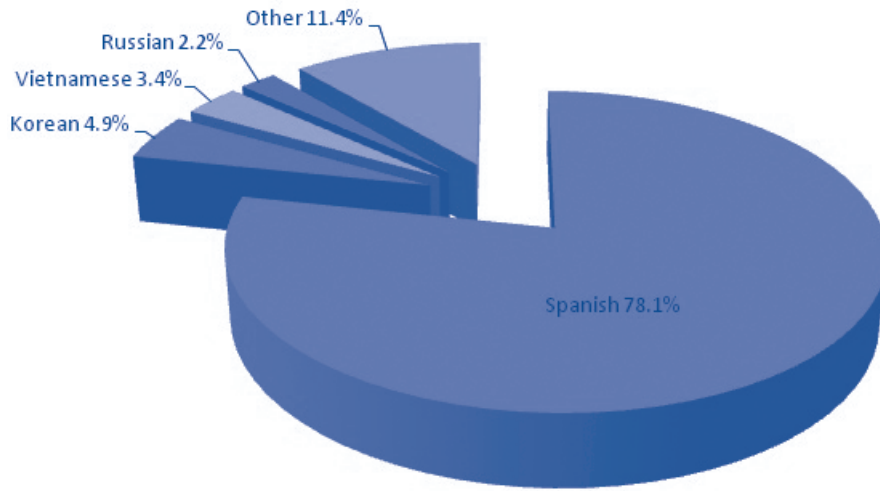
For individuals with limited English proficiency, the Program offers telephonic interpreter services at section 341 meetings of creditors, at no charge to debtors. At the section 341 meeting, the debtor is questioned under oath by the trustee, U.S. Trustee, and/or creditors about his or her financial affairs. The Program makes interpreter services available to debtors via either conference-quality telephones or cell phones with conference call speakers in nearly 260 section 341 meeting rooms.

The USTP collects data from the interpreter services regarding the languages interpreted and the locations where services are provided. The USTP uses the data for oversight, billing, and statistical purposes. The data are posted by state, city, and language on the USTP's "interactive dashboard" at [http://www.justice.gov/ust/eo/public\\_affairs/index.htm](http://www.justice.gov/ust/eo/public_affairs/index.htm), and in delimited text files at [www.data.gov](http://www.data.gov) and [http://www.justice.gov/ust/eo/public\\_affairs/data\\_files/index.htm](http://www.justice.gov/ust/eo/public_affairs/data_files/index.htm).

The interpreter services' data demonstrate that in FY 2011 interpreters were used more than 34,000 times; the three most commonly requested languages were Spanish, Korean, and Vietnamese; and interpreters were used most often in Los Angeles, California; Newark, New Jersey; and Riverside, California.

# CHAPTER 7. TRUSTEE OVERSIGHT

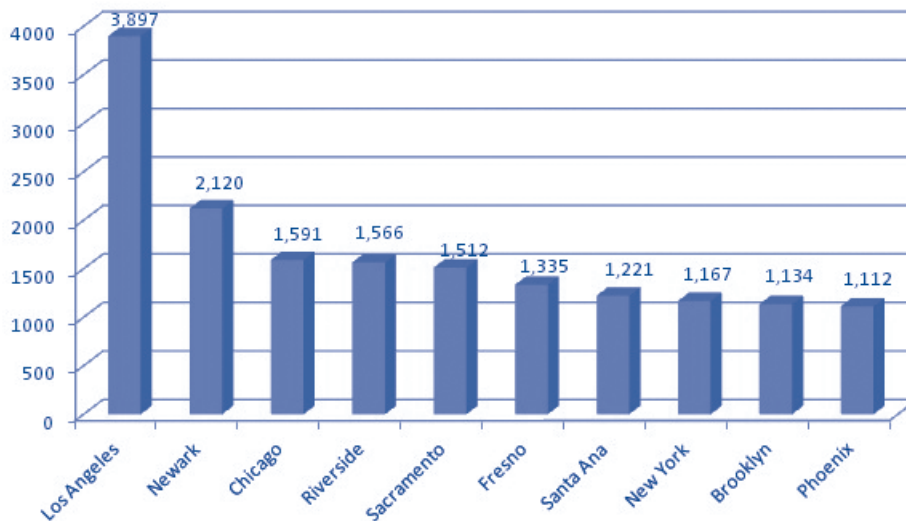
**Figure 7.4. Telephone Interpreter Usage by Language, FY 2011**  
**Total Number of Calls - 34,888**



Note: Seventy-nine other languages have been requested.

Source: Executive Office for U.S. Trustees

**Figure 7.5. Telephone Interpreter Usage by City, FY 2011**  
**(Top 10 Cities, Based on Number of Calls, for FY 2011)**



During FY 2011, 34,888 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 139,000 such reports in FY 2011. 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 2011, Program staff prepared about 555 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 63 performance reviews of chapter 12 and chapter 13 trustees in FY 2011.

### 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 2011, about 246 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 1,110 annual reports were reviewed during FY 2011.

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 2011, 194 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](http://www.justice.gov/ust/eo/bapcpa/ccde/index.htm).

**Table 8.1. Approved Providers at Year-End, FY 2011**

Type of Provider	Number Approved
Credit Counseling Agencies	172
Debtor Education Providers	271

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	\$50
Debtor Education	\$50	\$55

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	7.5%	12.5%
Debtor Education	7.0%	9.1%

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	3.3%	56.3%	15.9%	24.5%
Debtor Education Providers	5.6%	76.2%	9.0%	9.2%

Source: Executive Office for U.S. Trustees

### QUALITY OF SERVICES

In FY 2011, 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 145 complaints against approved agencies and providers. The most common complaints involved authenticity of credit counseling certificates, timely issuance of credit counseling certificates, and bankruptcy court inquiries regarding certificate validity and/or credit counseling agency approval to provide services.

### FEDERAL RULEMAKING

At the end of FY 2011, the Executive Office for U.S. Trustees' proposed final rules for approval of providers of personal financial management courses (the debtor education rule) and pre-bankruptcy credit counseling agencies (the credit counseling rule) awaited final approval and publication.



[www.justice.gov/ust](http://www.justice.gov/ust)