

## **The U.S. Trustee Program Commemorates its Silver Anniversary**

*Submitted by the U.S. Trustee Program*

This month the U.S. Trustee Program celebrates its 25th anniversary as a permanent, nationwide component of the U.S. Department of Justice. The U.S. Trustee Program (USTP or Program) was first launched as a pilot program in the 1978 Bankruptcy Reform Act, with 10 regions in 18 judicial districts and an Executive Office in Washington, D.C. In 1986, after much study, the Program was expanded across the nation (excluding Alabama and North Carolina) in the Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act. The 21 USTP regions were certified over a two-year period, with the process completed in October 1988.

### **Broad Range of Duties**

The Program has a broad range of responsibilities to carry out. In fact, the full breadth of our role provides us with a bird's eye view of the bankruptcy system as a whole.

Each year, the USTP takes about 50,000 civil enforcement actions, including those not requiring formal resolution by a court, for a monetary impact—such as debts not discharged, fees denied or disgorged, or penalties—of more than \$1 billion. In the 10 years since we began tracking these data, we have taken nearly 575,000 actions for a monetary impact of more than \$12 billion. These include actions against both debtors and creditors who violate the law. They also include a host of other actions for which we do not attribute a dollar impact, such as preventing executive bonuses that exceed statutory limits, seeking to oust managers in favor of a chapter 11 trustee and other actions to enhance the integrity of the bankruptcy system.

We have the statutory duty to refer suspected bankruptcy crimes to the United States Attorneys. In FY 2012, we made more than 2,000 criminal referrals to law enforcement. The Program has approximately 25 attorneys in field offices across the country who assist in prosecutions through designation as Special Assistant U.S. Attorneys. In addition, employees—including attorneys, bankruptcy analysts and paralegals—regularly provide expert testimony or fact testimony at criminal trials.

The USTP has important statutory obligations in business reorganization cases to ensure accountability by the debtor's management so the interests of all stakeholders are protected. Among the USTP's top priorities in chapter 11 are reviewing fee requests by professionals such as attorneys, accountants and turnaround specialists; appointing chapter 11 trustees and examiners; appointing unsecured creditors' committees and other official committees; and scrutinizing bonuses requested for chapter 11 debtor company executives.

We supervise the private trustees administering cases under chapters 7, 12 and 13, who in FY 2012 distributed \$11 billion in assets. That duty involves reviewing more than 150,000 case reports a year, reviewing hundreds of trustee operations and performing other trustee oversight tasks. We also approve and monitor about 450 credit counseling agencies and debtor education providers that provide mandatory pre-filing counseling and post-filing education.

And each year we participate in about 150 appeals to the district courts, circuit courts of appeals and even the U.S. Supreme Court. We work closely with the Office of the Solicitor General in the Department of Justice on Supreme Court cases involving bankruptcy, even if we did not participate in the courts below.

Beyond carrying out our mandatory responsibilities, we also look for areas where we can add value and where we are uniquely situated to intervene. Moreover, we refine our focus as new issues emerge. The 2005 bankruptcy reform law gave the Program major new responsibilities in both the consumer and business bankruptcy areas. We have placed more emphasis on our consumer protection efforts consistent with our statutory authorities. And we have become even more active in chapter 11 cases, especially in keeping with changes in the law that were designed to enhance accountability by management of chapter 11 companies and their professionals.

### **Enforcement Activities**

Twenty-five years ago Congress recognized the need for a national enforcement agency—the USTP—to ensure the Bankruptcy Code is upheld. In recent years, we have moved beyond a ministerial approach to case administration, emphasizing our role as enforcement agency and litigator to address emerging fraud, abuse and other problems in the bankruptcy system. Like any other enforcement agency, we do not seek to enforce against all violations 100 percent of the time. The facts and circumstances of each case need to be evaluated, with the exercise of the prosecutorial discretion that belongs to the executive branch.

Why did Congress consider it important to have a national enforcement agency? In bankruptcy there is a multiplicity of interests, as well as parties with varying levels of leverage. While some bankruptcy matters such as preference actions are pure two-party disputes, most major actions in a case invoke the interests of many parties. In our enforcement, we try to avoid the two-party disputes and focus on issues that implicate wider interests, including the public interest. For example, we may bring cases to vindicate the public interest; to protect the integrity of the statute; or where there is a systemic violation of the Bankruptcy Code and a party, typically a consumer debtor, is not in a position to raise the issue.

Our enforcement actions, which are generally the traditional kinds of actions taken by an executive branch agency, may create anxiety because bankruptcy cases move so fast and deal-making is often a virtue. The USTP's role is sometimes to put a brake on proceedings until parties can figure out a way to accomplish their goals within the parameters set in statute. In large and small cases alike, we need to ensure that the law is followed. By and large, bankruptcy professionals, judges and U.S. Trustees are all trying to do our jobs for the benefit of the bankruptcy system and the American economy.

### **Setting Goals and Priorities**

Across the range of our responsibilities, we strive to be a high performing, result-oriented organization and to meet documented goals. We maintain a steady course until we achieve our set objectives, but we also revise our goals as we complete tasks, as external events dictate and as the needs of the bankruptcy system change.

We have three essential priorities as a national Program. First, we carry out our duties under the Bankruptcy Code with prudence, discretion and sound judgment. Those duties include

our responsibilities under the means test, routine objections to retention applications and disclosure statements, and other core responsibilities. Second, in the consumer bankruptcy area, we protect consumer debtors against abuse by creditors, bankruptcy petition preparers and other third parties. Third, in the business reorganization arena, we seek greater accountability by management and professionals. That is where our efforts to seek trustees and examiners, hold executive bonuses to statutory limits and bring greater rationality to the professional fee process come in.

We review our priorities each year, looking to three basic sources—the USTP itself, the broader bankruptcy community and the U.S. Department of Justice. The needs of the bankruptcy system, nationally and locally, are a constant source of discussion and feedback among the USTP’s top leadership. The U.S. Trustees who supervise our 21 regions, together with senior staff in headquarters, provide a steady stream of information about where we can make a difference in the bankruptcy community from year to year. It is equally critical that all levels of staff—from the trial attorneys in the courtroom to the financial analysts to the paraprofessionals—tell us what they are seeing on the ground level.

We invite advice from members of the bankruptcy community, including judges, trustees and other practitioners. Our local offices seek to apply national priorities in the most effective way in their districts and to address local problems that may not be covered by national priorities. U.S. Trustees and Assistant U.S. Trustees communicate regularly with judges and others to identify local problems as they develop.

And we are extremely proud to be part of the Justice Department—the greatest law firm in the world. Unlike other DOJ components, we do not represent the government as a creditor in a case, but our status as a component gives us an opportunity to work with law enforcement and to partner with other components to attack broader issues. Our leadership in the mortgage area, which began in 2008, certainly accelerated when the Associate Attorney General asked us to play a leading role in seeking a national settlement with the five largest mortgage lenders. In a similar way, our updated fee guidelines for attorneys in large chapter 11 cases were announced by the Department, with a quote from Acting Associate Attorney General Tony West, demonstrating the importance DOJ attaches to our role in the bankruptcy system. We were strongly encouraged all along the way by DOJ leadership to address issues of bankruptcy fees, and we have done so with the Department’s support.

## **Conclusion**

Over the past 25 years, the USTP has met many challenges, growing and adapting to changes in the bankruptcy laws, filing trends, new legal practices and national economic developments. We have grown from a few pilot offices to a national program addressing national bankruptcy problems with national solutions. At the same time, our regional and district offices continue to seek ways to add value locally, based upon the needs of the local bankruptcy system.

We are extremely grateful to current USTP staff and to alumni who have done so much to build the USTP into the consequential and effective organization that it has become. All of us who have been stewards of the Program are thankful for the building blocks that were laid through the work of our predecessors. As we look ahead to our next quarter century of public service, we know we will face significant challenges that will require us to muster all of the skill

at our disposal. But we are optimistic that we will play an increasingly vital role in ensuring the integrity and efficiency of the bankruptcy system.

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### Major Milestones of the U.S. Trustee Program Over the Past Twenty-Five Years

- March 1987 to October 1988–USTP expansion includes 86 offices and 900 employees.

The first office to be certified was in Tyler, Texas, in March 1987; the last regions to be certified were Regions 5, 7, 13, 15, 17 and 18 in October 1988.

- June 1992 and March 1993–USTP implements Chapter 7 Initiative and Standing Trustee Initiative.

These initiatives called for the implementation of a blind rotation assignment system for chapter 7 cases and established U.S. Trustee oversight of trustees handling cases under chapters 7, 12 and 13.

- October 1994–Bankruptcy Reform Act of 1994 includes new duties for USTP.

The Act included a requirement that the U.S. Trustee adopt guidelines for reviewing bankruptcy professionals' requests for payment of fees and expenses from the bankruptcy estate.

- November 1997–Settlement with Sears, Roebuck & Co. is announced.

The USTP assisted in a federal/state settlement with Sears, Roebuck & Co. arising from Sears' improper debt collection practices. Sears agreed to pay more than \$180 million in restitution and penalties to debtors and \$40 million in civil fines to state attorneys general. Sears later agreed to pay a \$60 million fine in a criminal matter referred by the U.S. Trustee.

- July 2001–Civil Enforcement Initiative is launched.

Goals included ensuring that chapter 7 was not abused and protecting consumer debtors, creditors and others.

- July 2003 and August 2003–First U.S. Supreme Court briefs are filed for the USTP.

In *Kontrick v. Ryan*, the USTP for the first time helped author the United States' brief filed as *amicus curiae* in the Supreme Court. In *Lamie v. U.S. Trustee*, the first brief listing the U.S. Trustee as a party was filed with the Supreme Court.

- October 2005–BAPCPA expands USTP duties.

The Act made sweeping changes in the Bankruptcy Code and directed the USTP to implement new requirements including means testing, pre-bankruptcy credit counseling and post-bankruptcy debtor education.

- October 2008–USTP national settlement with Capital One Bank (USA) N.A. is announced.

The settlement resolved USTP allegations that the credit card issuer attempted to collect debts previously discharged in bankruptcy. Based on an auditor’s examination of nearly 700,000 customer accounts, Capital One refunded approximately \$2.35 million to consumers in bankruptcy or their bankruptcy estates.

- December 2008–USTP launches creditor abuse enforcement effort.

The USTP launched a national effort to address abusive practices of mortgage loan servicers and other creditors.

- October 2009 and October 2010 U.S. Supreme Court Terms–USTP assists in four bankruptcy appeals decided in the United States’ favor.

In *Ransom v. FIA Card Servs., N.A.*; *Hamilton v. Lanning*; and *Milavetz, Gallop, & Milavetz, P.A. v. United States*, the Supreme Court interpreted the BAPCPA. In *Schwab v. Reilly*, the Court’s ruling helped ensure chapter 7 trustees may resolve bankruptcy cases expeditiously and fairly.

- June 2010–\$108 million USTP/FTC settlement with Countrywide Home Loans, Inc. is announced.

The USTP and the FTC announce a \$108 million settlement resolving an FTC complaint and U.S. Trustees’ lawsuits in bankruptcy courts. The settlement required Countrywide to compensate homeowners harmed by its mortgage loan servicing practices, including homeowners in bankruptcy, and provided for a monitor to verify compliance.

- February 2012–\$25 billion federal/state settlement with five largest banks is announced.

The USTP played a key role in the National Mortgage Settlement, which required the banks to commit \$25 billion to resolve violations of state and federal laws governing mortgage servicing, including with respect to borrowers in bankruptcy, and to implement comprehensive new mortgage servicing standards.

- June 2013–USTP issues updated professional fee guidelines for attorneys in large chapter 11 cases.

The updated fee guidelines apply to the USTP’s review of applications for fees and expenses submitted by attorneys in large chapter 11 cases filed on or after November 1, 2013.

- July 2013–Program announces unsealing of settlement protecting consumers’ personal information.

The settlement with Citigroup, Inc. protected the personal information of nearly 150,000 consumers in 85 jurisdictions.