

U.S. Department of Justice

United States Trustee Program



FY 2017 Performance Budget

Congressional Submission



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I. Overview for the United States Trustee Program

A. Introduction

The United States Trustee Program (USTP or Program) is a litigating component of the Department of Justice (DOJ) whose mission is to promote the integrity and efficiency of the nation's bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public. The USTP mission supports the Department of Justice's Strategic Objective 2.6 – Protect the federal fisc and defend the interests of the United States – by enforcing the Bankruptcy Code and ensuring the effective administration of bankruptcy cases. The Program also supports DOJ's FY 2017 budget priorities to enhance public safety, protect vulnerable Americans and combat white collar crime and financial fraud.

To meet its mission, the USTP requests \$229,717,000 for FY 2017 which supports 1,184 work years. This request funds the most essential positions and operational needs, and provides funding for oversight, mortgage fraud, and creditor abuse enforcement activities – an area that continues to grow in terms of case complexity. The USTP's FY 2017 budget request is anticipated to be fully offset by bankruptcy fees collected and on deposit in the United States Trustee System Fund.¹ In addition, in FY 2017 the USTP proposes to adjust the current quarterly fee structure for the largest chapter 11 debtors.

The nation's consumer bankruptcy laws are premised on the notion that honest, but unfortunate debtors should be able to receive a fresh start and return to becoming economically productive members of society; and business debtors should be provided a breathing spell to reorganize their debts and operations to become profitable, job-creating enterprises.

Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet at <http://www.justice.gov/02organizations/bpp.htm>.

B. Core Responsibilities and National Priorities

The USTP continues to steadfastly carry out core statutory responsibilities of policing debtor abuse and ensuring that private trustees effectively administer estate assets. The USTP also demonstrates great agility and responsiveness in protecting consumer debtors from fraud and abuse; in ensuring bankruptcy law is uniform in all judicial districts; and in maintaining a bankruptcy system that functions fairly and efficiently.

¹ The FY 2017 revenue estimate assumes that the fee proposal is effective October 1, 2016. The proposed fee structure and FY 2017 revenue estimate were calculated using the bankruptcy filing projections provided in section I.D.5. Any change in bankruptcy filings or date of enactment would impact actual revenue collections.



1. Consumer Protection

A core function of the USTP is to protect consumers by combating bankruptcy fraud and abuse. Since FY 2007, as part of its consumer protection duties, the Program has undertaken a coordinated and sustained national effort to address abusive creditor activity against individual debtors, who are often least able to defend themselves from unscrupulous, improper or fraudulent creditors and other third party conduct. In 2015 alone, the USTP obtained monetary relief of more than \$130 million for non-compliance by mortgage servicers Wells Fargo Bank N.A. (Wells Fargo) and JPMorgan Chase Bank, N.A. (Chase).

On November 5, 2015, the USTP announced a national settlement agreement with Wells Fargo² that required the bank to pay \$81.6 million in remediation for its repeated failure to provide legally required notices to homeowners in bankruptcy, thereby denying their opportunity to challenge the accuracy of mortgage payment increases. Wells Fargo acknowledged that it failed to timely file more than 100,000 payment change notices and failed to timely perform more than 18,000 escrow analyses in cases involving nearly 68,000 accounts of homeowners who are or were in bankruptcy. Wells Fargo also agreed to change internal operations and submit to oversight by an independent compliance reviewer.


Eight months earlier, in March 2015, the USTP entered into a settlement agreement with Chase³ obligating the bank to pay more than \$50 million, including cash payments, mortgage loan credits and loan forgiveness to over 25,000 homeowners who are or were in bankruptcy. The settlement addressed issues uncovered by the USTP involving the robo-signing of payment change notices filed in bankruptcy court, as well as Chase's failure to timely and accurately provide payment change notices and escrow statements to their customers in bankruptcy. Chase also agreed to change internal operations and submit to oversight by an independent compliance reviewer.

The Wells Fargo and Chase settlements were the USTP's 10th and 11th national settlements, and the seventh and eighth resulting from the Program's creditor enforcement efforts. Previous national settlements, all obtained since 2008, address a broad range of violations from improper disclosure of personally identifiable information to the collection of discharged debt. The USTP generally obtains three key results in its consumer protection settlements:

- remediation of past practices;
- prevention of recurrence; and
- independent verification of compliance.

² The USTP's press release is available at <http://www.justice.gov/opa/pr/us-trustee-program-reaches-816-million-settlement-wells-fargo-bank-na-protect-homeowners>.

³ The USTP's press release is available at <http://www.justice.gov/ust/press-releases/us-trustee-program-reaches-50-million-settlement-jpmorgan-chase-protect-homeowners-bankruptcy>.



In FY 2017, the Program anticipates expanding its national enforcement efforts to address a growing concern regarding poorly performing consumer practitioners, including national and Internet-based law firms that violate bankruptcy practice requirements. Debtors, creditors, and the court systems are victims of improper, fraudulent, or abusive practices by those who represent debtors in bankruptcy courts.

2. Shaping Bankruptcy Law

One of the USTP's most important functions is to develop case law by participating 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 process. The USTP identifies important emerging issues, develops uniform legal positions, and advocates them as a party and as *amicus curiae*.⁴ The USTP has handled an increasing number of appeals in recent years, many of which may have a profound and long-standing effect on the bankruptcy system. The Program participated in 96 appeals during FY 2015, and received written decisions in 55 appeals, winning 51 of them.

The USTP also works to shape the bankruptcy law by engaging in outreach and training to address significant priorities that range from local to international. The USTP is actively involved at the local level with participants in our nation's bankruptcy community including bankruptcy judges, private trustees appointed by the U.S. Trustees, and bankruptcy practitioners, as well as national groups that represent these stakeholders or work within the bankruptcy system framework such as the Judicial Conference of the United States' Advisory Committee on Rules of Bankruptcy Procedure. The USTP plays a key role in the International Association of Insolvency Regulators, an international organization that brings together the collective experiences and expertise of government insolvency regulators from jurisdictions around the world. This year, a senior representative from the USTP made a presentation at the annual general meeting on achieving the right balance between debtor and creditor protection.

Further, it is the USTP that frequently must act alone to vindicate the strictures of the Bankruptcy Code. The USTP's actions in policing professional fees are a perfect example of this role. The USTP promulgated new guidelines in late 2013 for attorneys in large chapter 11 cases, which were designed to reflect significant changes in the legal industry and the complexity of business bankruptcy reorganization cases, as well as to enhance transparency and public confidence in the integrity and soundness of the bankruptcy compensation process. Counsel have by and large agreed to abide by the guidelines; large firms have improved internal billing practices and processes; and firms are providing greater discounts and taking cost-cutting measures that previously had rarely been provided in large bankruptcy cases. The General Accountability Office issued a report in September 2015 reviewing the U.S. Trustee Program's updated attorneys' fee guidelines for larger chapter 11 cases, and did not recommend any changes in the guidelines or USTP enforcement policy.

⁴ When the USTP acts as *amicus curiae*, it is not a party to the case, but is permitted by the court to provide information, such as legal opinion, testimony or a brief, that directly affects the case.



3. Enforcement and Oversight Activities

As the watchdog of the bankruptcy system, the Program employs a broad range of enforcement and oversight activities to ensure the system functions fairly and efficiently for all stakeholders. By statute, the Program has standing to participate in each of the 685 thousand to more than 1.5 million bankruptcy cases filed annually within its jurisdiction. These activities include:

- Combatting fraud and abuse by debtors and creditors by taking tens of thousands of civil enforcement actions each year, including those not requiring formal resolution by a court, for a monetary impact of more than \$1 billion. Since the Program began tracking its civil enforcement and related actions in 2003, it has taken more than 686,000 actions with a monetary impact in excess of \$16.3 billion.
- Providing oversight of chapter 11 cases by taking actions that range from objecting to excessive and unreasonable professional fees and improper management bonuses, to reviewing debtors' disclosure statements and proposed plans of reorganization, and to seeking dismissal of cases where there is little likelihood of reorganization or the debtor fails to exercise its fiduciary obligations.
- Supervising private trustees who administer chapters 7, 12, and 13 bankruptcy cases and distribute more than \$10 billion in assets each year. This duty involves reviewing more than 110,000 case reports per year, reviewing hundreds of trustee operations, and performing other trustee oversight and auditing tasks.
- Participating in nearly 100 appeals annually to the bankruptcy appellate panels, district courts, circuit courts of appeals, and the U.S. Supreme Court.
- Identifying and referring cases of potential criminal wrong-doing to law enforcement, training law enforcement who investigate bankruptcy crimes, and assisting the U.S. Attorneys in the prosecution of cases through Program attorneys who are cross-designated as Special Assistant U.S. Attorneys.

For more information on Program activities, see the Annual Report of Significant Accomplishments at http://www.justice.gov/ust/eo/public_affairs/annualreport/index.htm.

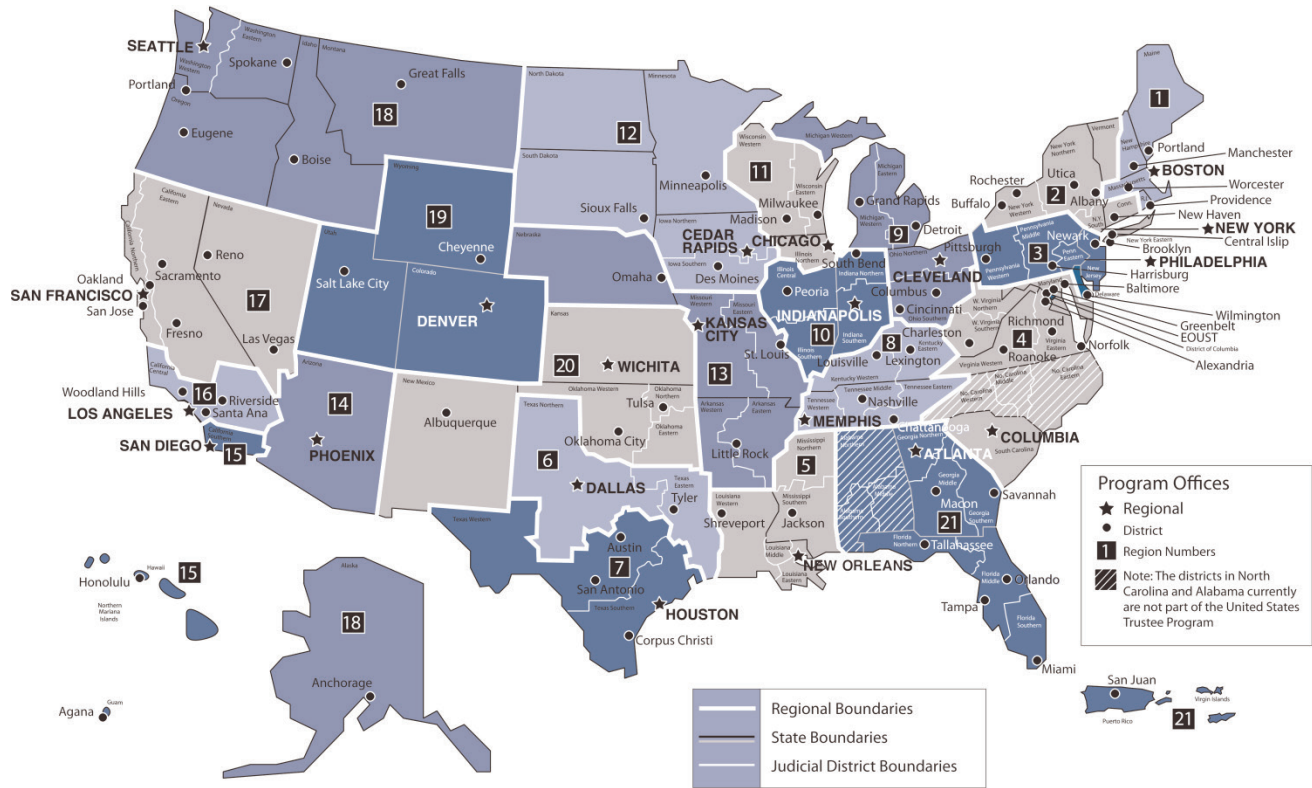
C. Program History and Structure

The USTP is responsible for overseeing the administration of bankruptcy cases and private trustees under 28 U.S.C. § 586 and 11 U.S.C. § 101, *et seq.* The Program was established by the Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, *et seq.*) as a pilot effort encompassing 18 judicial districts. Through the enactment of the Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986, the Program expanded to 21 regions nationwide, covering all

Federal judicial districts except Alabama and North Carolina. Since 1989, the Program’s appropriation has been fully offset by the United States Trustee System Fund (Fund), which consists primarily of fees paid by parties and businesses invoking bankruptcy relief.

The Program has a headquarters office in Washington, D.C., led by a Director; 21 regions managed by U.S. Trustees; and 92 district office locations in 46 states supervised by Assistant U.S. Trustees.⁵ In FY 2015, the Program had 1,099 full time equivalent employees, consisting of attorneys, financial analysts, paralegals, and support staff. More than 90 percent of the Program’s employees are located in the district offices.


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



2. Executive Office for United States Trustees

The USTP’s Executive Office for U.S. Trustees (EOUST) sets policy, directs litigation, and manages Program operations and staff. The Office of the Director directly supervises the U.S. Trustees and the operations of the EOUST and has primary responsibility for liaison with the

⁵ During FY 2014 and FY 2015, the Program completed two consolidations of offices (Brooklyn with Manhattan and Woodland Hills with Los Angeles), and plans to complete a third consolidation in FY 2016 (Oakland with San Francisco). This will bring the number of the USTP field office locations to 92 (versus the 95 reported in prior years).



Department, Congress, the Judiciary, private trustee organizations, and other stakeholders in the bankruptcy system (e.g., professional associations, debtors, and creditors). The EOUST also includes the Office of the General Counsel, the Office of Oversight, the Office of Criminal Enforcement, the Office of Planning and Evaluation, the Office of Administration, and the Office of Information Technology.

D. Challenges

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

1. Maintaining Operations


The largest immediate challenge facing the USTP is its ability to maintain the high level of enforcement activities and bankruptcy services for all stakeholders in a challenging budget environment. Over the last ten years the Program has successfully taken on substantial new duties under the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), greatly expanded its national consumer protection initiatives (including investigating mortgage servicer misconduct and fraudulent legal service providers), undertaken more complex litigation and initiated efforts to enhance security at public meetings of creditors. These enforcement efforts have yielded billions of dollars in settlements in recent years. Despite this workload expansion, full funding for adjustments-to-base (ATBs) has not been consistently appropriated. Most recently, in FY 2016, the USTP requested but was not appropriated \$2.2 million in ATBs.

The USTP will have to make difficult operational decisions to absorb these costs, including potential reductions to debtor audits, oversight of private trustees who administer approximately \$10 billion in assets, field operations, and other Program infrastructure.

The Program has already integrated innovative strategies to find cost effective solutions to maximize appropriated resources while addressing significant challenges including an evolving and complex caseload. To successfully undertake these challenges, the USTP examined the following internal functions closely to find ways to cut costs, increase efficiency, and enhance services.

Consolidation of Functions

The Program piloted and implemented nationwide a number of work process changes by consolidating at the regional level functions previously conducted in each field office, freeing valuable time for field office personnel to pursue other enforcement priorities and also providing greater consistency in case administration. This consolidation includes certain administrative areas of trustee oversight, chapter 11 quarterly fee review, and bankruptcy case data extraction and download. For example, the USTP approves and files Trustee Final Reports (TFRs) that provide for distribution of chapter 7 estate funds to creditors in accordance with statutorily prescribed priorities. TFRs must be reviewed and approved by the USTP, and filed with the



Bankruptcy Court, within 60 days of receipt. Consolidation has resulted in more efficient and consistent review of TFRs, now conducted by only a few specially trained staff members who focus on this area.

Co-Location of Work Space

The USTP has achieved considerable savings by returning underutilized space and reducing space allocations as leases expire. In total, since FY 2012, the Program estimates it will have returned over 45,000 square feet of space. This includes co-locating several Program field offices, providing the dual benefit of reducing costs of office space while increasing operational efficiencies. In FY 2014 and FY 2015, the USTP completed the co-location of two offices (Brooklyn with Manhattan and Woodland Hills with Los Angeles), and a third co-location of offices (Oakland with San Francisco) is targeted for completion in FY 2016. In addition to co-locating field offices, when it is feasible and justifiable, the Program co-locates Section 341 meeting rooms in federal buildings with security.

Improved Security at Public Meetings

Section 341 of the Bankruptcy Code requires the U.S. Trustee to convene a meeting of creditors in every bankruptcy case. At the Section 341 meeting, the debtor must appear and answer questions under oath from the U.S. Trustee, any trustee appointed in the case, creditors, and other parties in interest regarding the administration of the bankruptcy estate and the debtor's liabilities and financial condition. In addition, these meetings are open to the general public. The USTP acquires space for Section 341 meeting rooms in secured locations when feasible and justifiable. This is not always possible, however, due to a lack of available space, as well as the infrequency of meetings in remote locations. As a result, over 100 of the 400 + meeting rooms are currently situated in non-federal space with less than optimal security, including commercial space and low or no cost space in hotel conference rooms and local government facilities like public libraries. Because of their nature, Section 341 meetings may be contentious, and the increased safety and security risks warrant the adoption of appropriate security measures.

In FY 2015, the USTP initiated a multifaceted strategy to provide efficient and effective Section 341 meeting room security. The Program is working with other components of the Department of Justice on an initiative to identify and share secured space. The USTP is also working to identify opportunities to share or acquire space that the federal courts do not use on a full-time basis. This space is typically located within secure federal facilities, with court security officers available. Finally, the USTP initiated a pilot program at the end of FY 2015 under which armed guards provided by the Federal Protective Service will be present at Section 341 meetings in 14 locations that the Program deemed most in need of additional security. Through this pilot, the USTP anticipates learning how to most efficiently provide additional security, including the number of guards necessary to simultaneously protect multiple rooms and adjustments to docket schedules to reduce costs. The USTP will use this knowledge as it expands security services in FY 2017 to priority Section 341 meeting room sites with heightened safety concerns, funds for which are being requested in FY 2017 enhancements.

Use of Technology for Streamlining and Cost Savings

The Program employs technology to improve operations while reducing costs. The USTP upgraded its video teleconferencing equipment in field offices nationwide, allowing the Program to avoid additional travel costs by increasing the use of video teleconferences for meetings and training programs.

The USTP also initiated using low-cost alternative and internal resources to reduce the cost of accessing bankruptcy court documents. The cost of accessing documents through the federal courts' Public Access to Court Records (PACER) system previously totaled approximately \$1.5 million annually. The USTP's Office of Information Technology designed and launched an internal application providing docket-like views of cases using data obtained and utilized in other Program databases. During the second half of FY 2013, the Program also began transitioning from PACER to a third party vendor that allows access to bankruptcy court records nationwide. Together, these changes resulted in average annual savings of nearly \$800,000 in FY 2014 and FY 2015.

2. Offsetting Collections and the U.S. Trustee System Fund


Since 1989, the Program's appropriation has been fully offset by bankruptcy fees paid primarily by those who use the bankruptcy system. Two categories of fees generate nearly all of the revenue for the Fund. The first category is the filing fee paid at the commencement of each case for chapters 7, 11, 12, and 13,⁶ and the second category is the quarterly fee paid by chapter 11 debtors. All fees are deposited in the Fund and offset the USTP's annual appropriation.

Beginning in FY 2016, revised appropriation language was enacted in which the full appropriation is initially derived from the General Fund of the Treasury and subsequently offset by net fees received during the fiscal year and balance in the Fund.

The following table reflects actual and projected revenue collected by source, for the period FY 2011 – FY 2017.

Bankruptcy Fees by Source	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 President's Budget	FY 2017 Est. without Fee Increase	FY 2017 Est. with Fee Increase
Bankruptcy Filing Fees	\$ 110,529	\$ 94,073	\$ 81,374	\$ 69,518	\$ 60,515	\$ 63,200	\$ 49,200	\$ 49,200
Chapter 11 Quarterly Fees	\$ 155,810	\$ 139,289	\$ 126,948	\$ 110,623	\$ 92,688	\$ 98,100	\$ 73,000	\$ 197,800
Interest on Earnings on Investments	\$ 1,005	\$ 652	\$ 902	\$ 744	\$ 650	\$ 900	\$ 857	\$ 857
Other	\$ 197	\$ 123	\$ 142	\$ 178	\$ 76	\$ 150	\$ 143	\$ 143
Total Deposits	\$ 267,541	\$ 234,137	\$ 209,366	\$ 181,063	\$ 153,929	\$ 162,350	\$ 123,200	\$ 248,000

⁶ The USTP receives a portion of these filing fees as specified in statute.



In most years, revenues deposited in the United States Trustee System Fund exceeded appropriations such that the Fund achieved a balance of well over \$200 million in FY 2013. Generally, excess fees are deposited during periods of increasing bankruptcy case filings and fee collections, and funds are withdrawn to cover the Program's appropriation during periods of declining case filings. For instance, between FY 2006 and FY 2008, the Fund was drawn down from \$258 million to \$93 million, while from FY 2009 to FY 2012, the Fund grew back to over \$200 million.

Bankruptcy filings are in the midst of a six-year decline, and have not in recent years followed traditional historical patterns. Based upon recent filing trends, the USTP projects a continued decline in bankruptcy filings and associated fees through FY 2017.⁷ Offsetting collections in FY 2016 are projected to cover approximately 70 percent of the Program's appropriation, with the remainder being drawn from the Fund. As a result, the balance in the Fund is projected to decline from \$99 million at the end of FY 2015 to \$36 million in FY 2016. Absent any legislative changes made to the fee amounts paid to the Fund, the Program is predicted to exhaust the balance of the Fund around the start of FY 2017 and fall \$71 million short of offsetting the FY 2017 requested appropriation.

To address these issues, the USTP proposes to adjust quarterly fees for the largest chapter 11 debtors, which should allow the Program to continue to fully offset appropriations from deposits to the Fund. Unlike other bankruptcy fees that are set administratively by the Judicial Conference of the United States, the filing fees and quarterly fees paid to the USTP are set in statute and cannot be adjusted by the USTP. Filing fees and quarterly fees generate the vast majority of revenue for the United States Trustee System Fund. The Program's current fee rates became effective in 2005 for filing fees and 2008 for quarterly fees.

3. Fee Proposal

In FY 2017, the USTP proposes to revise chapter 11 quarterly fees for the largest Chapter 11 debtors. The proposed fee structure would allow the USTP Director to adjust the quarterly fee, within specified limits, imposed in cases with quarterly disbursements of at least \$1 million. Initially, the fee would be set at the lesser of 1 percent of disbursements or \$250,000. Beginning in fiscal year 2020, the USTP Director may adjust the fee no more than once a fiscal year, provided that the amount does not exceed the lesser of 1 percent of disbursements or \$250,000.

Importantly, to ensure that small businesses and other debtors with lower disbursements do not pay additional fees, cases with quarterly disbursements under \$1 million are excluded from the proposed adjustment in chapter 11 quarterly fees. About 98 percent of debtors who voluntarily identify themselves in the bankruptcy system as meeting the Bankruptcy Code's definition of a

⁷ USTP estimates are based on recent filing trends and do not consider other economic factors, draw dates for high yield bonds, or other considerations frequently cited by commentators who make filing predictions.

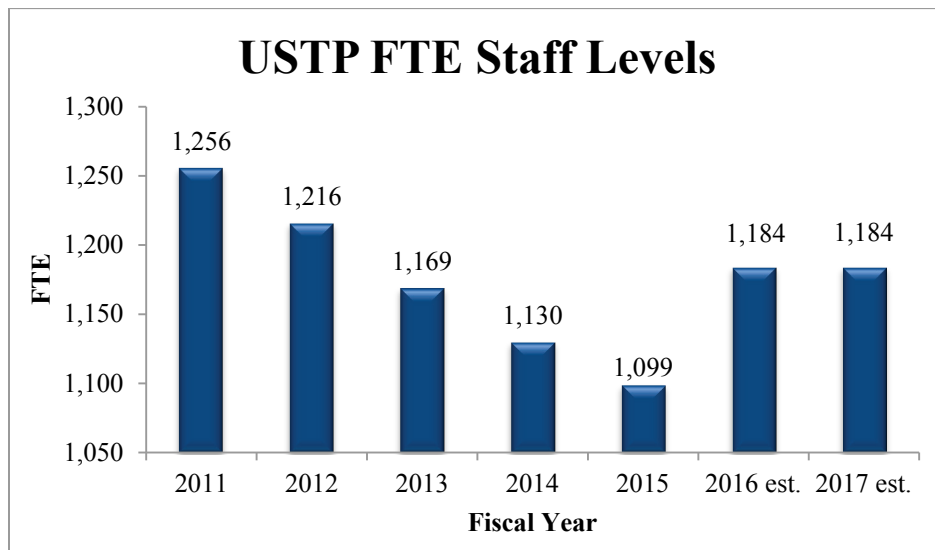
small business have quarterly disbursements under \$1 million.⁸ For these small business debtors, the existing fee structure remains unchanged.

The proposed fee structure and FY 2017 revenue estimate were calculated using the bankruptcy filing projections provided in section I.D.5. Any change in bankruptcy filings would impact actual revenue collections. Additionally, the FY 2017 revenue estimate assumes that the fee proposal is effective October 1, 2016. Initially setting quarterly fees for the largest chapter 11 debtors with quarterly disbursements of \$1 million or more at 1 percent subject to a cap of \$250,000 should provide adequate revenue to allow the Program to continue to offset appropriations through offsetting collections and the balance in the Fund.

4. Staffing⁹


Over the past four years, the USTP has sustained a net loss of more than 150 staff or over 10 percent of total staff. The Program is in the process of backfilling 50 percent of these mission critical positions. While USTP's cadre of dedicated professionals continues to fulfill mission priorities, the impact of lower staff levels has adversely impacted the Program's mission. Further, with over 90 percent of its budget now comprised of essentially fixed costs such as personnel and rent, the Program has few options left to continue to absorb any reductions along with standard inflationary costs.

The following chart reflects actual and projected USTP staffing levels in full-time equivalents (FTE) for FY 2011 through FY 2017.



⁸ Generally, 11 U.S.C. § 101(51D) defines a small business debtor as an individual, partnership, or corporation engaged in commercial or business activities that has aggregate noncontingent liquidated debts of not more than \$2,490,925, subject to adjustment every three years.

⁹ A Congressional Budget Office Cost Estimate Report dated February 28, 2005, for the BAPCPA implementation indicated that the USTP needed at least 220 additional staff positions from FY 2005- FY 2010, but only a fraction of these were funded, and USTP staffing remains near pre-BAPCPA levels.



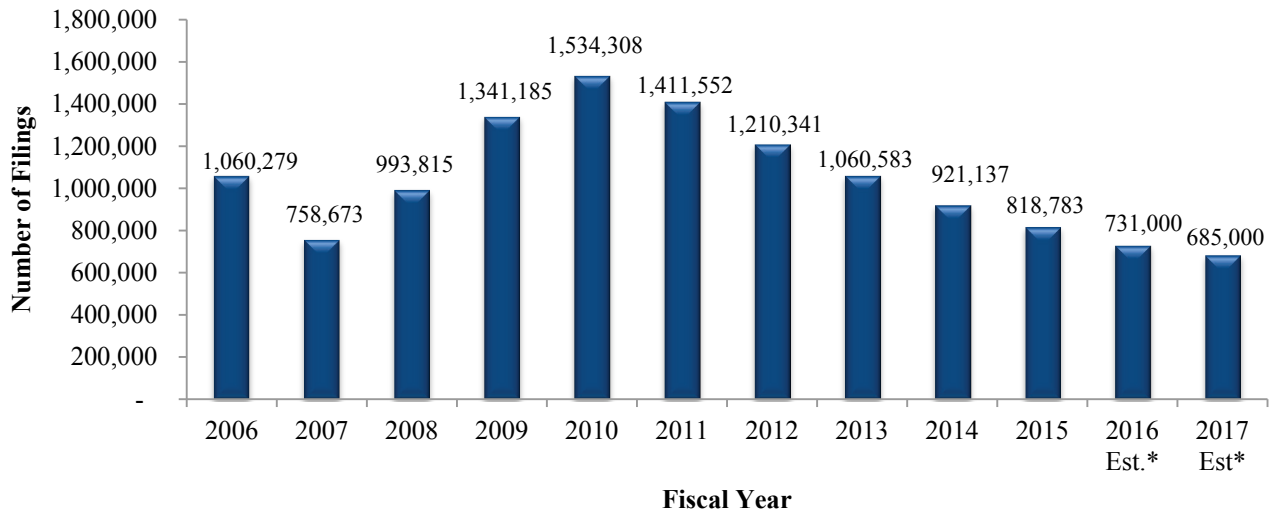
The Program manages 92 field office locations nationwide, the Executive Office, and more than 400 sites where Section 341 meetings are held. In addition, staff appears in court in more than 300 locations nationwide.

5. Programmatic Challenges

- *Coordination with the Judicial Branch.* The Program depends on the exchange of electronic data with the U.S. Bankruptcy Courts to ensure timely processing of bankruptcy cases. The Program must work cooperatively with the Administrative Office of the U.S. Courts to ensure that the systems that are in place support an effective and efficient bankruptcy process.
- *Unpredictable Legal Challenges.* Legal challenges to the Bankruptcy Code are unpredictable in scope and number. The USTP enforces and defends challenges to provisions of the Bankruptcy Code, including by litigating issues of first impression.
- *Evolving and Complex Caseload.* The USTP's sustained heavy workload in civil enforcement, along with the sheer sophistication of fraud schemes and abusive activities, place an incredible burden on the USTP staff to move cases through the system efficiently. In addition to carrying out statutory duties, including means testing and credit counseling oversight, the Program remains very much involved in new and complex issues associated with national mortgage servicers, other consumer protection issues, and large chapter 11 bankruptcy filings.
- *Bankruptcy Filings.* The volatility in the number and location of bankruptcy filings creates challenges in case management. For the past century, filings have generally increased about two-thirds of the time and decreased the other one-third. However, in recent years, bankruptcy filing rates have been extraordinarily unpredictable, with unprecedented volatility that some experts attribute to changes in the law, low interest rates, declining consumer credit, and the availability of distressed debt funding in the capital markets. Many of these factors are subject to sudden change, as shown by the explosion in the number of bankruptcy filings from FY 2008 to FY 2010. Filings from FY 2014 to 2017 are estimated to be fewer than one million per year for the first time since FY 2008. The following chart reflects actual and projected filings for fiscal years 2006 through 2017.¹⁰ Based upon trend analysis, and without regard to changes in external economic conditions, the USTP projects a continued decline in bankruptcy filings and associated fees through FY 2017.

¹⁰ The chart reflects bankruptcy filings under all chapters of the Bankruptcy Code, as reported by the Administrative Office of the U.S. Courts (AOUSC). Fiscal years 2016–2017 are current estimated filings.

Bankruptcy Case Filing History USTP Districts



* Note: FY 2016 – FY 2017 bankruptcy filings are based on current estimates.

E. Program Efforts Toward Integrating Environmental Accountability

The USTP continues its work to improve its environmental management activities. The Program actively participates in a number of recycling and other greening initiatives and ensures compliance with existing Federal Acquisition Regulations. The following activities reflect the Program’s continuing efforts toward managing and improving its environmental and health safety matters:

- The USTP’s Facilities Management Division works with the General Services Administration to ensure the use of environmentally preferable building products and materials for the design, construction, and operation of commercially owned office space occupied by the Program.
- As required by Federal Acquisition Regulation (FAR) 23.705, the Program makes every effort to purchase electronic products that are Electronic Product Environmental Assessment Tool registered, or EnergyStar Compliant products. Such products include computer monitors, desktop computers, notebook computers, printers, and copiers.
- As required by FAR Subpart 23, the Program purchases supplies that are environmentally preferable products made from recycled content, such as copier paper, file folders, pens, and remanufactured toner cartridges.

- Recycling of paper products, cans, bottles, and plastics is encouraged throughout the Program – an effort highlighted through the use of signage, posters, and the continual availability of appropriate recycling receptacles.

II. Summary of Program Changes

Item Name	Description				Page
		Pos.	Estimated FTE	Dollars (\$000)	
Section 341 Meeting Room Security	The USTP requests \$2,135,000 to provide security services at priority Section 341 meeting room sites with heightened safety concerns.	0	0	\$2,135	29

III. Appropriations Language and Analysis of Appropriations Language

The FY 2017 budget request includes proposed changes in the appropriations language set forth and explained below. New language is *italicized and underlined*, and language proposed for deletion is bracketed.

United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, [~~\$225,908,000~~]\$229,717,000, to remain available until expended: *Provided*, That, notwithstanding any other provision of law, deposits to the United States Trustee System Fund and amounts herein appropriated shall be available in such amounts as may be necessary to pay refunds due depositors: *Provided further*, That, notwithstanding any other provision of law, fees collected pursuant to section 589a(b) of title 28, United States Code, shall be retained and used for necessary expenses in this appropriation and shall remain available until expended: *Provided further*, That to the extent that fees collected in fiscal year [2016]2017, net of amounts necessary to pay refunds due depositors, exceed [~~\$225,908,000~~]\$229,717,000, those excess amounts shall be available in future fiscal years only to the extent provided in advance in appropriations Acts: *Provided further*, That the sum herein appropriated from the general fund shall be reduced (1) as such fees are received during fiscal year [2016]2017, net of amounts necessary to pay refunds due depositors, (estimated at [~~\$162,400,000~~]\$248,000,000) and (2) to the extent that any remaining general fund appropriations can be derived from amounts deposited in the Fund in previous fiscal years that are not otherwise appropriated, so as to result in a final fiscal year [2016]2017 appropriation from the general fund estimated at \$0.

Analysis of Appropriation Language

No other substantive changes are proposed at this time.



IV. General Provision Language and Analysis of General Provision Language

Sec. XXX. (a) Section 1930(a) of title 28, United States Code, is amended

(1) in paragraph (6) by striking “\$6,500 for each quarter in which disbursements total \$1,000,000 or more but less than \$2,000,000;” and all that follows and inserting in lieu thereof:

(A) “1 percent of disbursements, or \$250,000, whichever is less, for each quarter in which disbursements total \$1,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.”; and

(B) “Beginning in fiscal year 2020, the Director of the Executive Office for United States Trustees may adjust (no more frequently than once per fiscal year) the fee for each quarter in which disbursements total \$1,000,000 or more, not to exceed 1 percent of disbursements, or \$250,000, whichever is less.”

(2) This section and the amendment made by subsection (a) shall take effect October 1, 2016, or on the first day of the calendar quarter following the enactment of this Act, whichever is later, and shall apply to all cases pending or filed under title 11 of the United States Code on or after the effective date of the amendment.

Analysis of General Provision Language

The proposed language amends 28 U.S.C. § 1930(a)(6) to allow the Director of the Executive Office for United States Trustees (Director) to adjust the quarterly fee, within specified limits, imposed in larger cases filed pursuant to chapter 11 of title 11, United States Code, with quarterly disbursements of at least \$1 million. Initially, the fee would be set at the lesser of 1 percent of disbursements or \$250,000. Beginning in fiscal year 2020, the Director may adjust the fee no more than once a fiscal year, provided that the amount does not exceed the lesser of 1 percent of disbursements or \$250,000. The proposed fee would take effect the first calendar quarter after the date of enactment. There is no effect on outlays.

V. Program Activity Justification

A. Administration of Cases

The USTP budget is contained in one decision unit, the Administration of Cases, which encompasses all operational activities and includes the direct cost of all outputs, indirect costs, and common administrative systems. There are two main Program activities: (1) enforcement; and (2) case and trustee administration. The work years and associated funding are allocated to these Program activities based upon the direct, productive hours of the USTP staff performing enforcement and case administration activities, as well as resources directly related to the performance of these activities. Administrative and other overhead costs are allocated based upon the direct hours expended for the two Program activities.

<i>Administration of Cases</i>	Direct Pos.	Estimated FTE	Amount (\$ in thousands)
2015 Enacted	1,314	1,174	\$ 225,908
2016 Enacted	1,314	1,184	\$ 225,908
Adjustments to Base and Technical Adjustments	-	-	\$ 1,674
2017 Current Services	1,314	1,184	\$ 227,582
2017 Program Increases	-	-	\$ 2,135
2017 Request	1,314	1,184	\$ 229,717
Total Change 2016 - 2017	-	-	\$ 3,809

<i>Administration of Cases</i>	Direct Pos.	Estimated FTE	Amount (\$ in thousands)
Information Technology Breakout			
2015 Enacted	39	39	\$25,594
2016 Enacted	39	39	\$25,465
Adjustments to Base and Technical Adjustments	-	-	-\$1,656
2017 Current Services	39	39	\$23,809
2017 Request	39	39	\$23,809
Total Change 2016 - 2017	-	-	-\$1,656


General Civil Enforcement

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

During FY 2015, the USTP offices reported taking more than 31,000 formal and informal civil enforcement actions, yielding in excess of \$1.16 billion in debts not discharged in chapter 7, fines, and other remedies. The USTP attorneys prevailed in 98.5 percent of the actions resolved by judicial decision or consent in the fundamental areas of dismissal for abuse (11 U.S.C. § 707(b)), denial of discharge (11 U.S.C. § 727), fines and injunctions against bankruptcy petition preparers (11 U.S.C. § 110), and disgorgements of attorneys' fees (11 U.S.C. § 329).

Means Testing

The Program also administers and enforces the “means test” as required under the BAPCPA. Under the means test, individual debtors with income above their state median are subject to a statutorily prescribed formula to determine disposable income. The formula is based partially on allowable expense standards issued by the Internal Revenue Service for its use in tax collection. The primary purpose of the means test is to help determine eligibility for chapter 7 bankruptcy relief.



In FY 2015, approximately 11 percent of chapter 7 debtors had income above their state median. Of those cases filed by above median income debtors, about 6 percent were “presumed abusive” under the means test. Of those presumed abusive cases that did not voluntarily convert or dismiss, the Program exercised its statutory discretion to decline to file a motion to dismiss in about 67 percent of the cases after consideration of the debtor’s special circumstances, such as recent job loss, that justified an adjustment to the current monthly income calculation.


Consumer Protection

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

In addition, in recent years, the USTP has addressed other multi-jurisdictional violations against consumer debtors with a coordinated nationwide enforcement approach. As a result, the Program has participated in or played a substantial role in 11 nationwide settlements, including eight settlements to protect consumer debtors against national creditors. These national settlements provide relief for victimized debtors, require systemic corrective actions so such violations do not recur, and uphold the integrity of the bankruptcy system.

For example, as part of its coordinated activity to protect consumers from creditor abuse, on November 5, 2015, the USTP announced a national settlement agreement with Wells Fargo that required the bank to pay \$81.6 million in remediation for its repeated failure to provide legally required notices to homeowners in bankruptcy, thereby denying their opportunity to challenge the accuracy of mortgage payment increases. Wells Fargo acknowledged that it failed to timely file more than 100,000 payment change notices and failed to timely perform more than 18,000 escrow analyses in cases involving nearly 68,000 accounts of homeowners who are or were in bankruptcy. Wells Fargo also agreed to change internal operations and submit to oversight by an independent compliance reviewer.

Eight months earlier, in March 2015 the Program announced the settlement with Chase obligating the bank to pay more than \$50 million, including cash payments, mortgage loan credits and loan forgiveness to over 25,000 homeowners who are or were in bankruptcy. Chase acknowledged that it filed in bankruptcy courts around the country more than 50,000 payment change notices that were improperly signed, under penalty of perjury, by persons who had not reviewed the accuracy of the notices. Chase also acknowledged that it failed to file timely,



accurate notices of mortgage payment changes and failed to provide timely, accurate escrow statements. In addition to the cash payments totaling \$50 million, Chase agreed to make necessary changes to its technology, policies, procedures, internal controls and other oversight systems to ensure that the problems identified do not recur, and to be subject to an independent compliance review by a monitor who will file public reports with the bankruptcy court.

Criminal Enforcement


The Program has a statutory duty to refer matters to the U.S. Attorney’s offices for investigation and prosecution that “relate to the occurrence of any action which may constitute a crime.” 28 U.S.C. § 586(a)(3)(F). The statute also requires that each U.S. Trustee shall assist the U.S. Attorney in carrying out prosecutions. The Program submits an annual report to Congress that details the number and types of criminal referrals made by the Program. In FY 2015, the USTP made 2,131 criminal referrals.

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

For example, a defendant who pleaded guilty to bankruptcy fraud, wire fraud, and money laundering was sentenced in the District of Oregon to four 70-month terms in prison and one 60-month term, with the sentences to run concurrently, followed by three years of supervised release. He also was ordered to pay \$1.1 million in restitution. The defendant admitted that he devised a scheme to defraud an elderly woman of \$1.1 million, lied under oath during his bankruptcy case, and attempted to launder the money he received from the fraud scheme. The U.S. Trustee’s office in Portland, Oregon, referred the criminal matter and provided substantial assistance in the investigation and prosecution of the defendant. The U.S. Trustee also filed a complaint objecting to the debtor receiving a discharge for making false statements in documents filed with the bankruptcy court, falsely testifying under oath in the bankruptcy case, fraudulently transferring, removing or concealing assets both before and after the bankruptcy case was filed, and failing to satisfactorily explain his loss or deficiency of assets. Prior to trial, the debtor waived his discharge, which prevented him from discharging approximately \$148 million in unsecured debt.

Financial Fraud

The Program has been an active member of the President’s Financial Fraud Enforcement Task Force since 2009, and its offices participate in more than 75 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. The USTP conducts extensive training for federal, state, and local law enforcement personnel, USTP staff, and private bankruptcy trustees (with more than 3,500 trained in FY 2015), and publishes internal resource documents. In addition, Program staff – including



attorneys, bankruptcy analysts, and paralegals – are frequently called upon to assist with investigations and to provide expert or fact testimony at criminal trials.


Chapter 11 Oversight

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

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

Executive Bonuses: The USTP reviews executive bonuses and other compensation for compliance with Section 503(c) and is often the only participant in the bankruptcy case that is willing or well-positioned to seek enforcement of that section. In the BAPCPA 2005 bankruptcy reform law, Congress sought to curtail the practice of chapter 11 debtors’ executives awarding themselves lavish bonuses during the bankruptcy case, which were often styled as “retention programs” that ostensibly dissuaded those executives from seeking employment elsewhere.

In many cases, the U.S. Trustee’s formal or informal objections have resulted in substantial voluntary changes to the debtor’s proposed executive compensation programs. Other cases required formal court action. For example, in the case of *Loehmann’s Holdings Inc.*, the Bankruptcy Court for the Southern District of New York agreed with the U.S. Trustee’s




Manhattan office that the chapter 11 debtors' bonus plan was a disguised key employee retention plan that violated the Bankruptcy Code. As a result, the court denied the debtors' request to pay bonuses totaling up to \$655,250 to the debtors' chief operating officer and general counsel. In *GT Advanced Technologies*, the Bankruptcy Court for the District of New Hampshire sustained the U.S. Trustee's objection and denied the purported "incentive" bonuses for the debtor's management totaling \$2.1 million. The court agreed that these bonuses were disguised retention bonuses prohibited by the Code and further denied another bonus plan of \$1.5 million because it was not justified by the facts and circumstances of the case. In a series of rulings during FY 2013, in the highly publicized case of American Airlines (*In re AMR Corp.*, 497 B.R. 690 (Bankr. S.D.N.Y. 2013)) the Bankruptcy Court for the Southern District of New York sustained the U.S. Trustee's objections to a severance payment of nearly \$20 million for its departing chief executive officer.

Independent Trustees and Examiners: The Program's responsibilities in business reorganization cases also include the appointment of trustees when there are grounds to suspect that current management has participated in gross mismanagement, fraud, dishonesty, or other improper activity. The USTP also seeks the appointment of examiners when independent investigations are needed. By way of example, the U.S. Trustee appointed chapter 11 trustees in cases such as *TelexFree LLC* (the debtor purported to provide inexpensive Internet phone service worldwide but actually operated a massive cross-border pyramid scheme), *ISoltech, Inc.* (the debtor allegedly installed uncertified solar panels in U.S. military bases and commercial facilities), and *Soundview Elite, Ltd.* (involving self-dealing by the managers of Cayman Islands mutual funds).

Appellate Practice and Challenges to the Bankruptcy Code

One of the Program's most important roles has been to develop consistent case law. The USTP is the only participant in the bankruptcy system with a national perspective and a responsibility to develop coherent case law in all jurisdictions. The USTP has been handling a large number of appeals, many of which may have a profound and long-standing effect on the bankruptcy system. In FY 2015, the Program participated in 96 appeals beyond the bankruptcy court, including nearly two dozen cases at the United States court of appeals level.

One of the ways the USTP protects the bankruptcy system is by policing misconduct by bankruptcy professionals who violate their obligations to their clients, the court and the bankruptcy estate. The Program defended on appeal judgments holding those professionals accountable for their misdeeds. In one recent case, a chapter 7 trustee was removed from all his cases after it was uncovered that he had tried to overcharge the bankruptcy estate by surreptitiously billing for personal expenses not necessary to the administration of the estate. On appeal, the USTP successfully defended his removal. *Smith v. Robbins (In re IFS Fin. Corp.)*, 803 F.3d 195 (5th Cir. 2015). When an attorney not only failed to provide a benefit to his client (the debtor), but also took actions that were detrimental to the debtor and caused the debtor to incur unnecessary fees, the Program successfully defended an order denying compensation to the attorney, disgorging his attorney's fees, and suspending him from practicing in that court. *Needler v. Casamatta (In re Miller Auto. Grp. Inc.)*, 536 B.R. 828 (B.A.P. 8th Cir. 2015). The




Program also successfully defended sanctions against a debtor’s attorney who told his client to lie about her assets and her financial transactions in violation of the Bankruptcy Code. *Bisges v. Gargula (In re Clink)*, 770 F.3d 719 (8th Cir. 2014). Further, the Program successfully defended sanctions imposed upon an attorney who improperly filed court documents while suspended and then lied about it in court. *Septowski v. Neary (In re Jones)*, No. 14-971, slip op. (N.D. Tex. June 17, 2015). Finally, the Program successfully defended an order significantly reducing a bankruptcy attorney’s fees because no attorney-client relationship existed during the periods when the disputed services were provided and, even if such a relationship had existed, the services did not benefit the estate and the attorney’s conflict of interest barred any recovery of the disputed fees in any event. *Ressler v. Harrington (In re Gold)*, No. 13-1744, slip op., 2015 WL 3796102 (D. Conn. June 18, 2015).

The United States Supreme Court heard five bankruptcy cases during its 2014 term, including three in which the United States participated as amicus. The USTP provides assistance to the Solicitor General in analyzing bankruptcy cases before the high Court and was listed among the government’s counsel in two of the briefs filed during the 2014 term. Among the issues addressed are the constitutional authority of bankruptcy courts, *Wellness Int’l Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015); standards for determining the finality of bankruptcy court orders, which affected not only the denials of proposed consumer debt repayment plans at issue in the case, but also many other matters (e.g., USTP motions to disqualify counsel and objections to their fees), *Bullard v. Hyde Park Sav. Bank*, 135 S. Ct. 1686 (2015); and the right of attorneys to obtain additional fees for defending objections to their fee applications, *Baker Botts LLP v. ASARCO LLC*, 135 S. Ct. 2158 (2015). In the 2015 term, which is ongoing, the USTP has assisted the Solicitor General in arguing that debtors should be liable for debts obtained through intentional fraudulent schemes even if they do not involve a false statement or false representation, *Husky Int’l Electronics v. Ritz*, No. 15-145 (S. Ct.). These and other cases illustrate the importance of the USTP’s participation in appeals to promote coherent and consistent development of case law and ensure compliance with the commands of the Bankruptcy Code.

Trustee Administration

The Program appoints and supervises private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12, and 13. Chapter 7 trustees collect the debtor’s assets that are not exempt from creditors, liquidate the assets, and distribute the proceeds to creditors. Chapter 12 and chapter 13 trustees evaluate the financial affairs of 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 in accordance with the priorities of the Bankruptcy Code.

The Program instructs trustees concerning their duties to debtors, creditors, other parties in interest, and the U.S. Trustee; trains trustees and evaluates their performance; reviews their financial operations; ensures the effective administration of estate assets; and intervenes to



investigate and recover the loss of estate assets when embezzlement, mismanagement, or other improper activity is suspected or alleged.

At the end of FY 2015, the Program supervised the activities of 982 chapter 7 trustees, 36 chapter 12 trustees, and 177 chapter 13 trustees. In FY 2015, chapter 7 trustees administered approximately 55,000 asset cases that generated more than \$3 billion in funds, while chapter 12 and chapter 13 trustees administered over 1.2 million cases and disbursed more than \$6.8 billion.

B. Performance Tables

1. PERFORMANCE AND RESOURCE TABLE											
Appropriation: United States Trustee Program											
Decision Unit: Administration of Cases											
DOJ Strategic Goal/Objective: 2.6 Protect the federal fisc and defend the interests of the United States.											
		Target		Actual		Projected		Changes		Requested (Total)	
WORKLOAD/ RESOURCES		FY 2015		FY 2015		FY 2016		Current Services Adjustments & FY 2017 Program Changes		FY 2017 Request	
Number of Chapter 7, 11, 12 and 13 Cases Filed											
Total Filings ^{1/}											
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
TYPE / Strategic Objective	Performance /Resources	1,174	\$225,908	1,099	\$225,908	1,184	\$225,908	0	\$3,809	1,184	\$229,717
Program Activity	1. Civil Enforcement	<u>FTE</u>	<u>\$000</u>	<u>FTE</u>	<u>\$000</u>	<u>FTE</u>	<u>\$000</u>	<u>FTE</u>	<u>\$000</u>	<u>FTE</u>	<u>\$000</u>
		450	\$86,500	421	\$86,500	453	\$86,500	0	\$1,459	453	\$87,959
Efficiency Measure	No. of 707(b) inquiries per successful outcome	7.0		5.2		7.0		0.0		7.0	
	Percent of Trustee Final Reports reviewed within 60 days ^{2/}	New Measure FY 2017		New Measure FY 2017		New Measure FY 2017		New Measure FY 2017		95%	
WORKLOAD/ RESOURCES											
Program Activity	2. Case and Trustee Administration	<u>FTE</u>	<u>\$000</u>	<u>FTE</u>	<u>\$000</u>	<u>FTE</u>	<u>\$000</u>	<u>FTE</u>	<u>\$000</u>	<u>FTE</u>	<u>\$000</u>
		724	\$139,408	678	\$139,408	731	\$139,408	0	\$2,350	731	\$141,758
Outputs	Number of successful actions related to consumer protection	2,400		2,545		2,400		-200		2,200	
	Number of successful discharge complaints	600		395		475 ^{3/}		0		475	
	Potential Additional Returns to Creditors through Civil Enforcement and Related Efforts	\$950,000,000		\$1,168,495,384		\$950,000,000		\$0		\$950,000,000	
	Litigation success rate ^{2/}	New Measure FY 2017		New Measure FY 2017		New Measure FY 2017		New Measure FY 2017		95%	

1/ The Program has discontinued reporting the number of bankruptcy case filings on the performance and resource table. The decision to discontinue reporting this measure was made in collaboration with JMD as the measure was established as a workload measure and is not a performance measure.

2/ The Program added two new measures in FY 2017, the percent of Trustee Final Reports reviewed within 60 days and the Program's overall litigation success rate.

3/ The FY 2016 target for the number of successful discharge complaints differs from the FY 2016 President's Budget.



Data Definitions:

Chapter 7: A liquidation case. A trustee is appointed to sell the debtor's non-exempt assets and distribute the proceeds to creditors in accordance with the priorities of the Bankruptcy Code. Generally, absent fraud or abuse, the remaining debts of individual debtors are discharged. Chapter 7 cases include individuals and businesses.

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

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

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

Number of Section 707(b) inquiries per successful outcome: Inquiries made under 11 U.S.C. § 707(b)(2) and (b)(3) help the Program assess an individual debtor's eligibility for chapter 7 relief. If the debtor is above the applicable state median and calculations show disposable income above a specified amount, there is a presumption of abuse. In many cases, this requires the debtor to either agree to convert the case to chapter 13 or dismiss (cancel) the chapter 7 bankruptcy petition, voluntarily or through contested litigation. This efficiency measure is calculated by dividing the sum of all Section 707(b)(2) and (b)(3) inquiries made by the Program to debtors or their attorneys in a fiscal year by the number of successful outcomes relating to 707(b)(2) and (b)(3). A successful outcome is defined as a conversion to a more appropriate bankruptcy chapter, a dismissal of the bankruptcy case, or an abuse motion granted. A lower ratio suggests the Program is doing a better job of focusing staff effort (inquiries) on bankruptcy petitions requiring Program action.

Percent of Trustee Final Reports reviewed within 60 days (new measure in FY 2017): This measure is the efficiency rate for Trustee Final Reports (TFRs). Under the Memorandum of Understanding with the Administrative Office of the U.S. Courts, TFRs must be reviewed and approved by the USTP, and filed with the Bankruptcy Court, within 60 days of receipt. Case trustees distribute chapter 7 estate funds to creditors in accordance with USTP approved TFRs.

Number of successful actions related to consumer protection: This measure consists of formal motions and complaints granted in a bankruptcy court and successful inquiries made by the U.S. Trustee to prevent fraud, abuse, and error resulting from the inappropriate actions of creditors, petition preparers, attorneys, mortgage servicing agencies, and rescue mortgage scams. The measure includes actions under 11 U.S.C. §§ 110, 526 and 329, False/Inaccurate/Improper Claims, Discharge/Stay Violations under 11 U.S.C. § 524, Abuse of Reaffirmation Procedures,



Improper Solicitation, Objection to Relief from Stay Motions, and Other Actions for Attorney Misconduct.

Number of successful discharge complaints: This measure consists of successful formal discharge complaints filed by the USTP in a bankruptcy court to prevent fraud and abuse by individual debtors. These complaints result in waiver denial or revocation of a discharge of debt. It is the most serious civil remedy available to the Program in its effort to prevent fraud and abuse in the bankruptcy system and is taken to resolve issues such as hidden assets, unreported income, and exaggerated expenses. (This measure does not include successful discharge complaints against debtors who are ineligible due to a prior discharge or who failed to complete a debtor education course.)

Potential Additional Returns to Creditors through Civil Enforcement and Related Efforts: Program actions have a significant financial impact, and this measure tracks the amounts involved as the result of the Program's formal and informal actions. The majority of this measure is attributable to debts not discharged in chapter 7 and potentially available to creditors. Other amounts included are fee requests and claims reduced or withdrawn, fees disgorged, and sanctions and fines against professionals.

Litigation success rate (new measure in FY 2017): This measures the Program's aim for excellence in litigation, including exercising sound judgment, diligence, and discretion to bring the strongest actions given limited Program resources. The success rate is calculated as the number of actions favorably resolved (granted or sustained) divided by the total number of actions decided (granted, sustained, overruled, or denied) in any given year.

PERFORMANCE MEASURE TABLE

Appropriation: United States Trustee Program

Decision Unit: Administration of Cases

Performance Report and Performance Plan Targets		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015		FY 2016	FY 2017
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Efficiency Measure	No. of 707(b) inquiries per successful outcome	4.4	4.4	4.7	4.8	7.0	5.2	7.0	7.0
	Percent of Trustee Final Reports reviewed within 60 days ^{/1}	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	95%
Outputs	Number of successful actions related to consumer protection	3,335	3,259	4,018	2,829	2,400	2,545	2,400	2,200
	Number of successful discharge complaints	586	557	551	410	600	395	475 ^{/2}	475
	Potential Add'l. Returns to Creditors	\$2,539 M	\$1,982 M	\$1,659 M	\$1,071 M	\$950 M	\$1,168 M	\$950 M	\$950 M
	Litigation success rate ^{/1}	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	95%


^{1/} The Program added two new measures in FY 2017, the percent of Trustee Final Reports reviewed within 60 days and the Program's overall litigation success rate.

^{2/} The FY 2016 target for the number of successful discharge complaints differs from the FY 2016 President's Budget.

C. Performance and Strategies

1. Performance Plan and Report for Outcomes

Since FY 2010, the USTP has incurred a staffing decrease of over 10 percent. During this time USTP's cadre of dedicated professionals continued to fulfill mission priorities, but the impact of lower staff levels was felt with reduced civil enforcement output beginning in FY 2014 and continuing in FY 2015. In FY 2015, the USTP took nearly 32,000 formal and informal civil enforcement actions (compared with more than 35,000 civil enforcement actions in FY 2014). The USTP made more than 2,100 criminal referrals to U.S. Attorneys and law enforcement during FY 2015. The Program participated in 96 appeals beyond the bankruptcy court, including nearly two dozen cases at the United States court of appeals level. Program staff reviewed approximately 110,000 trustees' final reports before funds were distributed to creditors. On-site audits and field reviews of 457 chapter 7, 12, and 13 trustee operations were scheduled to ensure



the trustees were compliant in their fiduciary responsibilities. The USTP filed 2,691 motions to convert or dismiss chapter 11 cases.

In FY 2015, the Program met three of four performance goals. The Program fell 205 cases short of its target of 600 successful discharge complaints. These complaints result in denial or revocation of a discharge of debt, constitute the most serious civil remedy available to the Program in its effort to prevent fraud and abuse in the bankruptcy system, and is taken to resolve issues such as hidden assets, unreported income, and exaggerated expenses. The USTP officially started tracking this measure in FY 2011, and adjusted the target upward in the FY 2013 President's Budget prior to the significant decrease in staffing. The declines in FY 2014 and FY 2015 are attributable to several factors, most notably fewer staff on-board, the loss of experienced staff trained to discover and investigate these type of actions, and to a lesser degree reduced bankruptcy filings. The Program is focusing its efforts in this core enforcement area and filling key positions that over time will reinforce its ability to find, investigate, and prosecute these complex Section 727 actions. For FY 2016 and 2017, the Section 727 success measure has been adjusted downward to reflect current USTP staffing levels and the continued decline in bankruptcy filings during this period as the Program rebuilds critical expertise.

Since FY 2011, the Program has also tracked the number of successful consumer protection actions. Since that time, with the Program's emphasis on addressing abusive creditor conduct and aggressively investigating attorneys and bankruptcy petition preparers who prey on debtors, the performance target for successful consumer protection actions has twice been increased. However, the reduction in Program on-board staff, and to a lesser degree the decrease in bankruptcy filings, has impacted the Program's ability to meet this performance measure. Thus, for FY 2017 the consumer protection performance measure has been adjusted to the historical FY 2012 level.

During FY 2015, the Program completed a thorough review of its performance measures. As a result, the USTP is adding two new performance measures, which combined with existing measures will provide specific outcomes and impacts of the Program's activities, and provide valuable insight into the Program's performance of its core mission. The first new measure is the litigation success rate, which measures the USTP's aim for excellence in litigation, including exercising sound judgment, diligence, and discretion to bring the strongest actions given limited Program resources. The success rate is calculated as the number of actions favorably resolved (granted or sustained) divided by the total number of actions decided (granted, sustained, overruled, or denied) in any given year. The initial litigation success performance target is 95 percent for FY 2017.

The second new measure is the efficiency rate for Trustee Final Reports (TFRs). The USTP approves and files TFRs that provide for distribution of chapter 7 estate funds to creditors in accordance with statutorily prescribed priorities. TFRs must be reviewed and approved by the USTP, and filed with the Bankruptcy Court, within 60 days of receipt. The initial performance target for FY 2017 is 95 percent of TFRs to be reviewed within 60 days of receipt.



2. Strategies to Accomplish Outcomes

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

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


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

Debtor Abuse. The USTP combats debtor fraud and abuse primarily by seeking case dismissal if a debtor has an ability to repay debts and by seeking denial of discharge for the concealment of assets and other Bankruptcy Code violations. Civil enforcement actions include taking steps to dismiss abusive filings, deny discharges to ineligible or dishonest debtors, and limit improper refilings.

Creditor Abuse. Addressing violations of the Bankruptcy Code by creditors, including national mortgage servicers, remains a top Program priority. The Program takes action to ensure the accuracy of creditor claims, the protection of consumer personal information, and other compliance with the Bankruptcy Code and Rules. The USTP investigates and takes civil enforcement action in cases involving allegations that mortgage servicers file inaccurate claims that debtors owe more money than they actually owe, that a default has occurred when there has been no default, or that mortgage servicers have been adding additional and undisclosed charges that are not permitted under the terms of the loan contract.

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

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

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

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

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

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



VI. Program Increases by Item

Item Name:	Section 341 Meeting Room Security
Strategic Goal:	2: Prevent Crime, Protect the Rights of the American people, and Enforce Federal Law
Strategic Objective:	2.6: Protect the federal fisc and defend the interests of the United States
Budget Decision Unit(s):	Administration of Cases
Organizational Program:	United States Trustee Program
Program Increase: Positions <u>0</u> Agt/Atty <u>0</u> FTE <u>0</u> Dollars <u>\$2,135,000</u>	

Description of Item

The USTP requests \$2,135,000 to provide security services at priority Section 341 meeting room sites with heightened safety concerns. Section 341 of the Bankruptcy Code requires the U.S. Trustee to convene a meeting of creditors in every bankruptcy case. At the Section 341 meeting, the debtor must appear and answer questions under oath from the U.S. Trustee, any trustee appointed in the case, creditors, and other parties in interest regarding the administration of the bankruptcy estate and the debtor's liabilities and financial condition. In addition, these meetings are open to the general public. The USTP acquires space for Section 341 meeting rooms in secured locations when feasible and justifiable. This is not always possible, however, due to a lack of available space, as well as the infrequency of meetings in remote locations. As a result, over 100 meeting rooms are currently situated in non-federal space with less than optimal security, including commercial space and low or no cost space in hotel conference rooms and local government facilities like public libraries. Because of their nature, Section 341 meetings may be contentious, and the increased safety and security risks warrant the adoption of appropriate security measures.

The USTP is using a multi-pronged strategy to minimize the overall cost of providing security services at Section 341 meeting room sites with heightened safety concerns. The USTP is working with other components of the Department of Justice to identify secure space already used by other Justice components that could also serve as a Section 341 meeting site. The USTP is also collaborating with the Administrative Office of the U.S. Courts, judges, and clerks of court to identify opportunities to share or acquire space that the courts do not use on a full-time basis. This space is typically located within secure federal facilities, with court security officers available.

Between FY 2015 and FY 2016, the USTP committed \$1 million of limited one-time carryover funding to initiate a pilot program to provide security at 14 locations. This enhancement secures the base resources needed to provide security services at priority Section 341 meeting room sites with heightened safety concerns.

Justification

This enhancement is necessary to protect the safety and security of all parties attending the Section 341 meeting including debtors, creditors, case trustees, USTP personnel, and the general public at large.

Impact on Performance

Security at Section 341 meeting room locations supports the Department of Justice FY 2017 funding priorities for enhancing public safety, and protecting vulnerable people. This enhancement will protect the safety and security of all parties attending Section 341 meetings, including members of the local community and the general public at large.


Funding

Base Funding

<i>FY 2015 Enacted</i>				<i>FY 2016 President's Budget</i>				<i>FY 2017 Current Services</i>			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
0	0	0	20	0	0	0	20	0	0	0	20

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2017 Request (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Total Non-Personnel			2,135	0	0



Total Request for this Item

	Pos	Agt/ Atty	FTE	Personnel (\$000)	Non- Personnel (\$000)	Total (\$000)	FY 2018 Net Annualization (change from 2017) (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Current Services	0	0	0	0	20	20	0	0
Increases	0	0	0	0	2,135	2,135	0	0
Grand Total	0	0	0	0	2,155	2,155	0	0

Affected Crosscuts

None

VII. Program Offsets by Item

The FY 2017 requested budget does not reflect program offsets.



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Exhibits