



**United States Department of Justice
Executive Office for United States Trustees**

**United States Trustee Program
Annual Report of Significant Accomplishments
Fiscal Years 2017 - 2018**

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Message from the Director

It is my pleasure to present the United States Trustee Program's (USTP or Program) combined Fiscal Years 2017 and 2018 Annual Report of Significant Accomplishments. This was a notable period for the USTP in that we marked the 30th anniversary of the completion of our nationwide expansion as the “watchdog” of the bankruptcy system. We commemorated this important milestone by reflecting on the changes and challenges we have confronted, and by celebrating our progress and achievements. Over the 30 years, we successfully built a nationwide infrastructure, oversaw the fair and honest administration of more than 32 million bankruptcy cases, and enforced the law through sound regulation and robust litigation. Importantly, we remained steadfast in our mission of promoting the integrity and efficiency of the bankruptcy system. We are proud of our accomplishments and thankful for our cadre of hardworking and dedicated staff across the country—including about 110 employees who have been with us for the entire 30 years—who have helped us to achieve so much.

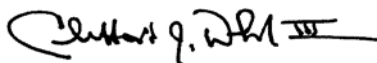
As our history shows, the Program is continually seeking ways to improve not only the bankruptcy system but the efficiency of our operations. Fiscal Years 2017 and 2018 were no exception. The USTP undertook a number of new enforcement initiatives and further advanced our innovative management strategies to continue to achieve success in an environment of scarce resources.

In the enforcement area, the USTP focused considerable attention on addressing the problem of fraudulent and abusive practices by a small segment of consumer debtors' attorneys—including Internet-based firms that present widespread, multi-jurisdictional issues—who harm debtors, creditors, and the bankruptcy system by their failure to comply with the Bankruptcy Code and Rules, or through other misconduct. The USTP also worked to ensure that bankruptcy asbestos trusts operate with greater transparency and with protections against fraud and abuse. Finally, the Program enhanced its enforcement efforts to ensure that bankruptcy is not used to evade federal drug laws prohibiting the use and sale of marijuana.

On the management side, the Program further refined its internal operations to maximize efficiency. The USTP consolidated several of its core functions at the regional level, adopted a shared staffing model in which the majority of staff work on some matters beyond their home office, and initiated shared-service arrangements both within the Department of Justice and in partnership with other agencies for key human resources and information technology services. In doing so, the USTP has been able to maintain a high level of productivity and remain flexible to address emerging issues.

I am proud of the USTP and the reputation that we have for upholding the law and ensuring that all participants in the bankruptcy system benefit from the fair administration of the Bankruptcy Code. I invite you to learn more about our many accomplishments from Fiscal Years 2017 and 2018, and encourage you to visit www.justice.gov/ust regularly for updates on our work.

Sincerely,



Clifford J. White III
Director

USTP's Role in the Bankruptcy System

Mission and Responsibilities

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 bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the American public. In 2018, the Program celebrated its 30th anniversary as a national Program.

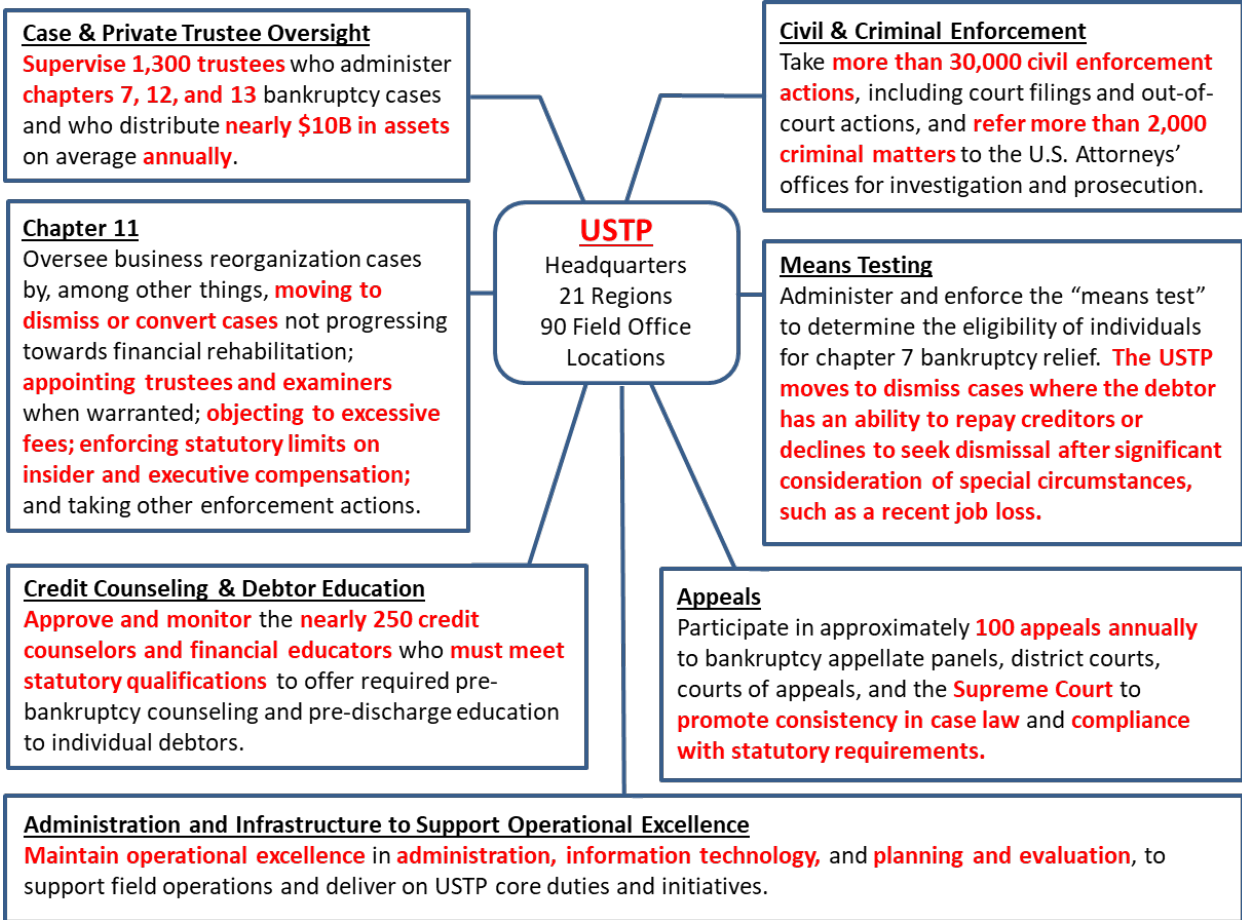
Annually, the Program oversees the administration of about 1.5 million ongoing bankruptcy cases in 88 federal judicial districts. More than two-thirds of all cases pending in the federal judicial system are bankruptcy cases.¹ The USTP has standing to participate in every individual and business bankruptcy case filed in those districts.

To ensure the integrity of the bankruptcy system, the Program carries out a broad range of administrative, regulatory, and enforcement activities that are critical to the proper functioning of the bankruptcy system:

- The USTP employs an array of civil enforcement tools to detect and pursue fraud and abuse by debtors, creditors, attorneys, bankruptcy petition preparers, and others.
- The Program oversees chapter 11 reorganization cases to ensure that parties comply with the Bankruptcy Code and Bankruptcy Rules.
- The USTP refers suspected bankruptcy-related crimes to the United States Attorneys and assists in criminal investigations and prosecutions.
- The Program appoints and supervises the private trustees who administer cases filed under chapters 7, 12, and 13.
- The Program approves and oversees pre-bankruptcy credit counseling agencies and post-bankruptcy debtor education providers.
- The USTP identifies and raises issues for review on appeal so the bankruptcy laws are shaped, interpreted, and applied consistently across the country.

¹ Data per the Administrative Office of the U.S. Courts, available at <http://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables>. For bankruptcy caseload data, see Table F. U.S. Bankruptcy Courts – Bankruptcy Cases Commenced, Terminated and Pending During the 12-Month Periods – Ending September 30, 2016 through September 30, 2018. For data on cases pending in district courts and number of appeals pending in the courts of appeals, see United States District Courts – National Judicial Caseload Profile; and U.S. Court of Appeals – Judicial Caseload Profile.

Figure 1. Core Duties of the U.S. Trustee Program



Source: Executive Office for U.S. Trustees

Case Filings

A bankruptcy case is a proceeding brought under federal law to discharge or reorganize the financial obligations of an individual or an entity. The federal Bankruptcy Code appears in title 11 of the United States Code. Most bankruptcy cases are filed under chapter 7, 11, 12, or 13.

- Chapter 7 bankruptcy is a liquidation proceeding available to individual consumers and businesses. The assets of a debtor that are not exempt from the reach of creditors are collected and reduced to money, and the proceeds are distributed to creditors in accordance with a priority scheme established by the Bankruptcy Code. A consumer debtor receives a release from debt, except for certain debts that the statute excludes from discharge.
- Chapter 11 provides a procedure by which a business can reorganize debts while continuing to operate. The vast majority of chapter 11 cases are filed by businesses, although individuals also may file under chapter 11. The debtor, often with participation from creditors, creates a plan of reorganization to repay debts, in full or in part.

- Chapter 12 allows family farmers or family fishermen to reorganize their debts and remain in possession of their property. The debtor continues operating under a repayment plan that must be completed within three to five years.
- Chapter 13 is used by individual consumers to reorganize their financial affairs under a repayment plan that must be completed within three to five years. To be eligible for chapter 13 relief, a consumer must have regular income and may not have more than a specified amount of debt.

The USTP has jurisdiction in all judicial districts except those in Alabama and North Carolina. In those districts, bankruptcy court officials called Bankruptcy Administrators perform a similar function.

Bankruptcy filings in the judicial districts covered by the Program totaled over 749,000 in Fiscal Year (FY) 2017 before dropping slightly to just over 732,500 in FY 2018. After several years of declining bankruptcy filings, the rate of decline in filings lessened considerably in FY 2017 and FY 2018. Filing totals have now stabilized and are nearly flat.

Figure 2. Bankruptcy Filings in USTP Districts by Chapter, FY 2017-2018

Bankruptcy Chapter	FY 2017 Filings	FY 2018 Filings
All Chapters	749,216	732,584
Chapter 7	470,731	461,859
Chapter 11	6,845	6,824
Chapter 12	486	455
Chapter 13	271,025	263,352
Other Chapters*	129	94

Source: Administrative Office of the U.S. Courts

*Other chapters include chapters 9 (municipalities) and 15 (cross-border).

Civil Enforcement and Means Testing

One of the USTP’s core functions is to combat bankruptcy fraud and abuse. The majority of the Program’s actions address abuse by debtors who attempt to conceal assets, evade the repayment of debts when they have disposable income available to pay their creditors, or commit other violations. However, the USTP also commits significant effort to combating 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.

In FY 2017, the Program took more than 32,000 civil enforcement actions, including court filings and out of court actions, with a potential monetary impact of \$884 million in debts not discharged and other relief. During FY 2018, the Program took more than 30,000 civil enforcement actions with a potential monetary impact of over \$2.8 billion.² Between FY 2003, when the USTP began tracking results, and the end of FY 2018, the Program has taken more than 781,000 actions, with a potential monetary impact in excess of \$21 billion.

Figure 3. Civil Enforcement Activity in Consumer Cases, FY 2017-2018

Type of Activity	Actions		Inquiries		Action Success Rate		Financial Impact (1,000s)	
	FY 2017	FY 2018	FY 2017	FY 2018	FY 2017	FY 2018	FY 2017	FY 2018
Enforcement Activity Against Debtors								
§ 707(a) Dismissal for Cause	1,584	1,395	1,351	1,270	99.2%	97.3%	\$49,876	\$45,339
§ 707(b) Dismissal for Abuse	1,429	1,365	9,566	9,293	99.0%	98.3%	\$185,425	\$156,236
§ 727 Denial of Discharge	991	943	1,687	1,628	98.2%	98.6%	\$579,438	\$2,595,532
§ 1328(f) Denial of Discharge	210	181	273	256	100.0%	100.0%	\$19,125	\$13,468
§ 1307(c) Dismissal or Conversion	135	133	54	73	96.7%	97.0%	N/A	N/A
Consumer Protection Activity								
§ 110 Bankruptcy Petition Preparers	319	252	620	522	99.0%	98.4%	\$2,465	\$1,201
§ 526 Debt Relief Agencies	47	63	255	638	100.0%	100.0%	\$141	\$1,061
§ 329 Attorney Fee Disgorgement	497	429	1,268	1,277	96.9%	98.8%	\$1,891	\$1,423
Other Attorney Misconduct	105	84	298	258	98.8%	97.2%	\$458	\$175
Abusive Conduct by Creditors	192	138	879	574	98.0%	100.0%	\$2,451	\$6,338

Source: Executive Office for U.S. Trustees

Means Testing and Debtor Violations

One of the major responsibilities of the USTP is to administer and enforce the “means test” which is used to help determine an individual’s eligibility for chapter 7 bankruptcy relief. Under the means test, individual debtors with primarily consumer debt and income above their state median income are subject to a statutorily prescribed formula. The formula uses historical income, partially reduced by allowable expense standards issued by the Internal Revenue Service for its use in tax collection, to determine disposable income. In FY 2017 and FY 2018, a case with disposable income above \$214.17 per month would be presumed abusive and subject to dismissal.

² The monetary impact figure for FY 2018 was affected by one anomalous case with over \$2 billion in debt not discharged.

The effectiveness of the means test largely depends on the USTP identifying cases that are presumed abusive under the statutory formula and filing actions to dismiss those cases when appropriate. The USTP is required by law to file with the court either a motion to dismiss a presumed abusive case or a statement explaining the reasons for declining to file such a motion – that is, special circumstances that justify an adjustment to the current monthly income calculation. Common reasons for declining to seek dismissal of a presumed abusive case include recent job loss or continuing medical debt.

In FY 2017 and FY 2018, the USTP declined to file a motion to dismiss in about 63 percent of presumed abusive cases. The percentage of declinations has grown from less than 35 percent in FY 2006 to more than 60 percent in recent years. This suggests that the objective criteria of the means test are now well-established and that most debtors’ attorneys file presumed abusive cases only if the cases satisfy statutory exceptions.

The Bankruptcy Court for the Middle District of Pennsylvania entered an order granting the U.S. Trustee’s motion to dismiss, preventing the discharge of \$344,784 in unsecured debt. An investigation by the U.S. Trustee’s Harrisburg office revealed that the debtors overstated their mortgage and tax expenses on their means test form by more than \$1,000 per month. After using the correct figures, the debtors had sufficient monthly disposable income to trigger the presumption of abuse and the U.S. Trustee filed its motion. The U.S. Trustee’s motion also argued that the case was abusive under the totality of the circumstances standard because the debtors lacked the need for a discharge based on their actual financial circumstances.

As a result of the USTP’s prudent exercise of its enforcement responsibilities, the means test is meeting its statutory objective of denying chapter 7 relief to debtors with ability to pay without creating unnecessarily harsh results.

Even if a case is not presumed abusive under the means test, the Bankruptcy Code permits the USTP to seek dismissal based on the debtor’s bad faith or the totality of the circumstances. For example, the case of a debtor who retains luxury items, incurs debt shortly before filing bankruptcy, or fails to disclose information required by the Bankruptcy Code and Bankruptcy Rules may be subject to dismissal on the U.S. Trustee’s motion.

The Bankruptcy Court for the District of Maryland granted the U.S. Trustee’s motion to dismiss a debtor’s chapter 7 case, preventing the discharge of \$227,032 in unsecured debt. The Program’s Baltimore office moved to dismiss the case as abusive under the totality of the circumstances. The debtor’s schedules indicated he had more than \$4,300 in monthly disposable income to repay creditors under a chapter 13 plan. Rather than defend the U.S. Trustee’s motion, the debtor consented to case dismissal.

In addition to or instead of seeking case dismissal, the U.S. Trustee may file a complaint to deny or revoke a bankruptcy discharge if the debtor engaged in improper conduct such as transferring, concealing, or destroying property to hinder or defraud a creditor or the trustee; knowingly and fraudulently making a false oath; refusing to obey a court order; or failing to keep or

preserve financial records. The debtor may voluntarily waive discharge under the same statutory provision.

Ruling for the USTP's Detroit office after a two-day trial, the Bankruptcy Court for the Eastern District of Michigan issued a written opinion denying the debtor's discharge of more than \$3.74 million in unsecured debt. The debtor had been a successful area restaurateur, but claimed that she was out of the business and that a restaurant bearing a slightly altered but familiar name belonged to her daughter. In her bankruptcy case, the debtor omitted transfers to her daughter, showed zero income, underreported her liabilities, failed to list all of her assets, and testified falsely at the section 341 meeting of creditors. The court found that the debtor engaged in continuing concealment of transfers, that her subsequent amendment of her bankruptcy schedules did not excuse her false original filings, and that her admission in her answer to the U.S. Trustee's complaint objecting to her discharge that she signed the petition schedules under penalty of perjury was binding.

Consumer Protection

The USTP takes a balanced approach in its civil enforcement actions against fraud and abuse in the bankruptcy system. While most of the Program's actions address debtor violations, a significant number focus on remedying wrongdoing by attorneys, non-attorney bankruptcy petition preparers, creditors, and others who attempt to exploit debtors.

Professional Misconduct

The USTP has a long history of rigorous enforcement of the Bankruptcy Code and Bankruptcy Rules against attorneys and others who engage in fraudulent conduct or provide inadequate representation to their consumer clients. Some attorneys fail to carry out their basic obligations to their clients by, for example, not meeting with their client, not attending court proceedings, and engaging in other unprofessional behavior. This professional misconduct not only harms the debtor who receives substandard representation, but also burdens the creditors and the courts by causing unnecessary delay in the bankruptcy case. In some of the more egregious cases, professionals engaged in fraud by lying to the court, misrepresenting their services to clients, or engaging in other wrongful conduct.

In FY 2017 and FY 2018, the USTP continued the initiative begun the prior year to combat misconduct and abuse by consumer debtor attorneys and debt relief agencies that fail to comply with bankruptcy standards, including addressing special problems created by national consumer law firms whose system-wide violations create widespread, multi-jurisdictional issues. In both FY 2017 and FY 2018, total USTP formal actions taken to address attorney misconduct based on sections 329 and 526 of the Bankruptcy Code were substantially above pre-initiative totals. Section 329 governs debtors' transactions with their attorneys and section 526 limits the conduct of debt relief agencies including attorneys that assist debtors filing for bankruptcy relief.

The Program filed more than 900 court actions in FY 2017 and more than 800 in FY 2018 against professionals and non-attorney bankruptcy petition preparers who violated legal standards to the detriment of debtors, creditors, and the bankruptcy system.

After a four-day trial on a complaint filed by the USTP's Roanoke office, a national consumer law firm and its management were sanctioned more than \$300,000, ordered to disgorge fees, and were barred from bankruptcy practice in the Western District of Virginia for five years. The bankruptcy court found that the firm and its attorneys, among other things, systemically engaged in the unauthorized practice of law, provided inadequate representation to consumer debtor clients, and promoted and participated in a scheme to convert auto lenders' collateral and then misrepresented the nature of that scheme. Specifically, the court found that the law firm used high-pressure sales tactics to "close" clients and failed to adequately supervise its non-attorney salespeople to prevent their unauthorized practice of law. Additionally, the law firm referred some clients to a third party towing company, which paid the clients' bankruptcy attorney's fees in exchange for taking possession of and, in some cases, selling vehicles already subject to valid liens, thereby harming the lenders with secured claims. This decision is currently being litigated on appeal.

The Bankruptcy Court for the Central District of California entered a stipulated judgment between the USTP's Riverside office and a bankruptcy attorney, sanctioning him \$5,000 and ordering him to pay \$10,000 in penalties to the U.S. Trustee. The judgment also canceled the attorney's engagement contracts with more than 75 clients, thereby extinguishing their obligations to pay approximately \$85,000 in legal fees. The attorney had adopted a "no money down" business model, claiming that he would not charge debtors for legal services typically performed before a debtor files for bankruptcy (pre-petition), but would only charge for work after the bankruptcy filing (post-petition). The attorney then increased his customary billing rates and charged clients higher fees for the minimal work he performed post-petition in order to justify higher legal fees. His firm also altered pre-petition bankruptcy documents to give the appearance that the firm had prepared them post-petition to justify the excessive fees. The stipulated judgment enjoined the attorney from engaging in the abusive practices described in the complaint, such as filing false documents that concealed the source, amount, or timing of fees paid and re-dating or altering client-executed documents filed with the court. Finally, the judgment required him to fulfill remedial education and training requirements.

Creditor Violations

In many creditor abuse cases there are multiple victims, including debtors and other creditors whose distributions are diminished by overpayments to the violating creditor. This activity also is an affront to the integrity of the bankruptcy system.

The USTP's creditor abuse enforcement efforts have sought to address a range of violations committed by both secured and unsecured creditors, including robo-signing documents filed with the bankruptcy court that have the signature of a person who did not review the document, billing debtors for amounts not owed, violating the bankruptcy discharge injunction, failing to protect debtors' personally identifiable information, and other non-compliance with bankruptcy statute and rules.

In FY 2017 and FY 2018, the USTP continued to monitor mortgage claims for fraud and abuse issues, although it should be noted that industry compliance and self-reporting have improved following a multi-year effort in which the USTP entered into six national settlements addressing mortgage servicing misconduct. Two settlements completed in 2018 resulted in more than \$148 million in remediation to bankruptcy debtors.

The Bankruptcy Court for the Northern District of Georgia approved a national settlement between the USTP and Citibank N.A. (Citibank), Department Stores National Bank (collectively, Citi), and FDS Bank, requiring Citi to pay \$5 million to remediate robo-signed proofs of claim filed in consumer bankruptcy cases in connection with more than 71,000 Macy's-branded credit card accounts. These proofs of claim were signed, under penalty of perjury, by employees of a third party vendor who had not reviewed and/or lacked knowledge of the contents of the proofs of claim or were filed using the electronic credentials of vendor employees who did not review the claim. Citi self-reported the errors to the Program after it took over servicing of the accounts from the third parties in late 2015.

The Program's Columbus office filed a motion seeking an escrow reconciliation at the end of the debtor's chapter 13 case after a mortgage servicer failed to file notices of payment changes between 2013 and 2017. The Bankruptcy Court for the Southern District of Ohio ultimately entered an agreed order requiring the servicer to turn over \$26,546 in escrow account surplus funds to the chapter 13 trustee for distribution to creditors. The servicer discovered the escrow surplus in response to the USTP's motion.

The Program's Chicago office filed an objection to a mortgage servicer's notice of payment change based on inconsistencies in the escrow statement and the servicer's failure to file previous payment change notices after entering into a mortgage loan modification agreement with the chapter 13 debtors. The Bankruptcy Court for the Northern District of Illinois approved the stipulated order between the USTP and the servicer requiring the servicer to refund \$9,250 to the debtors and \$8,195 to the chapter 13 trustee for overpayments made during the case. In the order resolving the USTP's objection, the servicer agreed that it received the excess funds from the debtors because the modification reduced their monthly payment effective in June 2016, but the servicer failed to file payment change notices with the court until March 2017.

The Program's Detroit office objected to the mortgage servicer's filing at the end of the debtor's chapter 13 case in which the servicer stated that the debtor was in default on his mortgage and owed more than \$17,000. The USTP asserted that the debtor made all of the required mortgage payments to the chapter 13 trustee, and in turn, the trustee made payments to the servicer, and that the servicer had failed to file required payment change notices during the case to properly adjust the escrow payments. The Bankruptcy Court in the Eastern District of Michigan entered an agreed order resolving the USTP's objection finding that the servicer waived the alleged default, the debtor was current on the mortgage, and no escrow shortage existed.

Marijuana Enforcement

As more and more states have legalized medical marijuana, recreational marijuana, or both, the issue of marijuana assets in bankruptcy cases has grown. In FY 2017 and FY 2018, the USTP enhanced its enforcement efforts in this area and has advocated up the appellate chain in consultation with other DOJ components to ensure that bankruptcy is not used to evade federal drug laws prohibiting the use and sale of marijuana. These actions have protected trustees from having to administer marijuana assets in violation of federal law, prevented proceeds from illegal marijuana activities from entering the bankruptcy system, and denied the privilege of bankruptcy reorganization to people and companies who seek to use the federal courts to perpetuate criminal activity.

Criminal Enforcement

Criminal enforcement is another key component of the Program's efforts to uphold the integrity of the bankruptcy system. In FY 2017 and FY 2018, the Program made 2,171 and 2,257 bankruptcy and bankruptcy-related criminal referrals, respectively. The Program works with its federal and state law enforcement partners and is a member of approximately 70 national and local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. Approximately 25 Program attorneys are designated as Special Assistant U.S. Attorneys to assist U.S. Attorneys' offices in the prosecution of bankruptcy and bankruptcy-related crimes. In addition, many other staff—including attorneys, bankruptcy analysts, and paralegals—are called upon to assist with investigations and to provide expert or fact testimony at criminal trials.

The success of the Program's criminal enforcement work results in part from its expansive training of federal, state, and local law enforcement personnel; USTP staff; private trustees; and members of the bar and other professional associations. In both FY 2017 and FY 2018, the USTP presented more than 75 training programs that reached, on average, about 3,000 individuals per year, including agents and other representatives from the United States Attorneys' Offices, Federal Bureau of Investigation, Internal Revenue Service Criminal Investigation, U.S. Postal Inspection Service, Department of Housing and Urban Development Office of the Inspector General, and Secret Service. Notable among these programs were presentations at four national training sessions provided to federal law enforcement in partnership with the FBI, and the publication of the March 2018 issue of the *Department of Justice Journal of Federal Law and Practice* that focused on bankruptcy and bankruptcy fraud.

The Program's San Diego office referred and assisted law enforcement in the Southern District of California with the investigation and prosecution of a disbarred attorney who was sentenced to 34 months in federal prison for committing bankruptcy fraud (concealment of assets) and tax evasion. The defendant pleaded guilty to devising a scheme to defraud his creditors by concealing assets and income valued at nearly \$1.5 million, including stock interest in a real estate venture, a luxury yacht, antique silver items, and unauthorized salary payments and other benefits he received in violation of a bankruptcy court order. The defendant also intentionally and willfully evaded payment of more than \$5.9 million in taxes, penalties, and interest owed for calendar years 2005 through 2009.

The Program's Chicago office referred and assisted law enforcement in the Northern District of Illinois with the investigation and prosecution of a former chapter 7 debtor who pleaded guilty and was sentenced to 41 months in prison and ordered to pay \$139,000 in restitution for a bankruptcy fraud scheme and wire fraud. In his bankruptcy case, the defendant failed to disclose his interests in certain investment companies and his purchase of an Arena Football Team that he was managing when he filed bankruptcy. He also failed to disclose business interests, bank accounts, and restitution orders from prior convictions for theft, and made numerous false oaths at the section 341 meeting of creditors. The office obtained denial of the defendant's bankruptcy discharge, referred the criminal matter for prosecution, and provided assistance to law enforcement.

The USTP's Peoria office referred and assisted law enforcement in the Southern District of Illinois with the investigation and prosecution of a former non-attorney bankruptcy petition preparer who was sentenced to 18 months in prison and three years of supervised release after pleading guilty to 21 counts of bankruptcy fraud, causing false statements to be made under penalty of perjury, and falsifying records in multiple bankruptcy cases. She also was ordered to pay \$13,200 in restitution to the *pro se* debtors. The former preparer defrauded her consumer clients by routinely charging excessive fees; concealed her involvement in cases by failing to disclose her name on documents she prepared and instructing clients not to mention her name; and caused the filing of false pre-bankruptcy credit counseling certificates.

Chapter 11 Business Reorganization Issues

The Program carries out significant responsibilities in chapter 11 business reorganization cases, including appointing official committees of creditors; objecting to the employment and compensation of professionals, such as attorneys and financial advisors, whose applications do not meet statutory standards; appointing trustees and examiners when warranted, such as when there is suspected financial wrongdoing; reviewing and objecting to disclosure statements to ensure adequate information is provided to stakeholders; moving to dismiss or convert chapter 11 cases because they are not progressing toward financial rehabilitation; and enforcing the statutory limitations on insider and executive compensation under 11 U.S.C. § 503(c).

While the USTP does not substitute its business judgment for that of management, the Program’s role is critical to protecting the interests of all stakeholders by advocating for strict compliance with the law and promoting management and professional accountability.

Figure 4. Chapter 11 Case Administration and Oversight Activity, FY 2017 and FY 2018

Type of Activity	Actions		Inquiries		Action Success Rate	
	FY 2017	FY 2018	FY 2017	FY 2018	FY 2017	FY 2018
§ 1112(b) Conversion or Dismissal	2,217	2,045	2,126	1,998	98.2%	98.0%
§ 1125 Disclosure Statements	598	513	403	428	98.3%	98.3%
§ 1129 Plan Confirmation	338	313	312	313	90.6%	94.0%
§ 1104 Appointment of Trustee or Examiner	60	57	25	45	88.5%	88.2%
§ 330 Professional Fee Requests*	342	292	1,415	1,169	93.5%	92.6%
§ 503(c) Key Employee Retention Plans	34	43	37	51	71.9%	61.3%

Source: Executive Office for U.S. Trustees

*Professional fee requests under 11 U.S.C. § 330 arise primarily in chapter 11 cases, but also in cases filed under other chapters.

Review of Executive and Other Insider Bonuses

The USTP reviews executive bonuses and other compensation requests for compliance with the Bankruptcy Code. In the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Congress curtailed the lingering 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. The USTP often is the only party to challenge excessive management bonuses. Among the changes sought by the USTP are removing top executives from the list of bonus recipients and imposing more challenging milestones that must be reached before the bonus is paid. In many cases, the United States Trustee’s formal or informal objections have resulted in substantial voluntary changes to the debtor’s proposed executive compensation programs. Other cases have required formal action.

Professional Fees

Under the Bankruptcy Code, the court must approve all professional fees that are paid from the bankruptcy estate under criteria set forth by statute. U.S. Trustees monitor and, when appropriate, object to applications for compensation filed by professionals such as attorneys, accountants, turnaround specialists, and others who are paid from bankruptcy estate funds.

The requirement to obtain bankruptcy court approval of professional compensation reflects the unique environment in which bankruptcy cases arise. Often, there is urgency to the bankruptcy filing due to impending foreclosure, lack of cash to continue operations, or other emergencies that result in a filing. As a result, the client control present in other business litigation often is absent. Moreover, a bankruptcy case often involves multiple parties with varying interests that are affected by the conduct of the case and varying levels of financial ability to assert their interests. Therefore, non-debtor parties seldom exercise oversight or do so only as a litigation tactic. Because of the unique dynamics in a bankruptcy case, attorney and other professional costs may be inflated, and the USTP is often the only party to object to professional fees.

Ruling for the Program's Greenbelt office after an evidentiary hearing, the Bankruptcy Court for the District of Maryland reduced the compensation sought by the chapter 11 debtor's attorney by nearly \$86,000. The attorney filed five disclosure statements and proposed plans of reorganization, none of which were approved. In four of the disclosure statement objections, the U.S. Trustee noted that prior objections had not been addressed or resolved. Further, each disclosure statement revealed new problems regarding the debtor's actions in the case. The court disallowed all time relating to the research, preparation, and filing of the statements and proposed plans.

The Program's Las Vegas office objected to professional fees of approximately \$2.4 million sought by the unsecured creditors' committee's financial advisor, claiming the fees were excessive and the time records were vague. For example, the USTP objected to multiple professionals attending the same lengthy meetings and hearings; excessive fees for preparing billing invoices and fee applications; and vague time entries of professionals directing the work of others.

Post-Bankruptcy Asbestos Trusts

The Program is focused on implementing Department of Justice policies to ensure that asbestos trusts operate with greater transparency and with protections against fraud and abuse. Asbestos trusts operate and pay claims for years, or even decades, after a company with asbestos liability emerges from bankruptcy. Since 1994, more than 60 such trusts have been established. According to the Government Accountability Office, asbestos bankruptcy trusts paid out \$17.5 billion from 1988 through 2011, and more recent studies estimate even higher amounts. The USTP will object to plan provisions that are viewed as inviting fraud and abuse to the detriment of future claimants and that challenge the integrity of the bankruptcy process.

In September 2018, the USTP filed an objection to a debtor company's proposed candidate for appointment as the Future Claimants' Representative (FCR) in a case involving an asbestos bankruptcy trust. An FCR is appointed to represent the possible future interests of individuals who are not yet but may become sick from exposure to asbestos from a company's operations. The interests of future claimants can be adverse to the interests of current claimants who are paid first and may deplete trust funds available to pay to future claimants. In the objection, the USTP asserted that the candidate's apparent conflicts of interest and close connections with lawyers representing current claimants could compromise his independence in serving as the FCR.

The proposed FCR had been selected by the plaintiffs' and debtors' lawyers under a pre-negotiated trust plan that the USTP asserted lacked protections against fraudulent claims (allowing depletion of the trust funds), yet provided the FCR with a long-term position that would continue long after confirmation of a bankruptcy plan. The court overruled the USTP's objection and the matter is currently on appeal.

Appellate Practice

One of the most important roles the Program plays in the bankruptcy system is to identify and raise issues for review on appeal, thereby ensuring that the law is shaped, interpreted, and applied evenly in all judicial districts. When substantial rights and financial interests of creditors large and small are affected, the clearer the standards and the law, the better for stakeholders – not only in the case at hand but in the larger marketplace as well.

During both FY 2017 and FY 2018, the Program participated in more than 100 appeals to bankruptcy appellate panels, district courts, courts of appeals, and the Supreme Court. Many appeals arise from enforcement actions prosecuted by the USTP, but the Program also intervenes as *amicus curiae* (friend of the court)³ in other cases.

³ When the USTP acts as *amicus curiae*, it is not a party to the case. Instead, it files a brief as a neutral party that shares its views about the legal issues presented by the appeal and its proposed solutions. As a neutral party, courts often give weight to the USTP's views.

Lamar, Archer & Cofrin, LLP v. Appling, ___ U.S. ___, 138 S. Ct. 1752 (2018). The Supreme Court agreed with the position of the United States, participating as amicus curiae, that a “statement about a single asset can be a ‘statement respecting the debtor’s financial condition’” under section 523(a)(2) of the Bankruptcy Code. Lower courts disagreed about this, and the government’s participation assisted the Court in understanding the bankruptcy implications of the issue presented and helped settle this statutory interpretation question. Although the Program does not litigate cases under section 523(a)(2), the USTP actively assisted the Office of the Solicitor General (OSG) in *Lamar* because the Court’s construction of the phrase “financial condition” in that section could have affected the construction of the same term in a statute the Program does enforce – section 727(a)(3), which denies the debtor’s discharge for misconduct regarding records pertaining to the debtor’s financial condition.

Law Solutions Chicago LLC d/b/a UpRight Law LLC v. United States Trustee, 592 B.R. 624 (W.D. La. 2018), aff’d, 770 F. App’x 168 (May 7, 2019). In this case, the bankruptcy court entered judgment in favor of the USTP, suspending UpRight’s right to practice before bankruptcy courts in the Western District of Louisiana for 90 days and imposing a civil money penalty under section 526(c)(5)(B) of the Bankruptcy Code. UpRight did not appeal the monetary penalty, but did appeal the suspension. On appeal, the U.S. District Court for the Western District of Louisiana agreed with the USTP’s position and affirmed the bankruptcy court’s suspension and the lower court’s right to set conditions on the firm’s future practice before the bankruptcy court. The court rejected UpRight’s argument that the 90-day suspension was an injunction rather than a disciplinary action. The district court also rejected UpRight’s challenge to the bankruptcy court’s jurisdiction to issue the suspension, and held that UpRight had received sufficient due process because it was given adequate notice and an opportunity to be heard. The district court held that because the bankruptcy court suspended UpRight under local disciplinary rules, it did not need to find bad faith, but in any event, bad faith was evident from the record.

Official Comm. of Unsecured Creditors v. Constellation Enters. LLC (In re Constellation Enters. LLC), 587 B.R. 275 (D. Del. 2018). In an issue of first impression before this court, the U.S. District Court for the District of Delaware agreed with the position of the USTP and dismissed appeals taken by the Official Committee of Unsecured Creditors from the bankruptcy court’s separate orders: (1) denying a motion to approve a priority-skipping settlement; and (2) converting the chapter 11 case to chapter 7. The bankruptcy court had denied a motion to approve a priority-skipping settlement through which the chapter 11 debtors proposed to transfer assets to a secured creditor, who would transfer them to a trust for distribution to unsecured creditors, thereby skipping claimants with a higher priority right to the funds. The USTP opposed the request and sought to uphold the Supreme Court’s ruling in *Czyzewski v. Jevic Holding Corp.*, ___ U.S. ___, 137 S. Ct. 973 (2017), that courts may not deviate from the order of priority that the Bankruptcy Code specifies for paying claims. The creditors’ committee argued that *Jevic* did not control and their settlement was appropriate under a pre-*Jevic* circuit decision, *In re ICL Holding Co., Inc.*, 802 F.3d 547 (3d Cir. 2015). The bankruptcy court disagreed with the committee (without deciding whether *ICL* survived *Jevic*). The bankruptcy court then granted the debtors’ motion to convert the case to chapter 7 under 11 U.S.C. § 1112(a). On appeal, the district court agreed with the USTP in ruling that the creditors’ committee-appellant had no authority to pursue the appeals because the committee automatically dissolved and ceased to exist when the cases converted from chapter 11. As this was one of the first attempts by parties to evade the Supreme Court’s ruling in *Jevic*, the USTP viewed the committee’s failure to accomplish priority skipping as a significant victory that should deter others from trying to do the same.

Pollitzer v. Gebhardt (In re Pollitzer), 860 F.3d 1334 (11th Cir. 2017). The United States Court of Appeals for the Eleventh Circuit agreed with the Program and affirmed a bankruptcy court order dismissing a chapter 7 liquidation case that was initially filed under chapter 13. This is the first decision from a circuit court analyzing whether a chapter 7 case can be dismissed for abuse under the means test of 11 U.S.C. § 707(b) following the case's conversion from another chapter. The appeals court rejected the debtor's argument that section 707(b) applies only when the case starts in chapter 7, but not when a debtor transfers it from another chapter. Had the debtor's argument prevailed, abusive debtors could manipulate the Bankruptcy Code and walk away from pre-petition debts they could repay in a chapter 13 case or outside bankruptcy, simply by filing their cases as chapter 13 repayment cases and quickly converting them to chapter 7 liquidation cases. The appeals court's ruling prevents that abuse of chapter 13, which Congress enacted so debtors could repay their debts over time and not as a back-door to a chapter 7 discharge that unjustly allows debtors to keep all their post-petition income despite section 707(b)'s substantial creditor protections.

In all litigation activities, but especially in deciding the Program's position on bankruptcy appeals, the USTP is guided by its role to define the boundaries of bankruptcy practice so that all parties act in compliance with the law and the Bankruptcy Code is not contravened by any party.

Private Trustee Oversight

Another core duty of the U.S. Trustees is to appoint and supervise private trustees, who are not government employees, to administer consumer bankruptcy estates and distribute payments to creditors in cases filed under chapter 7, 12, and 13. The Program trains the trustees and evaluates their overall performance, reviews their financial operations, and ensures the effective administration of bankruptcy estate assets.

In FY 2017 and FY 2018, there were approximately 1,300 private trustees who handled the day-to-day activities of more than 1.5 million ongoing bankruptcy cases. These trustees distributed a combined \$16 billion from the assets of bankruptcy estates over this time.

Assistance for Individuals with Limited English Proficiency

To help ensure that individuals with limited English proficiency can fully participate in the statutory section 341 meetings of creditors, the Program offers free telephonic interpreter services at the meetings.

In FY 2017 and FY 2018 combined, nearly 27,000 calls were made for interpreter services in more than 100 languages. The top five cities for use of interpreter services were Los Angeles, California; Newark, New Jersey; Riverside, California; Chicago, Illinois; and Brooklyn, New York. The top three languages requested were Spanish, Korean, and Vietnamese.

Credit Counseling and Debtor Education

To ensure that debtors are aware of alternatives to bankruptcy, and to provide tools to avoid future financial problems when they exit bankruptcy, the Bankruptcy Code requires individual debtors to receive credit counseling (including a discussion of options outside of bankruptcy) before filing, and to complete a personal financial management education course before receiving a discharge of debts.

The USTP is charged with the responsibility to approve providers who meet statutory qualifications to offer credit counseling and debtor education services to debtors. At the end of FY 2018, there were approximately 90 approved credit counseling agencies and 150 approved debtor education providers. Debtors primarily elect to take their credit counseling and debtor education via the Internet, although services also are available by telephone or in-person in many districts.

Figure 5. Delivery Method for Services Received, FY 2018

Type of Service	In-Person	Internet	Telephone
Credit Counseling	1%	88%	11%
Debtor Education	4%	88%	8%

Source: Executive Office for U.S. Trustees

Credit counseling and debtor education are accessible at a relatively modest cost. Historically, around 20 percent of credit counseling certificates and debtor education certificates

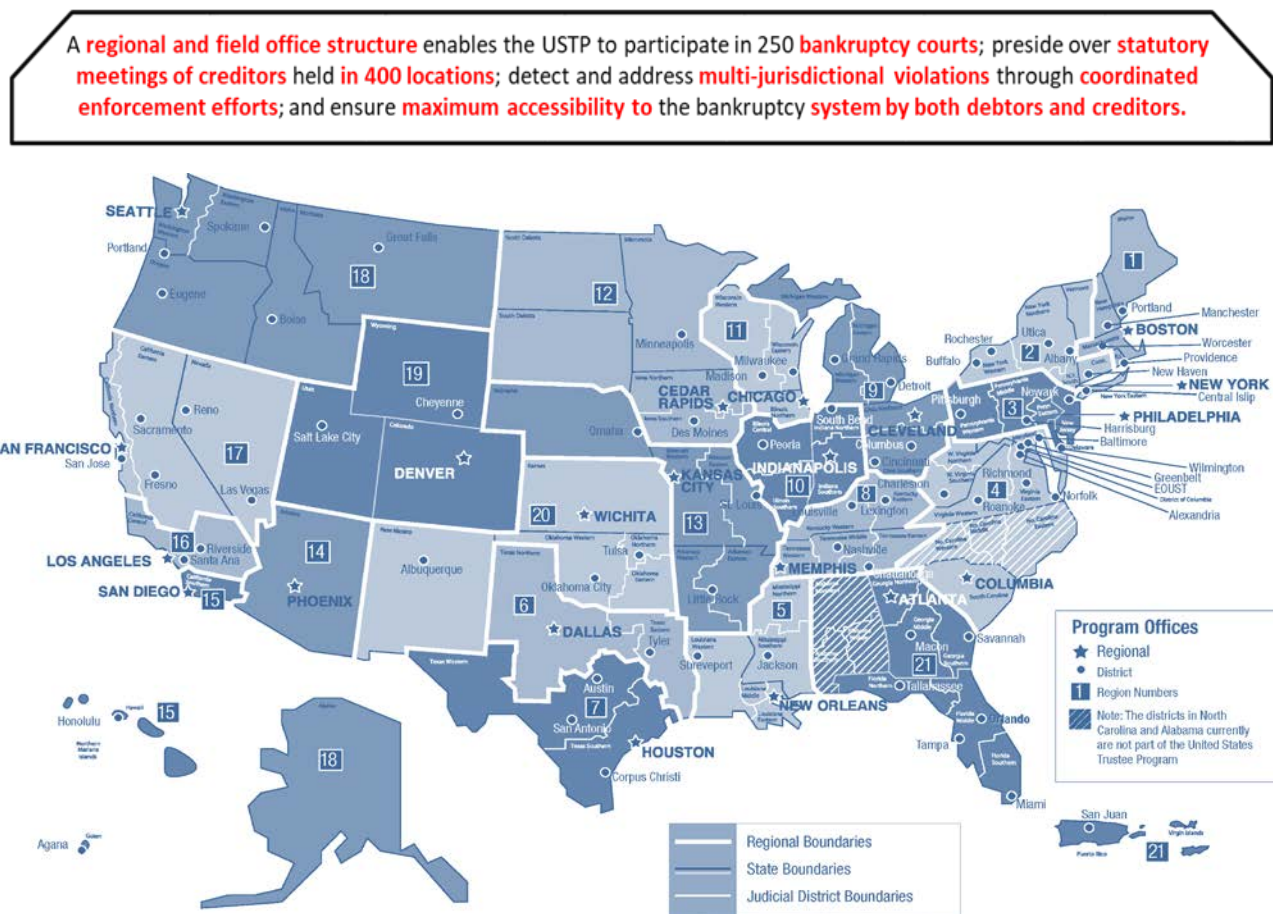
have been issued at no or reduced cost. For those debtors paying the full fee, the average combined cost of pre-bankruptcy credit counseling and post-bankruptcy debtor education is less than \$50.

Organization and Funding

Organization

The USTP is led by a Director headquartered in the Executive Office for U.S. Trustees located in Washington, D.C. The Executive Office oversees the Program by providing leadership, central policy and management direction, and administrative and information technology services to the field offices. The Program’s 21 regions are managed by U.S. Trustees appointed by the Attorney General and include 90 field office locations supervised by Assistant U.S. Trustees.

Figure 6. USTP Map of Regions and Offices



At the conclusion of FY 2018, the Program employed approximately 960 staff members consisting of attorneys, financial analysts, paralegals, and support staff. The majority of field offices have seven or fewer employees, and more than 90 percent of the Program’s employees are located in its field offices.

Funding

The USTP is funded through appropriations made by Congress that are offset by a portion of fees paid by bankruptcy debtors and deposited into the United States Trustee System Fund (Fund). The USTP's FY 2018 appropriation was fully offset by bankruptcy fees collected and deposited in the Fund.

The USTP has adopted a number of innovative internal processes to increase cost and time efficiencies, and assist the Program in addressing the challenge of diminishing resources. Fiscal Years 2017 and 2018 saw the further expansion of the consolidation of routine functions previously performed in all field offices to a more centralized handling; the effective allocation of staff throughout the country to better address local workload problems and national initiatives; implementation of shared services arrangements with other agencies and other divisions within the Department for human resources and certain information technology services; and a reduction in the number of office locations. The use of these work flow strategies combined with the extraordinary dedication of staff throughout the country have enabled the USTP to continue fulfilling its mission of protecting the integrity of the bankruptcy system for all stakeholders.

U.S. TRUSTEE PROGRAM NATIONWIDE OFFICE LOCATOR

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

REGIONAL AND FIELD
OFFICES (BY STATE)

Arizona
Phoenix

Arkansas
Little Rock

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

Colorado
Denver

Connecticut
New Haven

Delaware
Wilmington

Florida
Miami
Orlando
Tallahassee
Tampa

Georgia
Atlanta
Macon
Savannah

Hawaii
Honolulu

Idaho
Boise

Illinois
Chicago
Peoria

Indiana
Indianapolis
South Bend

Iowa
Cedar Rapids
Des Moines

Kansas
Wichita

Kentucky
Lexington
Louisville

Louisiana
New Orleans
Shreveport

Maine
Portland

Maryland
Baltimore
Greenbelt

Massachusetts
Boston
Worcester

Michigan
Detroit
Grand Rapids

Minnesota
Minneapolis

Mississippi
Jackson

Missouri
Kansas City
St. Louis

Montana
Great Falls

Nebraska
Omaha

Nevada
Las Vegas
Reno

New Hampshire
Manchester

New Jersey
Newark

New Mexico
Albuquerque

New York
Albany
Buffalo
Central Islip
New York City
Rochester
Utica

Ohio
Cincinnati
Cleveland
Columbus

Oklahoma
Oklahoma City
Tulsa

Oregon
Eugene
Portland

Pennsylvania
Harrisburg
Philadelphia
Pittsburgh

Puerto Rico
San Juan

Rhode Island
Providence

South Carolina
Columbia

Tennessee
Chattanooga
Memphis
Nashville

Texas
Austin
Corpus Christi
Dallas
Houston
San Antonio
Tyler

Utah
Salt Lake City

Virginia
Alexandria
Norfolk
Richmond
Roanoke

Washington
Seattle
Spokane

West Virginia
Charleston

Wisconsin
Madison
Milwaukee

Wyoming
Cheyenne

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