

U.S. Department of Justice

United States Trustee Program



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I. Overview of the United States Trustee Program

A. Introduction

The United States Trustee Program (USTP or Program) is a litigating component of the Department of Justice (Department or 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 American public. The USTP has standing to participate in every bankruptcy case in the 88 federal judicial districts under its jurisdiction,¹ overseeing about one million ongoing bankruptcy cases annually.

As the statutory “watchdog” of the bankruptcy system,² the USTP is the only national enforcement agency that can identify and marshal resources against significant fraud, abuse, and emerging threats to the integrity of the bankruptcy system. The Program’s activities encompass a wide range of administrative, regulatory, and enforcement functions, including the appointment and oversight of more than 1,100 private trustees who administer cases filed under chapters 7, 12, and 13 and distribute billions of dollars annually. The Program is also responsible for the appointment and oversight of chapter 11 subchapter V trustees appointed under the provisions of the Small Business Reorganization Act of 2019 (SBRA), Pub. L. No. 116-54.³ The USTP works to ensure compliance with bankruptcy laws while also balancing the legitimate interests of all parties, including debtors, creditors and others. Over the past year, the Program’s efforts have advanced equity among stakeholders in several high-profile large chapter 11 reorganization cases, including in a nationally significant case of a debtor involved in the national opioid crisis.

For Fiscal Year (FY) 2024, the USTP is requesting \$276,771,000 for 1,087 direct positions (421 attorneys) and 1,065 direct full-time equivalent employees (FTEs). The FY 2024 President’s Budget request builds on the USTP’s FY 2023 appropriation, which enables the Program to address an anticipated rise in bankruptcy filings following the end of COVID-19 pandemic government relief measures. The FY 2024 request also provides additional funding for two critical Program needs: (1) to develop secure and modernized Information Technology (IT) systems that safeguard sensitive bankruptcy case data, including the personally identifiable information of individual debtors; bring systems up to current technological standards; and provide for greater agility in addressing present and future data needs; and (2) congressionally mandated debtor audits of individual chapter 7 and 13 bankruptcy cases to identify and gather data regarding debtor misconduct.

¹ The USTP has jurisdiction in all federal judicial districts except those in Alabama and North Carolina, where bankruptcy court officials called Bankruptcy Administrators perform a similar function to that of the USTP.

² See 28 U.S.C. § 586(a)(3); see also H.R. Rep. No. 95-595, at 99 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6049. U.S. Trustees “serve as bankruptcy watchdogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena.”

³ Subchapter V of chapter 11 was created under the SBRA and became effective February 19, 2020. From the February 2020 subchapter V effective date through December 31, 2022, the USTP appointed over 200 individual trustees to serve in more than 4,800 subchapter V cases.

United States Trustee Program

The first funding need is \$5.1 million for information technology (IT) security upgrades, modernization of USTP legacy systems, some of which are over 30 years old, and secure data management and analysis applications. Without updated IT systems and applications, security improvements often degrade user efficiency or cannot be implemented at all, leading to increase security vulnerabilities. This enhancement is critical to the USTP’s ability to meet the government’s mandate to protect and secure government computer systems and improve the nation’s cybersecurity posture.

The second funding need is \$2.0 million for the USTP to contract with independent firms to conduct debtor audits as required under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).⁴ The purpose of these audits is to determine the accuracy, veracity, and completeness of a consumer debtor’s bankruptcy documents and identify “material misstatements” of income, expenses, or assets that may warrant corrective or enforcement action by the USTP. BAPCPA also requires the USTP to publish an annual public report of audit findings.⁵ The audits are a statutory mandate that has historically been supported through the use of carryover funding, when available. The Program does not anticipate sufficient carryover to support the audits in FY 2024 absent limitations on or significant reductions to staffing or non-personnel operating costs.

The USTP is funded solely through appropriations that are offset almost exclusively by a portion of filing fees paid by all debtors, as well as quarterly fees paid by chapter 11 debtors (excluding subchapter V debtors) that are deposited into the United States Trustee System Fund (Fund). The rates for quarterly fees were most recently amended by the January 2021 enactment of the Bankruptcy Administration Improvement Act of 2020, Pub. L. No. 116-325 (BAIA). However, due to sustained lower filings through the COVID-19 pandemic, the Program does not currently project that USTP appropriations can be fully offset by fees and interest alone and anticipates drawing down on the Fund balance to cover the FY 2024 appropriation. Please see pages 19 through 20 for more information on the Fund.

The Department of Justice’s Congressional Budget Justifications and exhibits can be found at <https://www.justice.gov/doj/budget-and-performance>

⁴ See Pub. L. No. 109-8, § 603(a) (2005); 28 U.S.C. § 586(f).

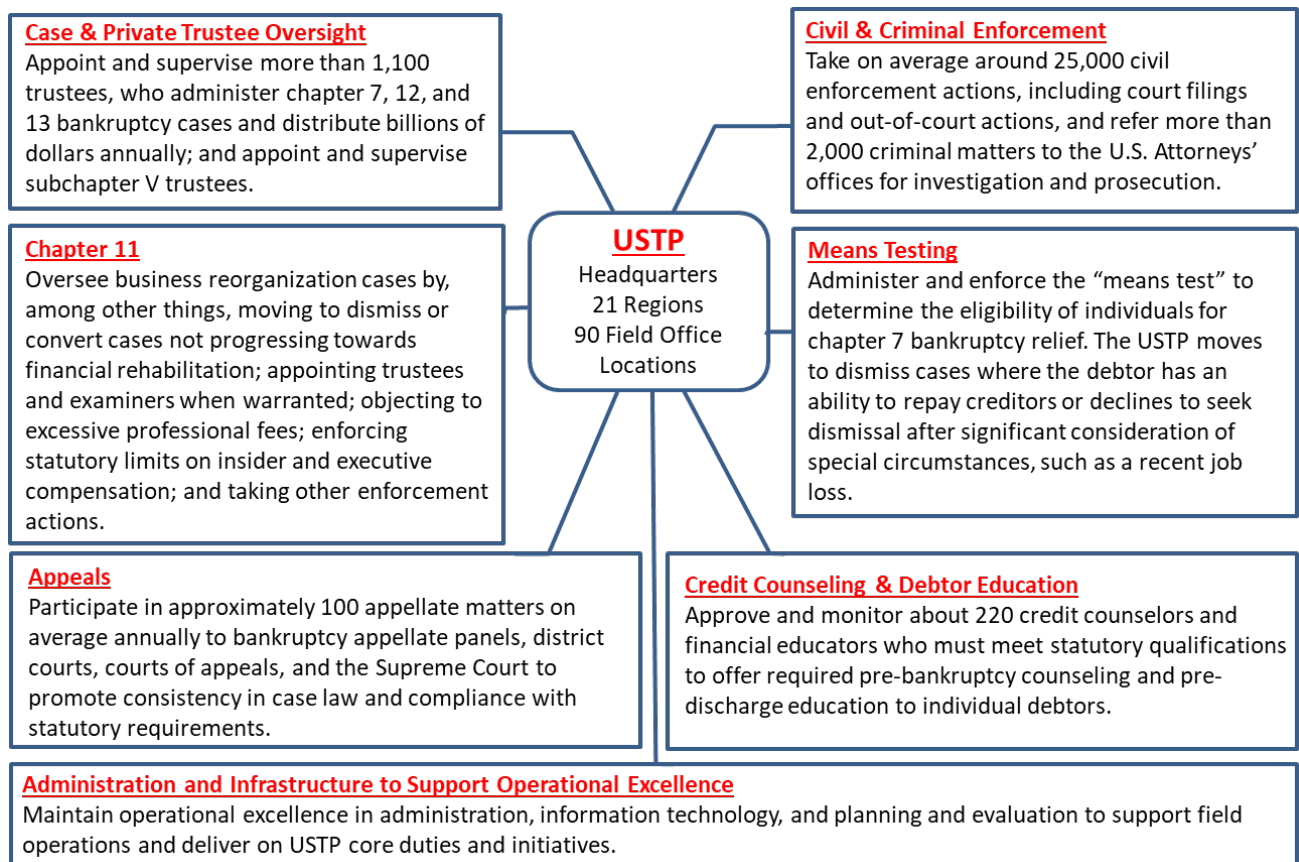
⁵ These reports are available at <https://www.justice.gov/ust/bankruptcy-data-statistics/reports-studies>.

B. Core Duties and Recent Activities

The USTP’s activities are extensive, as discussed in the subsequent sections. Mission execution is enabled by the Program’s geographic structure. With guidance from the USTP’s Executive Office at the headquarters level, field staff address local issues in a consistent manner across the Program while headquarters and field resources can be strategically aggregated to target system-wide multi-jurisdictional violations.

The nation’s bankruptcy laws are premised on the notion that honest but unfortunate consumer 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.

1. Core Duties



2. Recent Activities and Current Focus Areas

Below are some of the Program's recent activities and current focus areas.

- a. **Illegal Third-Party Releases in Large Chapter 11 Cases.** The USTP continues to devote significant resources to chapter 11 filings by large companies, including mega-cases with \$50 million or more, and sometimes billions of dollars, in assets and liabilities. The largest of these cases are often widely covered in the media and, consequently, cast a spotlight on the Program's significant and ongoing workload as a neutral enforcer of the Bankruptcy Code. This past year, the most significant legal issue the Program has litigated is the bankruptcy courts' statutory and constitutional authority to approve chapter 11 reorganization plans that require the debtor's creditors to release their claims against non-debtors, including the debtor's owners and managers, who have not themselves filed for bankruptcy relief. The USTP has consistently opposed such third-party releases, litigating the issue during FY 2021 and FY 2022 in several high-profile bankruptcy cases throughout the country, including, among others, in New York (for a large pharmaceutical company case), Delaware (for a case involving a national youth service organization), and Virginia (in a fashion retailer case).

In one example, the USTP's extensive litigation activities in a single case of a pharmaceutical company at the center of the national opioid crisis has now spanned a period of almost three years and has required a large team of both field- and headquarters-based trial attorneys and senior managers. The team developed and executed the Program's litigation strategies, coordinating with multiple state Attorneys General aligned with the USTP, Department leadership, and other Department components that had independently reached civil and criminal settlements with the debtors outside of bankruptcy. The debtor's plan included broad third-party, non-debtor releases that would shield the company's family of owners, managers, and hundreds of related parties from liability to thousands of opioid victims and their survivors who did not consent to the releases. Among other actions, over FY 2021 and FY 2022, the USTP expended considerable resources in: (1) objecting to plan confirmation because of the illegal, non-consensual third-party releases; (2) seeking a stay of the confirmation order to pursue an appeal; (3) moving for certification of a direct appeal to the Second Circuit of the confirmation order; (4) appealing to the district court when certification was denied; and (5) defending the debtor's appeal to the Second Circuit after the USTP prevailed at the district court. Adding to the complexity of the USTP's legal analysis at every step is that the circuit courts of appeal are split on the non-debtor release issue, with two circuits holding that not even consensual releases approved by all creditors are permitted, while other circuits allow them but under different standards.

Although the bankruptcy court overruled every USTP objection to the plan confirmation, the Program successfully appealed to the district court in the most consequential decision on a bankruptcy issue in the last two years. The district court ruled in favor of the USTP, reversing the bankruptcy court's confirmation of the debtor's reorganization plan and

ruling that there was no statutory authority for the sweeping third-party, non-debtor releases that the bankruptcy court had approved. The district court declined to reach a decision on the constitutional authority question beyond ruling that the bankruptcy court lacked this authority to enter a final order with the releases. The district court's decision had a significant impact on the bankruptcy system and garnered the widespread attention of courts, practitioners, and academics. The USTP appealed to the court only after extensive coordination and consultation with all of the Department's stakeholders, and thereafter worked with multiple Department components to coordinate the Department's response to the debtors' appeal to the Second Circuit.

While the pharmaceutical case remains open, the USTP has consistently taken similar positions in a number of chapter 11 cases, both large and small. For example, in May 2022, a bankruptcy court rejected the reorganization plan proposed by a regional nursing home operator who filed for bankruptcy in October 2021 along with more than 60 affiliates. The plan included releases of non-debtor third parties, including the debtor's owners, officers, and employees. The court's ruling followed the USTP's objection to the releases which noted, among other things, that plaintiffs in wrongful death and injury lawsuits against the debtor were not given an opportunity to appropriately opt in or out of the releases. The debtors returned to the drawing board and soon thereafter offered a plan with only consensual releases, which addressed the USTP's objection, and the court confirmed the plan as amended.

Additional details on the USTP's work to address illegal third-party releases in chapter 11 cases can be found on pages 37 and 38.

- b. Other Large Chapter 11 Case Issues.** Third-party releases are just one aspect of the complexities of large chapter 11 cases, which are driven by the amount of a debtor's assets and liabilities, number of creditors, nature of claims, and complex capital and corporate structures. The USTP carries out a wide range of statutory responsibilities throughout these cases, which often draw particular attention to the Program's role in presenting issues for judicial decision even when parties either will not, or lack the financial wherewithal to, litigate. The Program must fulfill these responsibilities while balancing a range of concerns, including legal issues that could have a bankruptcy system-wide impact or heightened creditor and public sensitivities to the debtor. For example, since FY 2019, the USTP has entered into three major settlements involving aggregate relief of well over \$15 million to address the adequacy of disclosures of connections and disqualifying conflicts of interest for bankruptcy professionals hired by debtors. Two of these settlements were reached with one of the largest global consulting firms and included one of the highest repayments made by a bankruptcy professional for alleged non-compliance with disclosure rules. Importantly, in the second settlement, the firm agreed for the first time that it would disclose all affiliate connections and all confidential client connections in any bankruptcy case in which it seeks to be retained in the future, unless the bankruptcy court orders otherwise. In the third settlement, three law firms representing debtors in the previously discussed pharmaceutical bankruptcy case

agreed to relinquish fees earned and were required to supplement their prior disclosures so the court and other parties could determine their sufficiency. The firms had failed to adequately disclose an agreement between the debtor and its family of owners that obliged the three firms to maintain the confidentiality of shared documents. During the case, the debtor invoked the agreement to avoid turning over documents to the official committee of unsecured creditors as it reviewed the debtor's conduct.

The USTP also devotes existing base budget resources to carrying out newly created duties in the review of connections and conflicts of interest for bankruptcy professionals employed in any cases proceeding under title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Pub. L. No. 114-187. PROMESA was enacted in June 2016. Proceedings under the law, which are reserved for territories of the United States, are subject to requirements that reflect a hybrid of those mandated for chapter 9 and 11 bankruptcies. In January 2022, the Puerto Rico Recovery Accuracy in Disclosures Act of 2021 ("PRRADA") was enacted, which imposed on professionals employed in PROMESA cases disclosure of connection requirements that are similar, but not identical, to requirements under chapter 11. PRRADA requires each professional seeking compensation in the case to file a statement disclosing its connections to parties in interest. The law further authorizes the Program to review these statements and either provide comments on the statement before a hearing on the professional's fee application or object to the fee application if the statement is omitted, it reveals a conflict of interest, or it is otherwise unsatisfactory based on the law. The Commonwealth of Puerto Rico and several of its instrumentalities are in or have recently completed restructurings through proceedings under title III of PROMESA. When PRRADA was enacted, there were approximately 60 professional firms with thousands of professionals employed in Puerto Rico's PROMESA cases that ultimately filed disclosure of connection statements. The USTP's efforts to review these statements and take appropriate action continued into FY 2023.

- c. **Debtor Fraud and Abuse.** The USTP's core mission is to protect and preserve the integrity of the bankruptcy system. In fulfilling that mission, the Program strives to promote full access to the bankruptcy system and fair treatment of all participants in the system. The USTP protects the system by combatting fraud and abuse by all parties and professionals, including individual debtors. These efforts, which include administering the "means test" based on debtors' ability to repay their debts and objecting to the discharges of debtors who conceal assets or commit other misconduct, require significant Program resources and are often less publicized than the Program's activity in large commercial cases, but still have a tremendous impact on improving system integrity. In FY 2022, for example, a year in which filings were drastically reduced, the USTP took more than 9,000 formal and informal actions to address fraud and abuse by consumer debtors seeking chapter 7 relief, with a total potential monetary impact of over \$496 million. These actions resulted in relief that included the dismissal of consumer cases filed by debtors with an ability to repay their debts or that were found abusive under a bad faith or totality of the circumstances standard. In some cases, fraudulent concealment

of assets, false oaths, or other serious misconduct led to a denial of the debtor's discharge.

The USTP also takes enforcement actions to combat abuse in business cases, including seeking dismissal when a debtor fails to show evidence of financial rehabilitation or repeatedly fails to file required reports or exhibits bad faith. For example, in FY 2022, three debtor companies owned by a radio host and operator of a non-mainstream news website entered into a stipulation and agreed order with the USTP and other parties to dismiss their cases. The move followed the USTP's motion to dismiss the cases for bad faith and abuse of the bankruptcy system. The bankruptcies were filed after the owner and his multiple companies, including the debtors, were found liable in defamation lawsuits filed by relatives of victims in a tragic 2012 elementary school shooting. The Program argued in its motion that the bankruptcies were filed only to protect the owner's personal wealth ahead of proceedings to determine judgment amounts in the defamation lawsuits rather than for a bona fide need to reorganize debts to become a profitable enterprise. With about one million ongoing bankruptcy cases annually falling under the USTP's oversight, the Program's efforts in cases like these not only serve to enforce the Code but also provide a deterrent effect against potential fraud and abuse in the bankruptcy system, thereby protecting the integrity of the bankruptcy system.

- d. Increasing Bankruptcy System Accessibility.** The USTP acts to promote enhanced access to justice in the bankruptcy system, which includes removing barriers to entry and ensuring that all participants who comply with the Bankruptcy Code's requirements receive the relief that the law affords them. For individual debtors, this includes permitting flexibility in their fee arrangements with their attorneys while guarding against overreach and abuse. To address this, in June 2022, the USTP issued guidelines on the Program's enforcement related to "bifurcated" fee arrangements in chapter 7 liquidation cases.⁶ Bifurcated fee agreements—which split an attorney's fee between work performed prior to the filing of a bankruptcy petition and work performed postpetition—have become increasingly prevalent in chapter 7 consumer bankruptcy cases. The Bankruptcy Code's statutory framework generally prohibits postpetition payment of attorney's fees arising from prepetition retention agreements in chapter 7 cases. After a bankruptcy case is filed the collection of a filer's debts, including fees for prepetition attorney work, is stayed, and the fees are subject to discharge. Therefore, in the past, most attorneys required the full payment of fees prior to filing a chapter 7 bankruptcy case, which some have noted presents a barrier to accessing the bankruptcy system for debtors who may need relief but are unable to pay in full before filing. In those jurisdictions that allow them, bifurcated agreements can provide an alternative under the current statutory framework to the traditional attorney's fee model. The benefits these type of agreements provide in increasing access and relief to those in need must be balanced against the risk that these fee arrangements, if not properly structured, could harm debtors and deprive them of the fresh start afforded under the Bankruptcy Code. It is the USTP's position that, subject to contrary controlling authority, bifurcated fee agreements are permissible

⁶ The guidelines can be found at: <https://www.justice.gov/ust/bifurcated-fee>.

so long as the fees charged under the agreements are fair and reasonable, the agreements are entered into with the debtor's fully informed consent, and the agreements are adequately disclosed. The USTP will review bifurcated fee agreements to ensure that they harm neither the debtors who rely on the bankruptcy system to obtain relief nor the integrity of the system and will bring enforcement actions to address these harms when appropriate.

To further enhance access to the bankruptcy system, following the COVID-19 pandemic, the Program moved to a policy allowing statutory section 341 meetings of creditors to proceed in whole or in part through virtual formats and annually devotes budgetary resources for providing the supporting technologies to private bankruptcy trustees who are delegated by the USTP to conduct the meetings. Based on the USTP's experience through the pandemic, the flexibilities provided by virtual meetings place fewer burdens on debtors who do not, among other things, have to take critical time off from work to participate, and result in greater creditor participation. After consulting internally and with external stakeholders to assess the effectiveness of virtual meetings, the USTP made the format a permanent policy change and began phasing in a new approach where all initial section 341 meetings in chapter 7, 12, and 13 cases are conducted by videoconference. When the Program has expanded the approach nationwide, the USTP will evaluate the economies of gradually reducing section 341 meeting space requirements. The USTP will be deliberate and transparent as it proceeds in making these decisions, which should result in significant savings for taxpayers while better serving debtors, creditors, and the public. For more information on the Program's actions to increase access to justice through the bankruptcy system, please see pages 47 and 48.

e. Violations by Consumer Debtor Attorneys and Debt Relief Agencies.

The USTP's efforts to address misconduct by attorneys and debt relief agencies build upon traditional enforcement activities. On a national level, the Program is addressing the special problems created by national consumer bankruptcy law firms whose system-wide violations create widespread, multi-jurisdictional issues. The USTP has successfully litigated and obtained favorable court decisions in several cases addressing misconduct in multiple districts. Though some of those cases are on appeal, the USTP has reached substantial settlements with some violators. These settlements include an agreement with a national consumer bankruptcy law firm that provided more than \$300,000 in relief to hundreds of consumers based in Montana and imposes a six-year practice ban on the firm in the state. Moreover, as a result of dozens of USTP actions filed since 2016 across multiple jurisdictions, the firm has paid or been ordered to pay almost \$900,000 in monetary relief, including returning fees to over 500 impacted consumers and paying court-ordered sanctions, attorney's fees, and costs. Additionally, bankruptcy courts have imposed practice bans on the firm in at least four jurisdictions.

f. Subchapter V of Chapter 11 (SBRA) of the Code. The USTP has continued to diligently execute its duties in subchapter V cases, the provisions for which were enacted

in August 2019 and effective in February 2020. The streamlined processes of the subchapter provide a more efficient and economical path to reorganization for eligible small business debtors under the statute. The USTP is responsible for recruiting private trustees for subchapter V cases and is required to appoint a trustee in every single case, following a comprehensive analysis of the case details. Once appointed, the Program oversees the trustees and supervises their administration of cases. In June 2022, the Bankruptcy Threshold Adjustment and Technical Corrections Act, Pub. L. No. 117-151, was enacted. The law temporarily extends the increased subchapter V debtor limit of \$7.5 million through June 21, 2024.⁷ The law also clarifies that a subchapter V debtor may not be a public company or an affiliate of a public company. Further, it clarifies that the bankruptcy trustee is authorized to operate the business of the debtor if the debtor is removed as debtor in possession.

By all current measures, it appears that the streamlined path to reorganization provided for under the SBRA is working as Congress intended, and the recent statutory amendments are anticipated to build upon this initial success. Median reorganization plan confirmation times to date have been approximately four months faster for subchapter V cases than for chapter 11 small businesses not electing subchapter V treatment and proceeding under different processes and eligibility requirements enacted through BAPCPA. Approximately two-thirds of confirmed subchapter V plans have been consensual plans. Based on results from FY 2020 and FY 2021 filings, subchapter V cases are confirming plans at approximately double the percentage, while being dismissed at approximately half the percentage, of chapter 11 small business cases historically. Since the subchapter's inception, more than 4,800 cases have been recorded through the end of December 2022, including those amended into the subchapter after filing. Approximately three quarters of chapter 11 small business filers have elected to proceed through subchapter V since it went into effect in February 2020. The USTP is closely monitoring the impact of the new legislation on filings and Program workload, and it remains committed to supporting the subchapter's success through FY 2024 and beyond. For more information on the Program's responsibilities in subchapter V cases and its oversight of subchapter V trustees, please see pages 32 to 33 and page 38 respectively.

- g. Criminal and Civil Enforcement.** Bankruptcy cases may involve conduct that violates both civil and criminal laws. The USTP pursues available civil enforcement remedies to address fraud and abuse issues and refers alleged wrongdoers, as required by statute, to the United States Attorneys and other law enforcement partners for potential criminal prosecution. For example, in a case ruled on by the District Court for the Middle District

⁷ The SBRA is applicable to small business debtors that meet the statutory debt limitations but excludes single-asset real estate debtors. The SBRA, as originally enacted in February 2020, set the debt limit at \$2.7 million, which was increased a month later to \$7.5 million under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136. The COVID-19 Bankruptcy Relief Extension Act of 2021, Pub. L. No. 117-5, extended the ability to file under the higher debt limit through March 26, 2022. With the June 2022 passage of the Bankruptcy Threshold Adjustment and Technical Corrections Act, the higher limit will apply to filers through June 21, 2024.

of Tennessee, a former stockbroker and bankruptcy debtor was sentenced to 29 months of imprisonment and ordered to pay restitution in the amount of \$1.5 million after he pled guilty to one count of wire fraud and one count of securities fraud. The U.S. Trustee's Atlanta office had previously filed a four-count adversary complaint against the debtor, alleging that from February 2013 to late August 2016, he converted more than \$1.6 million in funds belonging to an elderly widow and then lied about his use of the funds in both his bankruptcy schedules and at his section 341 meeting of creditors. The Bankruptcy Court granted summary judgment in favor of the U.S. Trustee, denying the debtor's discharge and preventing the discharge of \$1.5 million of unsecured debt. The U.S. Trustee's Atlanta office assisted with the criminal prosecution in the Middle District of Tennessee by providing extensive documentation of the debtor's criminal conduct to the U.S. Attorney. The SEC also brought a civil enforcement action against the debtor, resulting in a fraud judgment and an order permanently barring him from the securities industry. For more information on the USTP's criminal enforcement activities, please see pages 33 through 35.

- h. Appellate Efforts.** One of the most important roles the USTP plays is to identify and raise issues for review on appeal, thereby ensuring the law is shaped, interpreted, and applied evenly in all judicial districts. In support of this effort, in FY 2022, the USTP participated in 82 new appellate matters that included eight matters before the Supreme Court (Court), 21 appeals to the United States courts of appeals, and 53 appeals before district courts and bankruptcy appellate panels. The USTP's position prevailed in 86 percent of the appeals decided in FY 2022. Ongoing efforts include the Program's considerable work to address significant court challenges to the USTP's quarterly fee structure as amended by the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72 (2017 Amendment). The law adjusted the calculation of quarterly fees for the largest chapter 11 debtors for the calendar quarters beginning January 1, 2018 through March 31, 2021. Litigants argued, among other things, that the 2017 law is unconstitutional because the Judicial Conference mandated the collection of the increased fees in the bankruptcy administrator districts (the six judicial districts in North Carolina and Alabama, which are not in the USTP's jurisdiction) only as of October 2018, in cases filed on or after that date. The date is nine months after the USTP began requiring debtors to pay the increased fees in all open cases in its districts, which made the law a violation of the Constitution's bankruptcy uniformity clause according to the litigants. In June 2022, the Supreme Court ruled in *Siegel v. Fitzgerald*, 142 S. Ct. 1770 (2022), that the 2017 Amendment was unconstitutionally non-uniform because of the bankruptcy administrators' failure to charge the increased fee as required by the statute. The Supreme Court did not require the USTP to make refunds but instead asked the lower court to decide the remedy for the constitutional violation. Currently, this issue may be decided in appeals pending before multiple courts, primarily at the circuit level. The USTP and the Department continue to defend against these challenges.
- i. Creditor Abuse.** Creditor enforcement, including issues relating to the servicing of loans for borrowers in bankruptcy, has been an enforcement priority of the USTP for more than

a decade. During that time, the USTP has entered into 14 national settlements with creditors, including 10 national settlements with mortgage servicers that resulted in close to \$240 million in remediation to almost a quarter of a billion impacted bankruptcy consumers. Each of these settlements also required that the servicers correct deficient servicing practices to prevent recurrence of systemic errors. In the Program's most recent settlement, the USTP announced agreements with three mortgage servicers that provided more than \$74 million in remediation to homeowners in bankruptcy. The agreements with Nationstar Mortgage, LLC, U.S. Bank National Association, and PNC Bank, NA, addressed noncompliance with the Bankruptcy Code and Rules that impacted more than 60,000 accounts of borrowers in bankruptcy over a 10-year period. The servicers' noncompliance resulted in various errors and deficiencies, including payment application errors; inaccurate, missing, and untimely filings in bankruptcy cases; and delayed escrow statements. The agreements required the servicers to implement improvements in their bankruptcy operations to ensure that the errors do not recur. The USTP's creditor enforcement activities are continuing, including efforts to ensure that servicers have made pandemic relief programs, such as mortgage forbearances, equally available to homeowners in bankruptcy, and apply those measures in compliance with Bankruptcy Code and Rules.

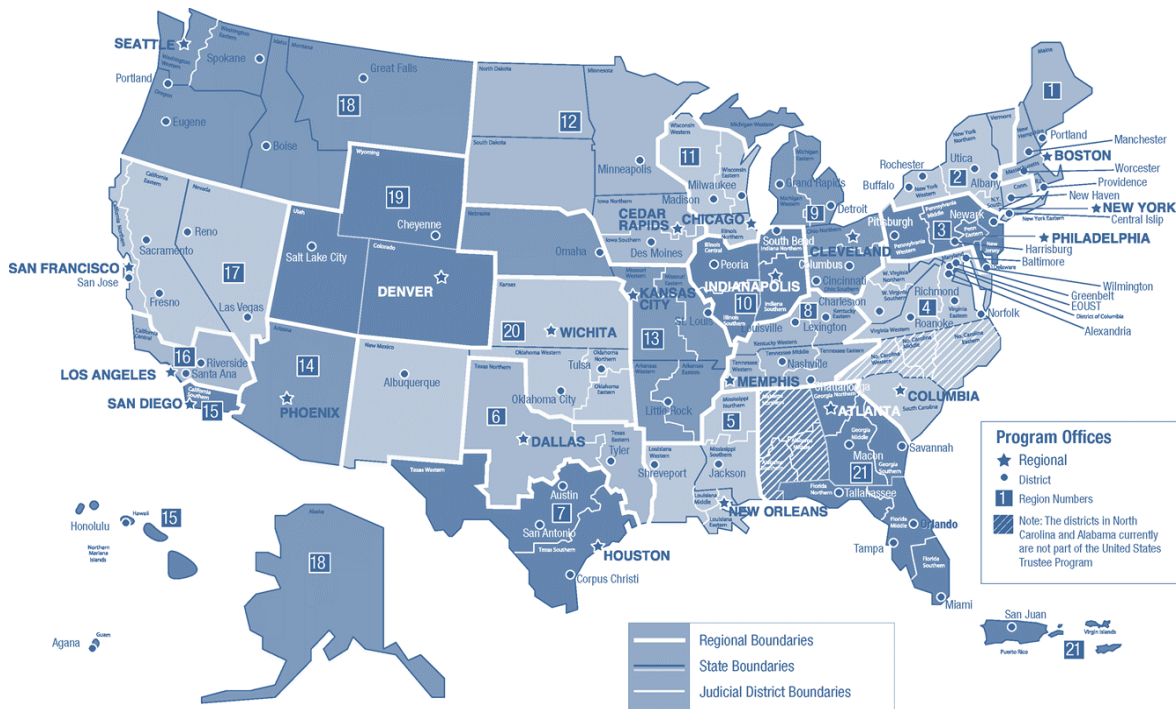
- j. Environmental Justice through the Bankruptcy System.** The Department's commitment to seeking equal justice under the law includes reducing disproportionate adverse public health and environmental burdens borne by underserved communities, including communities of color, low-income communities, and Tribal and indigenous communities. In this endeavor the USTP continues to train the private bankruptcy trustees it oversees on the ways they can promote environmental justice through their recurring trustee activities. The training encourages trustees to use their frontline role in the bankruptcy process to report to the USTP any patterns that may suggest community-wide environmental issues and provides real life examples on how this may be identified from interactions with and feedback from debtors in disadvantaged communities.

C. Program Structure

The USTP is a national program with a field-based structure that enables it to effectively address systemic issues in the bankruptcy system at the local and national or multi-jurisdictional levels. The Program’s headquarters, the Executive Office for United States Trustees (EOUST), is located in Washington, D.C. and is led by a Director who serves under authority derived from the Attorney General. Field operations are composed of 21 geographic regions across the country directly supervised by United States Trustees. The 90 field offices within those regions are headed by Assistant United States Trustees. The Program’s staff, totaling 985 direct and reimbursable FTEs in FY 2022, consists of attorneys, financial analysts, paralegals, and professional support staff.

A **regional and field office structure** enables the USTP to **appear before 300 judges in 250 bankruptcy courts**; preside over **statutory meetings of creditors held in 400 locations**; detect and address **local and multi-jurisdictional violations** through **coordinated enforcement efforts**; and ensure **maximum accessibility to the bankruptcy system by both debtors and creditors**.

United States Trustee Program Map of Regions and Offices



1. Executive Office for United States Trustees (EOUST)

The EOUST oversees the Program’s substantive operations, provides general policy and legal guidance, sets management direction on Program initiatives to address systemic fraud and abuse in the bankruptcy system, and handles the Program’s administrative functions. Within the EOUST, the Office of the Director directly supervises the United States Trustees and the operations of the EOUST, and has primary responsibility as the liaison with the Department,

Congress, the judiciary, private trustee organizations, and other stakeholders in the bankruptcy system, such as professional associations. As detailed in the Program's Exhibit A, the EOUST includes six other major units that are responsible for general counsel, criminal enforcement, trustee oversight, planning and evaluation, general administration, and IT functions.

2. USTP Field Offices

Currently, over 90 percent of staff are located in field offices across 44 states and Puerto Rico. As outlined in the preceding map, the Program's geographic presence enables it to participate in 250 bankruptcy courts and preside over statutory meetings of creditors held in about 400 locations. As the USTP pilots video meetings of creditors, the Program is examining opportunities to end leases in underused locations. Moreover, with this structure, the Program is able to leverage and aggregate resources across the EOUST and its field offices, to detect system-wide issues and execute coordinated and sustained enforcement efforts that advance consistent legal arguments against national or multi-jurisdictional violations. In the past decade, the result has been successful efforts to oppose illegal and unconstitutional releases of third parties to chapter 11 reorganization cases; address deficiencies in disclosures of connections to parties in a case by bankruptcy professionals; combat misconduct by national consumer law firms; and object to deficiencies in the servicing of mortgages for borrowers in bankruptcy.

D. Challenges

The USTP faces several internal and external challenges.

Maintaining Funding to Support Staffing, Operations, and Critical Investments

The USTP continues to face challenges in its ability to fund critical staffing levels while maintaining appropriate resources for non-personnel costs. The Program's appropriation remained almost flat between FY 2012 and FY 2019. During that period, funding constraints, a government hiring freeze, and recruitment challenges resulted in an FTE reduction of more than 20 percent. Despite these challenges, the Program succeeded in meeting its mission, but not without an impact to staff workload levels. This included increases to the average caseload per employee as well as employees having to perform double duties.

After overcoming recruitment challenges, receiving a current services level funding in FY 2020 and FY 2021, and a modest increase in FY 2022, the USTP was able to build its FTE footprint back up to approximately 985 FTEs in FY 2022. This alleviated some, but not all, of the Program's workload issues, as the scope and complexity of cases handled by the Program, particularly in mega-chapter 11 cases,⁸ continued to remain high even as filings declined over the COVID-19 pandemic period.

⁸ "Mega cases" often refer to cases with \$50 million or more in liabilities; many involve public companies and businesses with billions of dollars in assets and liabilities.

United States Trustee Program

Staff workloads are anticipated to increase further in FY 2023. While the Program's FY 2023 appropriation funded current services and provided a much-needed increase to USTP staffing, the Program will continue to require significant resources given the expected return of bankruptcy filings to pre-pandemic levels and increasingly complex emerging and evolving bankruptcy issues, such as ongoing litigation in the FTX cryptocurrency exchange case, filed in November 2022.

As an equally important management challenge, the USTP will have to further balance budgetary resources across operational and statutory needs. Almost 90 percent of the Program's annual appropriation is tied directly to staffing, rent, and other fixed costs, which leaves very little funding to address critical operational enhancements like IT infrastructure upgrades and investments, as well as new requirements and mandates, without additional resources. These necessary enhancements include the modernization of a 30-year-old case administration system relied on by a geographically dispersed workforce to oversee one million bankruptcy cases annually. Deferring the initiative would compromise the Program's ability to execute its mission and increase the Program's vulnerabilities to malicious cyber-attacks. Consequently, the Program is requesting \$5.1 million to complete the project as well as support the deployment of critical data analysis, data management, and cybersecurity tools, and provide staff for implementation and ongoing cybersecurity and privacy activities. These changes will enhance not only the USTP's cybersecurity posture, but also position the Program to meet increased data demands and reduce IT operations and maintenance costs.

The FY 2024 President's Budget request also includes \$2.0 million for congressionally mandated audits of individual chapter 7 and 13 bankruptcy cases. Although statutorily required, the audits historically have been supported through the use of carryover balances, when available. The audits, which are independently conducted, are an important element of the Program's efforts to promote the integrity of the bankruptcy system. Without them, the USTP is hampered in its ability to identify and take action to address, among other things, the understatement or omission of a debtor's assets, income, or the improper transfer of property prepetition. For more information on the Program's enhancement requests, please see section V, which begins on page 50.

Evolving and Complex Caseload

The USTP's sustained heavy workload in civil enforcement, along with the sheer sophistication and evolving nature of fraud schemes and abusive activities, present challenges for USTP staff to move cases through the system efficiently. In addition to carrying out statutory duties, including means testing in chapter 7 consumer cases and trustee oversight, the Program must monitor developing and complex issues associated with chapter 11 bankruptcy filings, fraudulent or abusive conduct by debtors, and misconduct by creditors and professionals to effectively execute its duties. More information on the USTP's activities in these areas can be found in section IV, which begins on page 25.

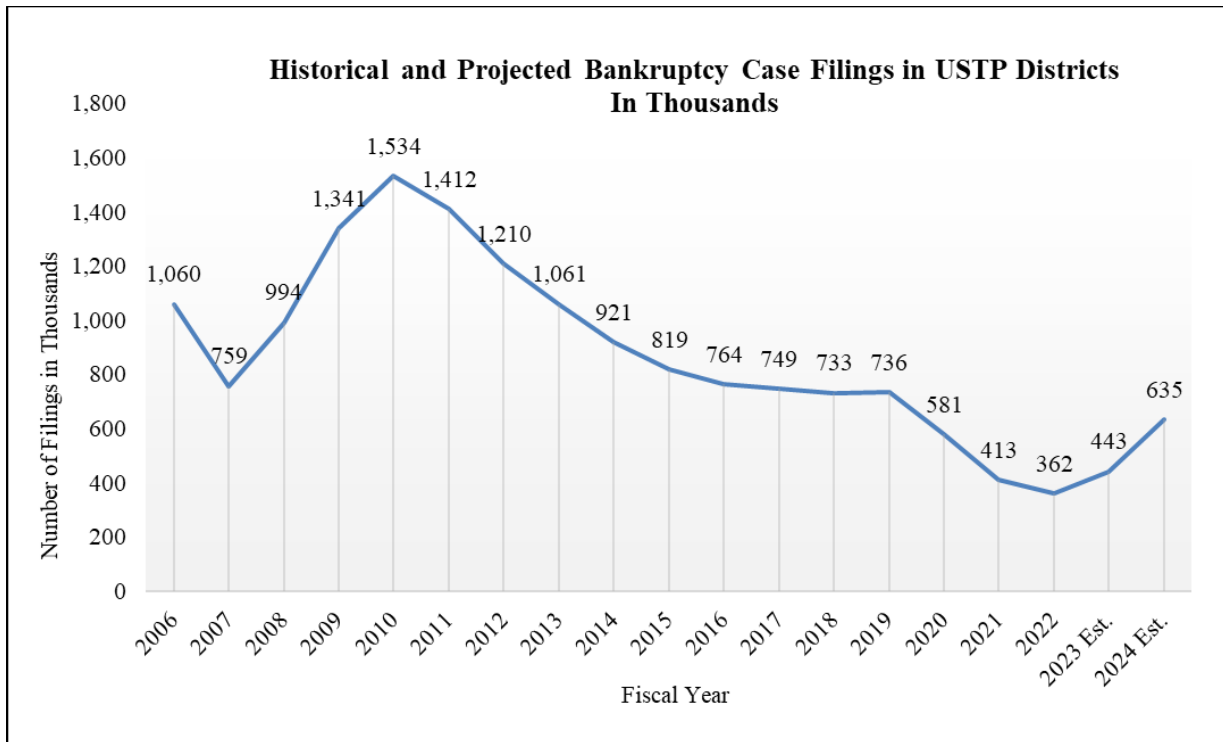
Unpredictable Changes in Bankruptcy Filings

The potential for unforeseeable changes in the number and location of bankruptcy filings creates challenges for the USTP in caseload management. Changes to the Bankruptcy Code and other laws as well as economic factors including employment levels, interest rates, consumer credit, and the availability of financing from capital markets potentially impact filings and pose an issue for workload planning.

Bankruptcy filings followed a general pattern for a significant time prior to 2007, historically increasing about two-thirds of the time followed by a decrease over the other one-third. Then, during the Great Recession, filings doubled over FY 2007 through FY 2010 before declining steadily over FY 2011 through FY 2016. Filings remained relatively flat through FY 2018 before increasing slightly in FY 2019, then dropping by more than 20 percent overall in FY 2020 due potentially to the impact of economic relief programs such as foreclosure moratoriums on potential filers. Overall bankruptcy filings fell nearly 30 percent in FY 2021 and another 12 percent in FY 2022, reaching over 361,000 filings. The downward trend lessened during the latter part of FY 2022, however, and total filings were up slightly during the first quarter of FY 2023.

Broken down by chapter, filings followed different trajectories since FY 2020. Consumer filings primarily accounted for the reductions in aggregate filings since FY 2020 as they comprise the vast majority of annual filings. Overall chapter 11 filings, however, sharply increased during the early months of the COVID-19 pandemic, then decreased by 31 percent during FY 2021 and by another 15 percent in FY 2022. The earlier increase reflected the impact of filings by large public companies, including mega-cases, which more than doubled during calendar year 2020 to reach their highest level since the Great Recession. Overall small business filings also increased significantly early in the pandemic before beginning to decline along with total chapter 11 filings in FY 2021. Notably, regardless of filing totals, around 75 percent of chapter 11 small business debtors have continued to proceed under subchapter V since its inception. During FY 2022, filings were down by 12 percent overall, with decreases in every chapter except for chapter 13, which was up by 27 percent compared to FY 2021 levels.

The chart that follows reflects actual and projected bankruptcy filings for the USTP from FY 2006 through FY 2024. While the USTP cannot predict the impact to filings from the COVID-19 pandemic or the residual effects of the CARES Act and subsequent stimulus laws, filings are likely to eventually return to pre-pandemic levels. If modeling filings on a gradual increase to these levels, filings could double in the next three years, rising from about 360,000 at the end of FY 2022 to the pre-pandemic level of about 737,000 filings in FY 2025.



E. Risks

Unpredictable Changes in and Challenges to the Bankruptcy Code

Changes to the Bankruptcy Code can significantly impact the USTP’s work, often with uncertainty as to the extent or timing of changes. These changes can occur in response to any number of factors including changes in the economy and other laws. To remain agile and responsive, the USTP must be positioned appropriately from a resource standpoint to pivot and address these types of issues. For example, when the SBRA was enacted in August 2019, the USTP had to immediately refocus its priorities to establish a comprehensive infrastructure for the appointment and oversight of new chapter 11 subchapter V trustees as well as the evaluation and monitoring of the individual cases. Among other things, this included recruiting and clearing more than 250 candidates (from more than 3,000 applicants) to serve as subchapter V trustees, developing a comprehensive manual and handbook to guide USTP staff and subchapter V trustees in carrying out their new duties, conducting extensive training and outreach, and coordinating closely with the bankruptcy courts on a myriad of administrative issues. These important initial efforts were critical to the successful implementation of the new law and are activities that remain ongoing. For more information on the USTP’s responsibilities in subchapter V cases and oversight over subchapter V trustees, please see pages 32 to 33 and 38 respectively.

Legal challenges relating to the Bankruptcy Code also present uncertainties for the USTP’s workload planning given the lack of predictability in terms of number and scope. The USTP

enforces the Code and defends challenges to its provisions, including by litigating issues of first impression. In recent years, the average annual number of appeals to which the USTP has been a party or has provided assistance to the Department's Office of the Solicitor General or Appellate Staff of the Civil Division has increased. On average, the Program has been involved with nearly 100 appellate matters annually from FY 2018 to FY 2022. These matters include significant challenges to the USTP's quarterly fee structure, as detailed on page 12.

F. Offsetting Collections and the United States Trustee System Fund

The USTP's appropriations are offset primarily by revenues deposited into the U.S. Trustee System Fund.⁹ A portion of filing fees paid by consumer and business debtors as well as quarterly fees that are based on disbursements made by chapter 11 debtors, excluding subchapter V debtors, comprise the majority of revenue. The appropriation is initially derived from the general fund of the Department of Treasury (Treasury)¹⁰ and subsequently offset primarily by the Program's fees during the fiscal year as well as the balance of the U.S. Trustee System Fund, if fees are less than the appropriation. Filing fees are paid at the commencement of each case in chapters 7, 11, 12, and 13,¹¹ and quarterly fees are paid by chapter 11 debtors except those in subchapter V of chapter 11 of the Code. 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.

From 1989 through FY 2016, the USTP's appropriation was offset by fees and the balance in the U.S. Trustee System Fund. This balance, however, was essentially exhausted in FY 2017 due to fee collections declining as a result of the reduction in bankruptcy filings from FY 2011 through FY 2017, and the Program fell short of offsetting the FY 2017 appropriation. The decline in filings continued through FY 2018. To ensure the Program could continue to offset its appropriation, the USTP set forth a proposal to adjust quarterly fees for the largest chapter 11 debtors. A modified version of the USTP's proposal to adjust quarterly fees for the largest chapter 11 debtors was enacted in October 2017 with the passage of the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72.¹² As a result, the Program's appropriations from FY 2018 through FY 2020 were fully offset by fees in those fiscal years.

⁹ Revenues include a small amount of statutorily-determined bankruptcy fines and other deposits to the Fund. The Program also invests and generates interest on deposits to the Fund which is also available to offset the Program's annual appropriation.

¹⁰ In FY 2016, Congress approved a change in the USTP's appropriation language such that the Program's full appropriation is initially derived from the General Fund of the Treasury. Prior to FY 2016, the appropriation was derived from amounts available in the U.S. Trustee System Fund.

¹¹ The USTP receives a portion of these filing fees as specified by statute.

¹² The fee increase affected about 10 percent of chapter 11 cases, equivalent to about 700 newly filed cases annually and a total of 1,000 cases pending in any given quarter. Only about 130 cases per quarter were subject to the maximum amended quarterly fee rate and only about 35 cases were billed the maximum amount for each of the first four quarters after the fee increase.

United States Trustee Program

In January 2021, Congress enacted the Bankruptcy Administration Improvement Act of 2020 (BAIA), Pub. L. No. 116-325. The law further amended the calculation of quarterly fees for calendar quarters beginning April 1, 2021 through December 31, 2025, following which the fees revert to the schedule in place before the 2017 amendment. Compared to the previous fee structure, the current structure under the BAIA:

- Reduces quarterly fees paid in almost all chapter 11 cases—it does not increase quarterly fees for any case—and simplifies the fee structure;
- Provides \$5.4 million to offset the cost of extending 25 bankruptcy judgeships;
- Enables the offset of the USTP’s appropriations through FY 2025;
- Uses surplus chapter 11 fees, when available, to pay for an increase in private trustee compensation for chapter 7 liquidation cases under 11 U.S.C. § 330(e) and the Administrative Office of the U.S. Courts’ (AOUSC) cost to administer those payments;¹³
- Deposits any remaining excess funds into the U.S. Trustee System Fund.

The following table reflects actual and projected deposits to the U.S. Trustee System Fund for FY 2019 through FY 2024.

USTP Bankruptcy Fees & Other Deposits by Source (\$ in Thousands)	FY 2019 Actual	FY 2020 Actual	FY 2021 Actual	FY 2022 Actual	FY 2023 Est.	FY 2024 Est. ¹
Bankruptcy Filing Fees	\$54,016	\$46,278	\$33,351	\$27,329	\$32,642	\$54,975
Chapter 11 Quarterly Fees ^{2/3}	\$256,621	\$280,827	\$335,551	\$168,141	\$148,962	\$176,262
Interest	\$2,482	\$1,940	\$187	\$229	\$2,933	\$1,277
Other	\$218	\$195	\$59	\$60	\$60	\$59
Total Deposits	\$313,336	\$329,238	\$369,148	\$195,759	\$184,597	\$232,573

¹ The FY 2024 estimates reflect previous higher assumptions on filings. The USTP currently projects fees in FY 2024 could total about \$8.8 million less due to the impact of sustained lower filings since the COVID-19 pandemic.

² Beginning in FY 2018, amounts exclude the portion of chapter 11 quarterly fees deposited into the general fund of the Treasury to fund additional bankruptcy judgeships as statutorily required. Beginning in FY 2020, subchapter V cases are exempt from quarterly fees. In FY 2022, as enacted under the BAIA, the USTP transferred \$14 million of chapter 11 quarterly fees collected in FY 2021 to Administrative Office of the United States Courts (AOUSC) for additional chapter 7 trustee compensation and the costs of administering such payments by the AOUSC.

³ Due to sustained lower filings since the pandemic, the USTP was not able to fully offset the Program’s FY 2022 appropriation with just fee collections and interest alone and had to drawdown \$43 million of the USTP Fund balance to repay the appropriation. The Program projects a similar situation for FY 2023 and FY 2024. In those years, the Program would also not have surplus chapter 11 quarterly fees to transfer out for the increased chapter 7 private trustee compensation and the cost of administering those payments enacted under the BAIA.

More information on the United States Trustee Program’s quarterly fees and the United States Trustee System Fund can be found at <https://www.justice.gov/ust/chapter-11-quarterly-fees>

¹³ The USTP and the Department identified the need for and proposed technical corrections to the statutory language necessary to implement the Bankruptcy Administration Improvement Act, Pub. L. No. 116-325 (2021). These corrections were enacted in June 2022 through the Bankruptcy Threshold Adjustment and Technical Corrections Act, Pub. L. No. 117-151.

G. Efforts to Maximize Appropriated Resources

To ensure the highest level of stewardship of federal resources, the USTP continues to employ innovative personnel, financial, and workflow strategies as described further below.

Shared Staffing

The USTP makes staffing allocations and assignments based on organization-wide needs. The Program has for several years shared work inter-regionally to ensure critical work is accomplished. In recent years, more than half of all field staff have been assigned some tasks that originate in other offices, including a significant number of managers who are serving double-duty. New initiatives or mandates are typically addressed via the formation of strategic working groups which help address resource issues and ensure consistency in Program approach. For example, by forming an SBRA Working Group, the Program successfully met the statutory 180-day timeline to implement the new chapter 11 subchapter V provisions. The group includes headquarters and field staff who, in coordination with the Office of Oversight and the Office of the General Counsel, as well as the regional United States Trustees, continue to guide Program activities with regards to the new law.

Shared Services

To mitigate staffing shortages and benefit from economies of scale, the USTP continues to utilize shared services in partnership with other agencies and divisions within the Department. Shared human resource services are provided by the Justice Management Division and shared litigation support is provided by the Civil Division of the Department. Further, Help Desk operations for Tier 1 support and call management are provided via a contract managed by the Bureau of Alcohol, Tobacco, Firearms and Explosives. Use of this contract has allowed the Program to save over \$100,000 a year in resources.

Use of Efficient Technologies

In addition to the USTP's efforts to modernize the Program's bankruptcy management systems, as discussed in sections I.D. and V., the USTP has carried out a number of initiatives with the goal of using technologies to reduce costs and be agile in response to potential changes in the Program's operating environment and responsibilities.

The successful pivot to a maximum telework posture through the majority of the COVID-19 pandemic highlighted the impact of technology measures implemented by the Program prior to the switch. These measures included updates to video teleconferencing technologies and critical laptop refreshes that provided appropriate equipment to existing staff, as well as those hired over the pandemic, for their transition to working from home full-time. The Program implemented additional updates following a return of staff to physical USTP offices and a shift to hybrid in-person and telework staff schedules. Further updates to video conferencing technologies as well as office space modifications have facilitated meetings across the two working environments and enabled the Program to maintain employee productivity and foster collaboration amongst staff.

United States Trustee Program

The USTP has been noted for the successful transition of its IT operations to a sustainable cloud infrastructure, which resulted in cost reductions and avoidance and also enabled the Program to eliminate the physical interventions associated with previous maintenance and system upgrade processes. An earlier consolidation of reporting lines for field-based IT specialist staff under the Program's Chief Information Officer also ensured a centralized approach towards employee IT assistance requests. Going forward, the Program must further evaluate, and deploy as funding permits, potential system and infrastructure upgrades and modernization. These efforts would include the modernization of the USTP's critical case management system on which the Program relies for the review and management of case-related information for about one million ongoing cases annually. The underlying platform for the system is over 30 years old and is not only more vulnerable to security risks than systems on more modern platforms but also cannot capture additional data elements currently required by the Program to execute its duties, nor be updated to allow for modern capabilities related to scalability, flexibility, availability, and enhanced security.

II. Summary of Program Changes

Item Name	Description	Pos.	Estimated FTE	Dollars (\$000)	Page
USTP Data Management, Protection and Privacy	The USTP requests funds for IT security upgrades, secure data management and analysis systems, and additional FTEs to manage these investments that will help the Program combat cyber-attacks.	[9]	4	\$5,116	50
Debtor Audits	The USTP requests funds to contract with independent firms to conduct audits of chapter 7 and 13 bankruptcy cases per the Program's statutory mandate.	[0]	0	\$2,000	57

III. Appropriations Language and Analysis of Appropriations Language

United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, \$276,771,000[\$255,000,000] to remain available until expended: *Provided*, That, notwithstanding any other provision of law, deposits of discretionary offsetting collections 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 deposited into the Fund as discretionary offsetting collections pursuant to section 589a of title 28, United States Code (as limited by section 589a(f)(2) 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 deposited into the Fund as discretionary offsetting collections in fiscal year 2024[2023], net of amounts necessary to pay refunds due depositors, exceed \$276,771,000[\$255,000,000], 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 2024[2023], net of amounts necessary to pay refunds due depositors, (estimated at \$232,573,000[\$269,000,000]) and (2) to the extent that any remaining general fund appropriations can be derived from amounts deposited in the Fund as discretionary offsetting collections in previous fiscal years that are not otherwise appropriated, so as to result in a final fiscal year 2024[2023] appropriation from the general fund estimated at \$0.

Analysis of Appropriation Language

The USTP is not proposing any language changes.

IV. 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. The USTP’s work encompasses two main activities: (1) enforcement; and (2) case and trustee administration. The FTEs and associated funding are allocated to these Program activities based upon the direct hours of the USTP staff and the resources directly related to performing these activities. Administrative and other overhead costs are allocated based upon the direct hours expended for the two activities.

<i>Administration of Cases</i>	Direct Pos.	Direct Estimated FTE	Amount (\$ in thousands)
2022 Enacted ^{/1}	[1,030]	984	\$239,000
2023 Enacted	[1,078]	1,060	\$255,000
Adjustments to Base and Technical Adjustments	[0]	1	\$14,655
2024 Current Services	[1,078]	1,061	\$269,655
2024 Program Increases	[9]	4	\$7,116
2024 Program Offsets	[0]	-	\$0
2024 Request	[1,087]	1,065	\$276,771
Total Change 2023-2024	[9]	5	\$21,771

/1 FTEs are actual.

<i>Administration of Cases</i> Information Technology Breakout	Direct Pos.	Direct Estimated FTE	Amount (\$ in thousands)
2022 Enacted	[31]	29	\$29,135
2023 Enacted ^{/1}	[31]	28	\$41,035
Adjustments to Base and Technical Adjustments ^{/2}	7	4	-\$22,743
2024 Current Services ^{/2}	[38]	32	\$18,292
2024 Program Increases	[4]	2	\$4,677
2024 Program Offsets	[0]	-	\$0
2024 Request	[42]	34	\$22,969
Total Change 2023-2024	[11]	6	-\$18,066

/1 The amount reflects FY 2023 non-personnel costs, including funding for the second year of a critical three-year project to modernize two of the Program’s legacy bankruptcy management systems. The FY 2024 Program Increase includes funding for the third and final year of the project.

/2 The adjustments to base and FY 2024 Current Services level reflect the impact on FY 2024 costs that may be funded in FY 2023 through carryover and recoveries. Since the current services level does not include carryover and recoveries, in FY 2024, the Program may have to consider reductions to IT operations depending on the level of Program resources.

1. A Balanced Approach to Civil Enforcement

During FY 2022, the USTP took nearly 22,000 civil enforcement actions against debtors and creditors, including court filings and out-of-court actions, with a potential monetary impact of over \$575 million in debts not discharged, fees returned, and other relief. Since 2003, the USTP has taken more than 877,000 actions with a potential monetary impact of nearly \$24 billion.

Means Testing and Debtor Violations

The Program 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 misconduct that harms creditors or the integrity of the bankruptcy process.

Means Testing. Under the means test, which was adopted under BAPCPA, individual debtors with primarily consumer debt and income above the state median for their household size 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 2022, a case with disposable income above \$252.50 per month was presumed abusive and subject to dismissal.

USTP Indianapolis Office Obtains Dismissal of Chapter 7 Case, Preventing Discharge of \$888,697 in Unsecured Debt

In its motion to dismiss the case for abuse, the U.S. Trustee alleged that the case was abusive based on the debtor's income as an investment broker, in excess of \$20,000 per month, and his ability to pay his debts in full. After the USTP conducted its discovery, the debtor withdrew his objection, and the Bankruptcy Court for the Southern District of Indiana granted the USTP's motion to dismiss the case.

The effectiveness of the means test largely depends on the USTP's identification of cases that are presumed abusive under the statutory formula and filing of 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 defined by statute that justify an adjustment to the current monthly income calculation. Common reasons to decline to seek dismissal of a case that is presumed abusive include recent job loss or continuing medical debt. 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 the statutory exceptions.

Bad Faith or Totality of the Circumstances. Even if a case is not presumed abusive under the means test, the Code permits the USTP to seek dismissal for bad faith or the totality of the circumstances. These enforcement actions are filed in cases where, among other things, the debtor makes extravagant purchases right before filing bankruptcy or fails to provide accurate financial information.

Debtor Agrees to Dismiss Chapter 7 Case Following Investigation and Actions by USTP Woodland Hills Office, Preventing Discharge of \$532,325 in Unsecured Debt

The investigation revealed that most of the unsecured debt held by the debtor was for credit card charges that were allegedly tied to business purposes. In his bankruptcy documents, the debtor indicated that he leased a 2017 Rolls Royce and a 2018 Mercedes-Benz, and was currently unemployed, although he reported gross income of more than \$300,000 in 2018 from operating a business and could not provide the amount of his 2019 income. After failing to appear for his section 341 meeting of creditors and respond to U.S. Trustee requests for documentation, the debtor agreed to a dismissal of his case, given his failure to continue the case in good faith, with a one-year bar to refile.

Denial of Discharge. In addition to seeking case dismissal, the USTP may file a complaint to deny or revoke a debtor's discharge, which constitutes one of the most serious civil remedies against fraud and abuse by individual debtors in the bankruptcy system. Examples of debtor conduct that could lead to this action include 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.

USTP Milwaukee Office Obtains Judgment Denying Discharge of More than \$40 Million in Unsecured Debt

The Bankruptcy Court for the Eastern District of Wisconsin entered a stipulated judgment and final order denying the debtor a chapter 7 discharge of \$40,735,832 in unsecured debt. The debtor, a real estate developer, induced friends, family, and acquaintances to invest in historic renovation projects throughout the Midwest and Florida. The debtor touted his success to investors, even though his projects were, in fact, failing and creditors had begun collection actions against him. An investigation by the U.S. Trustee's Milwaukee office found that the debtor filed false schedules, concealed assets, falsely testified at his section 341 meeting of creditors, and could not explain the loss of nearly \$10 million in assets, which he had reported owning on a sworn personal financial statement signed just two months before the petition date. The U.S. Trustee brought a complaint to deny the debtor's discharge, which the debtor contested. Following trial and before the court's ruling, the debtor stipulated to judgment and denial of his discharge.

Creditor Abuse

Creditor abuse cases often involve multiple victims, including debtors and other creditors whose distributions are diminished by overpayments to the violating creditor, and are an affront to the integrity of the bankruptcy system itself. The USTP continues to monitor compliance by national creditors for fraud and abuse issues. To date, the Program has entered into 14 national settlements with creditors, including the FY 2021 settlements discussed on pages 12 and 13.

Consumer Debtor Attorneys, Petition Preparers and Debt Relief Agencies

Addressing misconduct by consumer debtor attorneys remains a top priority for the USTP. The Program is continuing a key initiative, launched several years ago, to investigate and address violations in this area through appropriate civil enforcement actions. This effort follows the Program's long history of addressing violations of the Code and Rules by attorneys and others who fail to perform their duties to consumer clients. Misconduct and substandard practice by debtors' attorneys include failing to meet with clients, causing costly delays by not appearing at section 341 meetings or court proceedings, filing fraudulent credit counseling certificates with the court and engaging in a range of other unprofessional behavior. Debtor clients are not the only victims of these improper, fraudulent, and abusive practices. Courts and creditors are victims as well. For example, courts and creditors are forced to expend resources in proceedings that are unnecessarily lengthy or complex due to the failure of debtors' counsel to do their jobs properly. The USTP's enforcement actions in this area have led to remedies including refunds of attorneys' fees already paid, cancellation of retention contracts, civil penalties, and injunctions. In FY 2022, the Program brought more than 500 actions in court and took over 2,100 additional out-of-court actions against debtors' attorneys and non-attorney bankruptcy petition preparers including under the petition preparer provisions of section 110, the provisions of section 329 governing disclosure and reasonableness of debtor attorney's fees, and the debt relief agency provisions of section 526 of the Code.¹⁴

The USTP's initiative is both a national and local priority. At a national level, the USTP continues to address the system-wide, multi-jurisdictional issues caused by law firms who advertise to consumer debtors primarily through the Internet, operate in many states, and market themselves as "national law firms." The Program has addressed a range of improper practices related to such firms, including their failure to oversee non-attorneys who employ high-pressure sales tactics and engage in the unauthorized practice of law in order to convert potential debtors into clients; their "partnerships" with attorneys who fail to satisfy even minimal professional

Following Complaint Filed by USTP Alexandria Office, Bankruptcy Petition Preparer Permanently Enjoined, Fined \$15,000 in Settlement with USTP

The Bankruptcy Court for the District of Columbia entered a settlement order in six cases permanently enjoining a bankruptcy petition preparer (BPP) known for working in the District of Columbia, Virginia, and Maryland, from acting as a BPP in any jurisdiction in the United States. The settlement order also provides for \$15,000 in fines, which will be waived if the BPP does not violate the order for two years. The U.S. Trustee's Alexandria office alleged in its complaint that the BPP provided legal advice to her clients and on her website.

¹⁴ Section 329 of the Code governs debtors' transactions with their attorneys and provides bankruptcy courts with the ability to review and reduce unreasonable or undisclosed compensation. Section 526 limits the conduct of debt relief agencies including attorneys that assist debtors filing for bankruptcy relief. Debt relief agencies are also governed, where applicable, by Sections 527 and 528 of the Code.

standards for representation of their clients; and their willingness to engage in improper practices to obtain payment of their fees.

National Consumer Bankruptcy Law Firm Agrees to Pay more than \$300,000 in Relief to Consumers and to a Six-Year Practice Ban in Settlement with the USTP

The USTP alleged that the firm engaged in misconduct and misrepresentations impacting hundreds of Montana consumers, which came to light due to investigations by the USTP in two bankruptcy cases. In one case, the firm substantially delayed filing its client's bankruptcy case for almost a year after it misrepresented that it had a local attorney who was licensed in Montana available to file the case. The firm's delay resulted in a creditor garnishing more than \$6,000 of the debtor's wages. In the other case, the firm obtained payment of its attorney's fees by advising the debtors to participate in an improper scheme whereby they surrendered their vehicle to an out-of-state towing company. Another bankruptcy court previously sanctioned the firm for implementing the towing program – which it used in more than 200 cases across the country – describing it as a “scam from the start,” and the towing company's owners were indicted for their role in the scheme. The firm's advice resulted in the debtors being sued by their automobile lender for conversion of its collateral.

In the settlement, the firm does not contest the USTP's allegations that it engaged in misconduct in the course of its dealings with Montana consumers, including misrepresenting that it had a sufficient number of local Montana-licensed attorneys available to provide adequate bankruptcy representation, misrepresenting to clients the scope of legal services to be provided and the cost of those services, failing to timely provide its clients with written retainer agreements that clearly and conspicuously explained the legal services to be provided and the cost of those services, failing to discuss non-bankruptcy alternatives, failing to adequately supervise the firm's non-attorney staff (some of whom engaged in the unauthorized practice of law), providing erroneous legal advice, and failing to adequately supervise its Montana “partner” attorneys. This misconduct contributed to the firm's substantial delay in filing bankruptcy cases for Montana consumers. In addition, the firm filed bankruptcy cases for only 109 of the 473 Montana clients from whom the firm collected at least a partial fee.

To resolve the USTP's allegations of misconduct, the firm has refunded more than \$300,000 in fees paid by Montana consumers for whom the firm never filed a bankruptcy case. The firm also agreed to pay a civil penalty of \$10,309 and to return all fees, totaling \$3,770, to the debtors in the two cases in which the USTP brought its enforcement actions. Additionally, the firm is barred from accepting bankruptcy clients or providing bankruptcy services to consumers in Montana, effective July 2, 2018, through July 2, 2024. While the agreement resolves disputes with the USTP in the two underlying bankruptcy cases, it does not impact the rights of the debtors in those cases or any other parties or government agencies not participating in the settlement, including other Montana consumers, nor does it impact the USTP's rights to litigate enforcement actions against the firm in other jurisdictions or to seek redress in other Montana cases.

At a local level, the USTP has been continuing its focus on the review of attorney fee arrangements. In this area as well, the USTP's efforts aim to balance enhancing access to the consumer bankruptcy system while protecting debtors against abuse or overreaching by professionals who should be acting in their clients' best interests. As discussed earlier, beginning on page 9, bifurcated attorney fee agreements have become increasingly prevalent as a workaround to the Bankruptcy Code's structure that generally prohibits payment of a chapter 7 debtor's attorney's fees after the filing of a case. These type of fee arrangements, through their flexibility, may increase access and relief to debtors in need, but those benefits must be balanced

against the risk that they could harm debtors and deprive them of their fresh start in bankruptcy if not properly structured. Courts and stakeholders have expressed differing views on the propriety of bifurcated fee agreements. In order to balance these concerns and promote a uniform enforcement approach, in June 2022 the USTP published enforcement guidelines for its personnel to follow in determining whether bifurcated fee arrangements are appropriate. It is the USTP's position that, absent contrary local authority, bifurcated fee agreements are permissible provided that they do not harm debtors or the integrity of the bankruptcy system. The guidelines, which are publicly available generally provide that attorney's fees under bifurcated agreements must be fair and reasonable, that attorneys must provide adequate disclosures to their clients and obtain their fully informed consent, and that attorneys must make adequate public disclosures consistent with the requirements of the Bankruptcy Code and Rules.¹⁵ The USTP will continue to investigate and, when appropriate and in accordance with the guidelines, take enforcement actions related to inappropriate bifurcation and factoring.

In many instances, attorneys who violate the Bankruptcy Code and Rules during their representation of debtors or other parties also violate the rules of professional conduct governing all lawyers. Where appropriate, the USTP refers these matters to state licensing and disciplinary authorities for investigation and action, which may include suspension from practice or disbarment.

2. Chapter 11 Oversight

The USTP carries out significant responsibilities in chapter 11 reorganization cases, at times taking action when impacted parties lack the resources to address an issue. 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. Among other duties, the USTP is responsible for appointing official committees of creditors after conducting a comprehensive analysis of the types of debt held by unsecured creditors, their financial exposure and other factors that determine whether such entities adequately represent the creditor body as a whole, as required under the Code. In addition, the Program moves to dismiss or convert chapter 11 cases when they are not progressing toward financial rehabilitation. A chapter 11 case may continue for many years, and the USTP takes action, when necessary, to ensure a case's timely resolution.

The following sections highlight several of the USTP's other key activities in chapter 11 cases.

¹⁵ The Guidelines for United States Trustee Program (USTP) Enforcement Related to Bifurcated Chapter 7 Fee Agreements can be found at <https://www.justice.gov/ust/page/file/1511976/download>. The document is an internal directive to guide USTP personnel in carrying out their duties, but the final determination of whether a bifurcated fee agreement complies with the Bankruptcy Code and Rules resides solely with the court. The guidelines do not have any force or effect of law, nor do they impose any obligations on parties outside the USTP beyond those set forth in the Bankruptcy Code and Rules.

Review of Proposed Executive and Other Insider Bonuses

The USTP enforces statutory limitations on insider and executive compensation under section 503(c) of the Code, often as the only party challenging excessive or otherwise inappropriate management bonuses. In the BAPCPA, 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 purportedly dissuaded those executives from seeking employment elsewhere. In addition to outright objections when bonus requests do not satisfy the law, the USTP has at times sought changes to plans, such as the removal of top executives from the list of bonus recipients and the imposition of more challenging performance milestones that must be reached before the bonus is paid. In FY 2022, the USTP filed 24 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 55 percent among objections that were decided during FY 2022. These figures exclude the many cases in which the United States Trustee's formal or informal objections have resulted in substantial voluntary changes to the debtor's proposed executive compensation programs.

Court Sustains USTP Denver Office's Objection to Insider Bonuses

The Bankruptcy Court for the District of Colorado sustained an objection by the USTP's Denver office to a chapter 11 debtor's motion seeking authorization to pay insider bonuses under a Key Employee Incentive Plan (KEIP). The proposed KEIP would have provided bonuses totaling up to \$203,018 for the debtor's chief executive officer and chief financial officer based on the results of a sale of the business. The USTP argued that the debtor failed to establish that the KEIP was sufficiently challenging and that the insiders would receive substantial bonuses even for an unsatisfactory sale result. Following an evidentiary hearing, the court agreed with the USTP that there was no incentive for meaningful future results and that the proposal was instead retentive in nature.

Review of Professional Retention Applications

The USTP rigorously reviews applications to retain professionals to ensure the adequate disclosure of connections and the absence of disqualifying conflicts of interest. Over the past five fiscal years, the Program has, on average annually, filed more than 400 objections and taken nearly 1,800 out-of-court actions. Although all parties in a bankruptcy case may object to the adequacy of a professional firm's disclosures and to a professional firm's retention because of potential or actual conflicts, the USTP is typically the only party to make inquiries or file objections. The Program executes this role by faithfully reading and applying the Code and Rules and raises the issues it has identified to the courts for their ultimate determination.

Bankruptcy reorganizations and the organizational structure of professional firms seeking to be retained in bankruptcy cases—including law firms and financial advisors—have grown increasingly complex, particularly with the advent of investment arms and affiliate companies. This poses challenges for the Program's review of employment applications and the courts' decision on such applications. The USTP is committed to reviewing the unique facts of each case and application, and to interpreting the law in a consistent manner. Pursuant to this, the Program released an internal directive that outlines the general principles for USTP staff to follow in their

enforcement of the duty of professionals to disclose connections to a bankruptcy case under the Code and Rules. The document, which is publicly available, provides a common framework for consistent enforcement of the Bankruptcy Code and Rules related to disclosures and conflicts.¹⁶

Court Sustains USTP Chicago Office's Objection to Debtor's Application to Employ Counsel

In the Northern District of Illinois, the court sustained the USTP's objection to the debtor's application to employ its proposed counsel because of counsel's failure to disclose significant connections with one of the debtor's principals and with one of the debtor's secured creditors. Although counsel initially asserted that he had no disclosable connections, he later revealed that he represented a client—the debtor's former managing member and part owner—who had also guaranteed and remained liable on millions of dollars of the debtor's debt. The professional also later disclosed that he previously represented several entities whose owner now had a significant but unexplained role with a major secured creditor in the case. Counsel only disclosed the connections after the USTP objected and engaged in extensive fact-finding. The court found counsel's relationships "troubling" and ruled that counsel's original and supplemental affidavits were inadequate and incomplete and that the failure to disclose was sufficient and independent grounds to deny employment.

The Small Business Reorganization Act (SBRA)

The USTP continues to devote significant resources to addressing the Program duties provided for under the SBRA. While the Program is responsible for appointing and supervising private trustees in such cases, which unlike in most chapter 11 cases are a requirement, staff must also review and monitor cases throughout the bankruptcy process and take action to ensure the effective disposition of cases within the tight timelines established by the law. In the early stages, the Program performs a thorough review of the key business and reorganization facts of each case. This process enables staff to verify that debtors meet the eligibility requirements under the law as well as select and appoint the most appropriately skilled trustee from a pool of available candidates with diverse skillsets. Further, Program staff conduct the initial debtor interview and establish statutorily required section 341 meetings which can involve a wide range of stakeholders. After this initial stage, Program duties include ensuring that cases meet the statutory voting requirements and determining if plans are consensual or non-consensual, which can require the Program to engage in litigation to refine interpretations of the law. In addition, the Program is responsible for seeking to convert or dismiss cases that do not meet the small business statutory limits and other statutory requirements and, if conversion to a different chapter is necessary, continuing their diligent oversight of such filings based on the applicable chapter provisions and case facts. When appropriate, Program staff will take action to ensure debtors are fulfilling the requirements of the law, such as by ensuring they attend section 341 meetings and file statutory reports, pleadings and documents. In addition, Program staff also provide guidance

¹⁶ The Principles to Guide USTP Enforcement of the Duty of Professionals to Disclose Connections to a Bankruptcy Case Under 11 U.S.C. §§ 327 and 1103 and Fed. R. Bankr. P. 2014 can be found at: <https://www.justice.gov/ust/file/generalprinciplesdisclosureconflicts.pdf/download>. The document is a memorandum and an internal directive to guide USTP personnel in carrying out their duties, but the ultimate determination on the obligations of professionals under section 327 of the Code and Fed. R. Bankr. P. 2014 resides solely with the court. Nothing in the memorandum has any force or effect of law, and nothing stated therein imposes on parties outside the USTP any obligations that go beyond those set forth in the Bankruptcy Code and Rules.

on the USTP's views on the law to assist the trustee in performing their assigned duties. To ensure the success of subchapter V cases, the activities in this area are resource-intensive for field staff, requiring research of potentially affiliated filings in the same or other jurisdictions; an ongoing comprehensive understanding of each individual case; and close collaboration and coordination with multiple stakeholders, including the trustee and staff at the individual court level.

Court Grants Motion Filed by USTP Worcester Office to Direct Subchapter V Trustee to Conduct Investigation

The Bankruptcy Court for the District of Massachusetts granted a motion by the USTP's Worcester office in the chapter 11 bankruptcy case of a small business debtor, directing the subchapter V trustee to investigate the acts, conduct, and financial condition of the business and to file a report with the court. The USTP requested the order after learning that the debtor, a beer importer, may have paid monies to cover certain operating expenses and payroll of related entities. There also were concerns that the debtor had outstanding shareholder loans and failed to cooperate in providing due diligence information to potential investors in the company. Thereafter, the debtor filed a notice of voluntary conversion to a case under chapter 7, which was endorsed and approved by the court.

3. A Criminal Enforcement Mandate

Bankruptcy cases may involve conduct that violates both civil and criminal laws. The USTP pursues available civil enforcement remedies to address fraud and abuse issues and refers alleged wrongdoers, as required by statute, to the United States Attorneys and other law enforcement partners for potential criminal prosecution. As bankruptcies cross all industries and levels of American society, the detection of bankruptcy fraud and other criminal activity can lead to the detection and prosecution of other serious crimes.

Annually, the Program makes more than 2,000 criminal referrals on matters that include allegations of bankruptcy fraud, tax fraud, identity theft or use of false or multiple Social Security numbers, mail and wire fraud, bank fraud, and mortgage fraud.

To execute its mandate, the Program collaborates with federal and state law enforcement partners and is a member of approximately 50 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country. Many staff, including attorneys, bankruptcy analysts, and paralegals are called upon to assist with investigations, provide expert or fact testimony at criminal trials, and, in the case of attorneys, provide guidance on bankruptcy law and related issues. In particular, through their designation as Special Assistant U.S. Attorneys, over 20 attorneys assist U.S. Attorneys' offices in the prosecution of bankruptcy and bankruptcy-related crimes. In FY 2022, the Program also responded to more than 200 requests for assistance from the United States Attorneys' Offices (USAOs), the Federal Bureau of Investigation (FBI), and other law enforcement agencies on matters not originating from a USTP referral.

United States Trustee Program

The USTP further contributes to the Department's ability to detect criminal activity through expansive training for federal, state, and local law enforcement personnel; USTP staff; private trustees; and members of the bar and other professional associations. Its training program has reached, on average, nearly 3,000 individuals annually in recent years including agents and other representatives from the USAOs, the FBI, the Internal Revenue Service Criminal Investigation Division, the U.S. Postal Inspection Service, the Department of Housing and Urban Development Office of the Inspector General, and the Secret Service.

Former Hedge Fund Founder Sentenced for Bankruptcy Fraud in Case Referred by USTP

In a case filed with the Bankruptcy Court for the Southern District of Texas, the USTP conducted an investigation and filed a report with the court documenting its findings and preliminary analysis of allegations against the founder and manager of a hedge fund, who was serving as a co-chair of the unsecured creditors' committee in a major chapter 11 bankruptcy case. The allegations included attempted interference with competitive bidding for securities earmarked for certain classes of creditors that the hedge fund sought to acquire. The USTP report concluded that the hedge fund, through the committee co-chair, breached its fiduciary duty to unsecured creditors by coercing an outside third party not to submit a rival bid. The hedge fund stepped down as a member and co-chair of the creditors' committee, and its owner agreed to pay to the estate \$1.4 million in fees and costs and subordinate his interest to those of other creditors. One month later, based in part on the U.S. Trustee's investigative report reflecting the efforts of staff from multiple offices at the headquarters and field level, the same hedge fund manager was arrested after being charged in a criminal complaint filed in federal district court by the Acting United States Attorney for the Southern District of New York with extortion and bribery in connection with a bankruptcy, securities fraud, wire fraud, and obstruction of justice. The Acting United States Attorney's press release on the arrest thanked the USTP for its cooperation and assistance in the investigation. The hedge fund manager subsequently pleaded guilty and was sentenced to six months in prison and six months of supervised release on home confinement. He was also ordered to pay a fine of \$55,000.

The USTP is committed to supporting the Department's goal to protect vulnerable communities including the elderly as well as historically underrepresented and underserved communities in the bankruptcy system. The USTP evaluates cases for and takes action on signs of potential criminal as well as civil violations. Because the bankruptcy process requires transparency, disclosures and feedback from multiple parties, including the debtor, creditors, private bankruptcy trustees and others, the process can reveal facts and circumstances in cases that involve the abuse of an elderly person's money or property, sometimes by a person with access to the elderly individual such as a caregiver, or even more sophisticated fraudulent financial schemes that target the elderly. Beyond financial crimes, the bankruptcy process can also reveal instances of community-wide violations including those that may involve environmental crime and injustice against disadvantaged communities.

More information on the USTP's annual criminal referrals can be found at
<https://www.justice.gov/ust/bankruptcy-data-statistics/reports-studies>

Former Bankruptcy Petition Preparer Sentenced for Wire Fraud and Bankruptcy Fraud Following Referral and Investigation Assistance by the USTP's Madison Office

The District Court for the Western District of Wisconsin sentenced a former bankruptcy petition preparer to 12 years in prison after he pleaded guilty to one count of wire fraud and one count of bankruptcy fraud in connection with a mortgage-rescue scheme that defrauded more than 70 homeowners out of approximately \$390,000. The defendant targeted homeowners facing the possibility of foreclosure, representing to them that he could help them stay in their homes by obtaining loan refinancing or modification. Under the guise of negotiating with their mortgage lenders, the defendant convinced his victims to make their mortgage payments to businesses he controlled and then spent the money on his own travel and living expenses. Some of the victims made payments to the defendant for years, up to or even after they lost their homes to foreclosure. As part of his scheme, the defendant advised many of his victims to file for bankruptcy and sometimes prepared their bankruptcy petitions himself, stalling foreclosures and extending the time in which he could collect monthly mortgage payments. The U.S. Trustee's Madison office identified the defendant as an undisclosed bankruptcy petition preparer, referred the potential criminal conduct, and assisted with the investigation.

4. Appellate Practice and Challenges to the Bankruptcy Code

The USTP is the only participant in the bankruptcy system with a national perspective and a responsibility to promote the coherent and consistent application and development of bankruptcy law throughout the country. The Program identifies issues and presents the law and facts so that courts can adjudicate matters with the benefit of a fully developed record of facts and arguments. In support of this effort, the Program handles a large number of appeals annually, many of which have a profound and long-standing effect on the bankruptcy system.

In FY 2022, the Program participated in 82 new appellate matters beyond the bankruptcy court, including 21 matters at the United States court of appeals level and eight before the Supreme Court.

Below are notable recent case examples from the USTP's appellate practice:

- The debtor in *In re LTL Mgmt., LLC*, No. 21-30589 (Bankr. D.N.J.), and a non-debtor affiliate, "New JJCI," were created by their parent Johnson & Johnson (J&J), through a corporate restructuring of "Old JJCI" in a "divisive merger" under Texas law (often called a "Texas two-step") two days before the bankruptcy filing. J&J allocated to LTL all of Old JJCI's liabilities, including approximately \$2 billion in contingent liability on tort claims related to the sale and manufacture of talc-containing baby powder alleged to cause cancer, and a substantial asset known as a "funding agreement" backed by J&J and New JJCI and valued at \$61 billion to pay administrative expenses and to fund a trust to resolve talc liabilities. J&J also transferred Old JJCI's primary assets worth approximately \$61 billion to the debtor's newly created affiliate, New JJCI, which did not file for bankruptcy relief. J&J's stated goal was to isolate the talc liabilities in one of the new subsidiaries, LTL, so that entity

could file for chapter 11 without subjecting the operating enterprise, New JJCI, to bankruptcy proceedings. Creditors moved to dismiss the bankruptcy case alleging that the filing was in bad faith, while the U.S. Trustee supported dismissal after the bankruptcy court would not hear his pending motion to appoint an examiner. The bankruptcy court denied the motion to dismiss, finding that the divisive merger had a legitimate purpose to reduce costs and speed payments to tort victims. *In re LTL Mgmt., LLC*, 637 B.R. 396, 407-08 (Bankr. D.N.J. 2022), *rev'd*, 584 F.3d 738 (3rd Cir. 2023).¹⁷ The creditors appealed directly to the Third Circuit, and the USTP appeared and argued as *amicus curiae* in support of the creditors and dismissal of the case. On January 30, the Third Circuit Court of Appeals, in a highly consequential decision, reversed the bankruptcy court and ordered that the case be dismissed as a bad faith filing because the debtor was not in imminent financial distress given the open-ended funding agreement with its highly solvent, nondebtor parent, Johnson & Johnson. 2023 WL 1098189 *9, *13-16.

LTL Mgmt., LLC v. Bondurant (In re LTL Mgmt., LLC), 638 B.R. 291 (Bankr. D.N.J. 2022)

- In an important chapter 11 asbestos-related appeal, the Third Circuit adopted the Program's view, which it argued as *amicus*, that bankruptcy courts should evaluate nominees for future claimants' representative ("FCR") under 11 U.S.C. § 524(g) using a fiduciary standard akin to that for a *guardian ad litem*. The court agreed this standard "requires more than disinterestedness," as some courts have held. The court, which had invited the submission by the USTP, stated in its opinion that: "We are grateful the [U.S.] Trustee accepted that invitation and appreciate his prompt response and excellent quality of the submission." Although the USTP has prevailed on this issue in several bankruptcy courts in recent years, this is the only circuit court of appeals to have addressed this issue.

In re Imerys Talc America, Inc., No. 20-3485, 2022 WL 2350264 (3d Cir. June 30, 2022)

- The United States District Court for the Southern District of New York agreed with the position of the United States Trustee and reversed the bankruptcy court's order approving retention bonuses to six employees of the debtor, a Delaware corporation. The court agreed with the United States Trustee that the employees were insiders and therefore prohibited from receiving such bonuses under the Bankruptcy Code. The Code defines an "insider" as including an "officer" but does not define "officers." Although the six employees each had an officer's title, were appointed as such by the board of directors, and further, would be deemed officers under Delaware law, the bankruptcy court held that they were not "officers" under the Code based on a functional test. The district court's ruling held that the bankruptcy court erred by inquiring beyond the fact that the employees were appointed by the board and failing to give due weight to the resulting officer status under Delaware law. The district

¹⁷ On the same day the bankruptcy court denied the motion to dismiss, it also extended the automatic stay to, and entered a preliminary injunction to enjoin actions against, related non-debtor "Protected Parties." *LTL Mgmt., LLC v. Bondurant (In re LTL Mgmt., LLC)*, 638 B.R. 291 (Bankr. D.N.J. 2022).

United States Trustee Program

court also rejected the debtor's argument that the appeal was equitably moot because the bonuses had already been paid.

Harrington v. LSC Comms, Inc. (In re LSC Comms, Inc.), No. 20-cv-5006, 2021 WL 2887708 (S.D.N.Y. July 9, 2021)

- The United States District Court for the Central District of California agreed with the position of the United States Trustee and affirmed the bankruptcy court's order converting the debtor's chapter 11 case to chapter 7 and determining him ineligible for subchapter V. The debtor amended his chapter 11 bankruptcy petition to elect subchapter V on the eve of a hearing on a secured creditor's motion to appoint a chapter 11 trustee or convert his case. The district court agreed with the bankruptcy court's conclusion that the debtor was ineligible for subchapter V because he exceeded the debt limits.

Saber v. JPMorgan Chase Bank, N.A., 20-cv-05729, 2021 WL 1102440 (C.D. Cal. Mar. 23, 2021)

- Agreeing with the USTP, the United States District Court for the Eastern District of Virginia reversed the bankruptcy court's order confirming the debtor's chapter 11 plan, which included broad third-party release and exculpation provisions. Among other things, the district court held that the bankruptcy court lacked constitutional authority under *Stern v. Marshall*, 564 U.S. 462 (2011), to issue such a broad release and recommended that in future cases the district court should rule on third-party releases to avoid that constitutional issue. The court also held that implied consent—or the failure to opt out—is not actual consent to the releases. And it admonished the bankruptcy court for deferring to the plan proponent and failing to make detailed factual findings to determine whether the releases were necessary. The district court set criteria for approving exculpation clauses, noting that the further an exculpation clause stretched beyond those limits, the closer to a general non-debtor release it became. And the court declined to rule that the USTP's appeal of the plan confirmation order was equitably moot, in part because such a finding, according to the court, "would preclude the [United States] Trustee from fulfilling its duty of protecting the public interest and preventing the abuse of the bankruptcy system." Finally, although the court remanded as to the exculpation provision, it directed that the case be reassigned to a bankruptcy judge outside of the Richmond division.

Patterson v. Mahwah Bergen Retail Group, Inc. (In re Retail Group, Inc.), 636 B.R. 641 (E.D. Va. 2022)

- Agreeing with USTP, the United States District Court for the Southern District of New York reversed the bankruptcy court's order confirming the debtors' chapter 11 plan, which included non-consensual, third-party releases of claims against non-debtors. The debtor, "engulfed in a veritable tsunami of litigation" as noted in the district court's opinion, filed for chapter 11 bankruptcy in September 2019. Eventually, the bankruptcy court confirmed a plan for the debtors that included "broad releases, not just of derivative, but of particularized or

direct claims . . . to the members of the Sackler family (none of whom is a debtor in the bankruptcy case) and to their affiliates and related entities.” The USTP appealed the confirmation order. The USTP argued that the releases were impermissible under the Bankruptcy Code, and even if they were ever permissible under the statute, they were impermissibly broad and abusive. The Program also argued that the releases violated the Due Process Clause; the bankruptcy court lacked authority as an Article I court to extinguish common-law claims between non-debtors under *Stern v. Marshall*, 564 U.S. 462 (2011); and imposition of the releases was inconsistent with the Bankruptcy Clause of the Constitution. In a 142-page opinion, the district court reversed the order confirming the plan. The court conducted a comprehensive analysis of the question on whether the bankruptcy court was statutorily authorized to grant such releases outside the asbestos context. The district court concluded that “the Bankruptcy Code does not authorize such non-consensual non-debtor releases: not in its express text . . .; not in its silence . . .; and not in any section or sections of the Bankruptcy Code that, read singly or together, purport to confer generalized or ‘residual’ powers on a court sitting in bankruptcy.” The district court also agreed that the bankruptcy court lacked constitutional authority under *Stern* to impose the releases. The district court otherwise declined to “reach the constitutional questions that have been raised by the parties.” The debtor and others appealed the district court’s ruling to the Second Circuit, where the appeal was argued on April 29, 2022. The circuit has yet to issue an opinion.

In re Purdue Pharma, LP, Nos. 22-85 and 22-110 (2d Cir.), Nos. 7:21-cv-7966 and 7:21-cv-7969 (S.D.N.Y.) and No. 19-23649 (Bankr. S.D.N.Y.)

5. Private Trustee Oversight

The USTP recruits, 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. The trustees handled more than 900,000 ongoing cases during FY 2022 and, on average annually, distribute billions in assets. The Program also recruits, appoints, and supervises trustees for small business cases proceeding under subchapter V of chapter 11 of the Code. Trustee duties and their required skillsets vary according to the applicable Code provisions. 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 Code. Subchapter V trustees are primarily responsible for assessing the viability of a debtor’s business and facilitating a consensual reorganization plan within short timelines.

The USTP’s oversight duties for the different trustees also vary according to the applicable laws. These duties include interpreting the statutes and issuing appropriate guidance to trustees regarding their administration of cases and their duties to debtors, creditors, other parties in interest, and the United States Trustee. When new laws are enacted, such as in the case of the SBRA, this activity can require more resources in the implementation stage of the new

provisions. Ongoing resources, however, are still required beyond this stage. For example, the Program may need to issue updates to guidance and conduct enhanced training for trustees as well as their employees in response to staff experience gained under new laws, to clarify the Program's positions on laws, or in response to amendments to the law. In the case of the SBRA, the Program expended resources to enhance oversight policies and mechanisms even after the first year of the subchapter V effective date. These activities included investments in the Program's IT systems as well as the development of data-enabled electronic forms for consistent and efficient reporting of case data by trustees to the Program. The Program also periodically issues updated guidance to trustees, for example, recently clarifying guidance on the sale of over-encumbered estate property.¹⁸ Moreover, for chapter 7 trustees as well as trustees for cases in chapters 12 and 13, the USTP must also closely monitor the trustees' accounting, financial management, and administration of debtor funds and property of the bankruptcy estate for the payment to creditors and ensure the funds are appropriately safeguarded. In appropriate cases, the USTP also takes action when improper activity is suspected or alleged. Further, the Program is responsible for overseeing trustee compensation to ensure payments, including those based on reasonable and necessary expenditures in trustee budgets or as approved by the bankruptcy court, conform to the Code. To ensure the effectiveness of the USTP's oversight of chapter 7, 12, and 13 trustees, Program activities include reviewing around 60,000 reports on chapter 7 cases on average annually as well as about 250 annual and amended operating budgets of chapter 12 and 13 trustees, and annually conducting more than 400 audits and other reviews of trustee operations.

¹⁸ The clarification underscores and strengthens the USTP's longstanding requirement that, absent some special circumstances, sales of estate property must generate a meaningful distribution for unsecured creditors and not be undertaken primarily for the benefit of trustees and their professionals.

6. 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 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 agencies and providers who must meet statutory qualifications to offer these services to debtors. The Program also monitors their operations through in-depth, quality-of-service reviews and investigates customer complaints submitted to the USTP. Agencies and providers can be denied approval or have their approval revoked for failing to meet statutory duties and USTP requirements and approved entities must re-apply annually to maintain their standing. At the end of FY 2022, 84 credit counseling agencies and 135 debtor education providers were approved to offer these services. In recent years, around 8 percent of credit counseling certificates and debtor education certificates have been issued at no or reduced cost. Of those paying the full fee, the average combined cost of pre-bankruptcy credit counseling and post-discharge debtor education is under \$40, making these services accessible at a relatively modest cost.

B. Performance Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Administration of Cases												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2022		FY 2022		FY 2023		Current Services Adjustments & FY2024 Program Changes		FY2024 Request	
Total Costs and FTEs (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			1,006	239,000 [259]	985	239,000 [252]	1,060	255,000 [37]	5	21,771 [-7]	1,065	276,771 [30]
Type	Strategic Objective	Performance	FY 2022		FY 2022		FY 2023		Current Services Adjustments & FY2024 Program Changes		FY2023 Request	
			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Program Activity 1: Case and Trustee Administration			519	123,210 [134]	508	123,210 [130]	546	131,458 [19]	3	11,223 [-4]	549	142,681 [15]
Performance Measure	1.1 Protect our Democratic Institutions and 4.1 Reinvigorate Antitrust Enforcement and Protect Consumers /1	No. of 707(b) inquiries per successful outcome	7.0		6.8		7.0		0.0		7.0	
		Percent of Trustee Final Reports reviewed within 60 days	95%		99.7%		95%		0%		95%	
Program Activity 2: Civil and Criminal Enforcement and Appellate Matters			487	115,790 [125]	477	115,790 [122]	514	123,542 [18]	2	10,548 [-3]	516	134,090 [15]
Performance Measure	1.1 Protect our Democratic Institutions and 4.1 Reinvigorate Antitrust Enforcement and Protect Consumers /1	Number of successful actions related to consumer protection	N/A		1,809		N/A		N/A		N/A	
		Number of successful discharge actions	N/A		370		N/A		N/A		N/A	
		Potential additional returns to creditors through civil enforcement and related efforts	N/A		\$574.9M		N/A		N/A		N/A	
		Litigation success rate	95%		96.0%		95%		0%		95%	
Data definitions are outlined in the narrative that follows.												

/1 The USTP’s performance measures also quantify the Program’s progress towards achieving objectives 2.6, Protect Vulnerable Communities and 3.4, Expand Equal Access to Justice.

The USTP maintains targets for three of its six performance measures. These measures quantify the proportion of USTP efforts and activities that result in successful outcomes, as defined for each of the three measures. Because the measures are ratio-based, the Program can set targets for the measures with less concern that USTP staffing shortages or filing fluctuations will result in performance indicators that cannot be compared over time due to the impact on Program output.

Targets for the remaining three measures are counts of overall actions or sums of dollars, and actual measure levels can be more directly impacted by the size of the USTP’s workforce as well as overall bankruptcy filing levels. Consequently, the Program suspended targets for the measures in FY 2018, in response to declining and uncertain staffing levels. The USTP had planned to revisit targets for these measures after the conclusion of an aggressive hiring initiative, launched in FY 2019, which reversed a year over year decline in staffing since FY 2010. The impact of the COVID-19 pandemic on staffing plans, actual employee levels as well as filings, which dropped by 44 percent between FY 2019 and FY 2021, required the Program to delay these efforts. The USTP is tentatively planning to resume these efforts during the FY 2025 budget formulation cycle. The plan is based on the assumption that there will be no further staffing disruptions, either from the current pandemic or other unforeseeable events, and that filings return to pre-pandemic levels.

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 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 although individuals are also eligible to file.

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's income 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: 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 United States Trustee to prevent fraud, abuse and error resulting from the inappropriate actions of creditors, petition preparers, attorneys, mortgage servicing agencies and mortgage rescue scam operators. 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

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

Number of successful discharge actions: The Program added this new measure in FY 2018 to replace the number of successful discharge complaints measure, which was discontinued in FY 2018. This measure consists of successful formal and informal discharge actions that result in waiver, denial or revocation of discharge of debt. These actions are taken to resolve issues such as hidden assets and unreported income and represent one of the most serious civil remedies against fraud and abuse by individual debtors in the bankruptcy system. (This measure does not include successful discharge actions 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: The Program's 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 total 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 returned, and sanctions and fines against professionals.

Litigation success rate: 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.

Strategic Objective	PERFORMANCE MEASURE TABLE					
	Decision Unit: Administration of Cases					
	Performance Measures		FY 2022	FY 2022	FY 2023	FY 2024
Target			Actual	Target	Target	
1.1 Protect our Democratic Institutions and 4.1 Reinvalidate Antitrust Enforcement and Protect Consumers ^{1/}	Performance Measure	No. of 707(b) inquiries per successful outcome	7.0	6.8	7.0	7.0
	Performance Measure	Percent of Trustee Final Reports reviewed within 60 days	95%	99.7%	95%	95%
	Performance Measure	Number of successful actions related to consumer protection	N/A	1,809	N/A	N/A
	Performance Measure	Number of successful discharge actions	N/A	370	N/A	N/A
	Performance Measure	Potential additional returns to creditors through civil enforcement and related efforts	N/A	\$574.9M	N/A	N/A
	Performance Measure	Litigation success rate	95%	96.0%	95%	95%

[N/A = Not Applicable]

1/ The USTP’s performance measures also quantify the Program’s progress towards achieving objectives 2.6, Protect Vulnerable Communities and 3.4, Expand Equal Access to Justice.

C. Performance and Strategies

1. Performance Plan and Report for Outcomes

The USTP’s dedicated professionals have continued to fulfill mission priorities despite staffing levels declining by a quarter in the last decade. In FY 2022, this included making more than 2,100 criminal referrals to United States Attorneys and law enforcement, including referrals of fraud in obtaining funds under the CARES Act; participating in more than 80 appellate matters beyond the bankruptcy court, including 21 matters at the United States court of appeals level and eight before the Supreme Court; reviewing about 52,000 trustee reports; overseeing nearly 400 audits as well as conducting field reviews for chapter 7 and 13 trustee operations; and filing 24 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 55 percent among objections that were decided during FY 2022. Overall, the USTP took nearly 22,000 formal and informal civil enforcement actions, with a potential monetary impact of \$575 million in debts not discharged, fines, penalties, and other relief.

The USTP’s Annual Reports of Significant Accomplishments can be found at <https://www.justice.gov/ust/annual-reports-significant-accomplishments>

2. Strategies to Accomplish Outcomes

The USTP employs the following strategies as well as collaborates extensively with bankruptcy judges, trustees, clerks of court, and other participants in the bankruptcy process on system-wide and discrete issues alike. These strategies enable the Program to meet the Department's objectives of protecting the interests of all stakeholders in the bankruptcy process including consumers; pursuing equal access to economic justice systems, including in bankruptcy; and ensuring effective Program oversight of more than 1,100 private bankruptcy trustees overseeing cases under chapters 7, 12, and 13 as well as trustees that are appointed to subchapter V cases.¹⁹ In addition, the Program is continuing a number of efforts that align operations with best practices to promote good government as well as initiatives to enhance the security of the Program's IT systems and information.

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

The USTP's anti-fraud and anti-abuse enforcement efforts focus on wrongdoing by debtors, creditors, professionals and other third parties.

Debtor Abuse. The USTP combats fraud and abuse by debtors who, among other things, attempt to conceal assets; evade the repayment of debts when they have disposable income available to pay them; or commit other violations of the Code primarily by seeking case dismissal or by seeking denial of discharge. Civil enforcement actions include taking steps to dismiss abusive filings, deny discharges to ineligible or dishonest debtors, and limit improper refilings.

Consumer Debtor Attorneys. The USTP continues to address fraudulent conduct and other violations by consumer debtors' attorneys. Lawyers who are incompetent or dishonest or who fail to satisfy minimal professional obligations impede the debtor's "fresh start" and add costs to creditors and the entire system. Nationally, the Program is uniquely positioned to identify trends in attorney misconduct and to address issues raised by law firms that operate in multiple jurisdictions. At the local level, the Program identifies and takes action to redress misconduct by consumer debtor counsel, including those who employ deceptive fee arrangements that violate the Bankruptcy Code.

Creditor Abuse. The USTP continues to monitor compliance by national creditors for fraud and abuse issues. The USTP has entered into 14 national settlements related to creditor violations of the Bankruptcy Code and Rules, including settlements in FY 2021 with Nationstar Mortgage, LLC, U.S. Bank National Association, and PNC Bank, NA addressing noncompliance with the Bankruptcy Code and Rules that impacted more than 60,000 accounts of borrowers in bankruptcy dating back to 2011.

¹⁹ Currently, the USTP has available approximately 250 private individuals who are eligible for appointment as a trustee in small business cases in which the debtor has elected treatment under subchapter V.

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 deterrence against those who would abuse the system to defraud others. The USTP has a statutory duty to refer matters to the United States Attorneys' offices (USAOs) for investigation and prosecution that "relate to the occurrence of any action which may constitute a crime" and to assist the United States Attorney in "carrying out prosecutions based on such action." 28 U.S.C. § 586(a)(3)(F). Program staff also dedicate significant time to assisting its 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, tax fraud, identity theft or use of false or multiple Social Security numbers, mail and wire fraud, bank fraud, mortgage fraud and real estate fraud.

The USTP is committed to supporting the Department's goal to protect vulnerable communities including the elderly as well as historically underrepresented and underserved communities in the bankruptcy system. The USTP evaluates cases for and takes action on signs of potential criminal as well as civil violations. Because the bankruptcy process requires transparency, disclosures, and feedback from multiple parties, including the debtor, creditors, private bankruptcy trustees and others, the process can reveal facts and circumstances in cases that involve the abuse of an elderly person's money or property, sometimes by a person with access to the elderly individual such as a caregiver, or even more sophisticated fraudulent financial schemes that target the elderly. Beyond financial crimes, the bankruptcy process can also reveal instances of community-wide violations including those that may involve environmental crime and injustice against disadvantaged communities.

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

Pursuant to the Code, the United States Trustee appoints and supervises private trustees who administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12, and 13. The Program also appoints and supervises trustees in cases filed under subchapter V of chapter 11 who are primarily responsible for assessing the viability of a debtor's business and facilitating the development of a consensual plan of reorganization within short timelines. Trustees have a fiduciary responsibility to the bankruptcy estate and it is a fundamental duty of the United States Trustee to oversee the activities of these private trustees to ensure, where applicable, the effective distribution of funds and compliance with standards put in place to safeguard those funds, as well as the disposition of cases within the timelines established by the law. The USTP is responsible for recruiting, selecting, clearing, and training all trustees, and it must evaluate 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 management and professional accountability, compliance with the Bankruptcy Code and prompt disposition of chapter 11 bankruptcy cases

The USTP carries out significant responsibilities in chapter 11 reorganization cases. The following highlights some of the Program's current activities in this area:

Illegal Third-Party Releases. The USTP devotes significant resources to addressing non-consensual, non-debtor third-party releases in chapter 11 reorganization plans. The Program has litigated the statutory and constitutional authority of the bankruptcy courts to approve plans that require the debtor's creditors to release their claims against non-debtors, including the debtor's owners and managers, who have not themselves filed for bankruptcy relief.

Evaluating the Retention and Compensation of Professionals. The USTP rigorously reviews applications to retain professionals to ensure the adequate disclosure of connections and the absence of disqualifying conflicts of interest. In addition, the USTP reviews and objects to professional compensation applications to ensure that fees do not exceed market rates and comply with other statutory requirements.

Review of Proposed Executive and Other Insider Bonuses. The USTP enforces statutory limitations on insider and executive compensation under section 503(c) of the Code, often as the only party challenging excessive or otherwise inappropriate management bonuses. In addition to outright objections when bonus requests do not satisfy the law, the USTP has at times sought changes to plans, such as the removal of top executives from the list of bonus recipients and the imposition of more challenging performance milestones that must be reached before the bonus is paid.²⁰

e. Administer virtual section 341 meetings and provide access to language interpreters

The USTP is committed to promoting access to the bankruptcy system. To help ensure that individuals with limited English proficiency can fully participate in the statutory section 341 meetings of creditors where debtors testify under oath, the Program offers free telephonic interpreter services at these meetings as needed. In FY 2022, nearly 10,000 calls were made for interpreter services in more than 70 languages.

Following the COVID-19 pandemic, the Program moved to a policy allowing statutory section 341 meetings of creditors to proceed in whole or in part through virtual formats and annually devotes budgetary resources for the provision of supporting technologies to private bankruptcy

²⁰ In September 2021, the GAO issued a report on the incidence and magnitude of awards of executive bonuses by companies before a chapter 11 bankruptcy filing. The USTP provided significant assistance to the GAO for the report, which incorporated many of the USTP's technical comments but did not recommend any changes to the Program's practices or procedures. The GAO suggested that Congress consider amending the Code to clearly subject such bonuses to bankruptcy court oversight and to specify the factors that courts should consider in approving such bonuses. For more information, please see <https://www.gao.gov/products/gao-21-104617>.

trustees.²¹ The meetings are mandatory administrative proceedings in the bankruptcy process in which each debtor must appear and testify under oath. They are generally the only formal bankruptcy proceeding most debtors ever participate in. Based on the USTP's experience through the pandemic, the flexibilities provided by virtual meetings place fewer burdens on debtors who do not, among other things, have to take critical time off from work to participate, potentially suffering a loss in pay, and result in greater creditor participation. After consulting internally and with external stakeholders to assess the effectiveness of remote meetings, the USTP decided to make permanent changes to the section 341 meeting process after the pandemic and will begin to phase in a new approach by which all initial section 341 meetings in chapter 7, 12, and 13 cases will move on a permanent basis to a video platform. As the USTP expands to conducting these meetings by video nationwide, it will also evaluate the economies of gradually reducing section 341 meeting space requirements. The USTP will be deliberate and transparent as it proceeds in making these decisions, which should result in significant savings for taxpayers while better serving debtors, creditors, and the public.

f. Achieve management excellence by promoting standards of professional conduct across Program staff, fostering a talented and high-performing workforce representative of the public we serve, and implementing data and technology modernization initiatives.

The USTP is committed to ensuring the highest ethical conduct and performance of its diverse workforce. Integrity and ethical values in decision-making are expected at all levels of the organization, and standards are communicated by management as well as through a comprehensive ethics and financial disclosure program. Program operations are assessed via a robust management review system for regional performance and a peer evaluation protocol that ensures field offices comply with Program priorities, objectives, and policy. Further, continuous training opportunities are provided via formal training plans as well as through mentoring programs that allow long-serving staff to share knowledge with newer employees.

A USTP-wide working group comprised of headquarters and field staff from almost every level of the organization and representing nearly all occupations continues to strive to enhance diversity among Program staff to bolster employee satisfaction and foster workforce performance. The group's responsibilities include making recommendations on changes to Program operations and policies to ensure the USTP's workforce fully embraces diversity, seeks all opportunities to foster and promote a diverse workforce, and complies with Department diversity mandates. These initiatives and other workplace policies contributed to the USTP's advancement to the top 15 percent ranking among federal agency subcomponents, including

²¹ The USTP's policy is to conduct first meetings of creditors by videoconference and reflects the Program's deliberate consideration and analysis of the benefits of video meetings over telephonic meetings. Video meetings are preferable for a variety of reasons, most notably in the areas of verifying the debtor's identity, preserving the evidentiary value of that testimony, and retaining the formal and public nature of that meeting. The policy is in the implementation stage, and some meetings are currently conducted telephonically. When the policy is fully rolled out, most meetings will be conducted by videoconference though a telephonic option will remain for debtors unable to participate by video. Trustees will also have limited discretion to continue the virtual meeting to an in-person meeting when necessary and appropriate, and as health and safety concerns related to the COVID-19 pandemic abate.

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ranking 5th among 19 components within the Department, based on the 2021 Best Places to Work survey issued by the Partnership for Public Services. The Program continues to improve from prior years within this survey. As for the private bankruptcy trustees that the Program recruits and oversees, to promote the Program and publicize available positions the USTP has expanded its outreach to target an increased number of professional and academic affinity organizations, based in part on its successful recruitment campaign for SBRA trustees; increased its use of digital and social media; and deployed enhanced trustee training. The training focuses on a number of areas including professional conduct that promotes diversity and inclusion in the bankruptcy system; detection of and responses to potential signs that environmental justice may be compromised in communities of underrepresented and low-income populations; and overall reminders to remain vigilant in monitoring and reporting any conduct that impinges on the integrity of the bankruptcy system.

In the area of technology, the USTP is modernizing its portfolio of legacy bankruptcy management applications that enable staff to review and manage case-related information for about one million ongoing bankruptcy cases annually. The multi-year effort is anticipated to result in increased functionality and annual cost savings and, importantly, eliminate the security risks associated with the use of a system that operates on an old platform.

V. Program Increases by Item

Item Name:	USTP Data Management, Protection and Privacy
Budget Decision Unit(s):	Administration of Cases
Organizational Program:	USTP Data Protection and Privacy, and Litigation Activities
Program Increase:	Positions <u>9</u> Atty <u>2</u> FTE <u>4</u> Dollars <u>\$5,116,000</u>

Description of Item

To comply with privacy and civil liberties-related laws and policies and protect the USTP’s data from malicious cyber-attacks, the USTP is requesting \$5.1 million in FY 2024 to cover one-time implementation and recurring costs for critical IT system modernization initiatives. The funding would also enable the Program to deploy advanced cybersecurity tools as well as enhanced data management and analytical applications to comprehensively catalog, query and analyze complex case information in support of USTP litigation efforts. In addition, the Program is requesting additional FTE resources to establish a cross-functional team to manage implementation activities and ongoing support responsibilities in these vital areas. These efforts would not only enhance the security and adaptability of the Program’s information systems, but also enhance staff productivity.

This enhancement is critical to the USTP to meet the government’s mandate to protect and secure government computer systems and improve the nation’s cybersecurity posture. Funding for this comprehensive effort is not available from base budget or carryover resources absent significant reductions in other mission-critical areas or personnel.

Justification

Initiative #1 – Modernization of the Automated Case Management System (ACMS) and Data Exchange for Trustees (DXTR) system

The USTP requests \$2.0 million in enhancement funding to complete the modernization of its case management system as well as the related DXTR system that extracts data from the courts’ electronic filing system and populates various ACMS transaction records. This is a three-year project that began in late FY 2022. Because of the acute need, the USTP planned for the initial two years of funding utilizing FY 2022 and FY 2023 carryover funds but does not anticipate having sufficient base budget or carryover resources in FY 2024 to cover the remaining \$2.0 million that will be needed to complete this critical infrastructure project.

In developing its cost and approach to system modernization, the USTP consulted with the General Services Administration’s 18F Group, which specializes in effective agile acquisition strategies within the government. By taking an annual funding approach that requires identified deliverables, the USTP is better positioned to manage risk through improved contract

administration and an increased ability to respond to changing needs throughout the life of the contract.

The ACMS is a mission-critical system that allows staff to review and manage case-related information (e.g., details of a debtor's estate, including Social Security number and other personally identifiable information for non-business cases, which comprise most of the cases filed; hearings, pleadings, and court orders; financial case reports and fee information; and trustee and professional appointments) for approximately one million ongoing bankruptcy cases annually.²² In addition, the ACMS is interconnected with other legacy USTP IT systems that support, among other things, civil enforcement activities, data sharing, and chapter 11 quarterly fee collection. The modernization of the ACMS (and the related DXTR system) will serve as the foundation upon which the Program can develop a single, consolidated bankruptcy management system that seamlessly integrates the functions and processes of these legacy systems.

The ACMS is more than 30 years old and operates on an emulated IBM midrange computing platform,²³ an outdated technology that dates back to the 1990s. The technology was originally targeted for systems supporting small and medium-sized organizations and is incredibly difficult to maintain, support, and integrate with newer technologies; significantly compromises the USTP's cybersecurity posture as older technologies are inherently more vulnerable to security risks than current technology platforms; hinders the Program's ability to meet new data demands; and comes at a substantial cost, both financially in terms of operations and maintenance (O&M) costs and operationally due to technological inefficiencies. Without the requested funding, the Program will likely not be able to continue the project past the anticipated initial years of work, absent significant cuts in areas that would negatively impact other mission-critical functions, including potential limitations or reductions to USTP staffing levels.

The requested funding will support experts in the field of midrange computing system modernization. The selected vendor is executing an approach to the design, development, and implementation of an overhaul to the ACMS that will also necessarily involve the Program's legacy Data Exchange for Trustees (DXTR) system. DXTR is a daily intermediary data extraction program that contains various ACMS transaction records drawn from the courts' electronic case filing system. The Program is collaborating with the vendor to develop a new data repository for the modernized ACMS that is accessible via a web-based interface that will be the foundational piece for the modernization of the Program's remaining 10 legacy systems, which will be initiated as resources are available. Importantly, the web-based interface will enable the Program to comply with Department and administration mandates to transition

²² The ACMS also maintains historical case data for more than 25 million case filings.

²³ The USTP transitioned the ACMS and the Program's other legacy applications away from a server-based environment to a cloud environment over FY 2019 and FY 2020. The move not only reduced operational costs but also enhanced the Program's cybersecurity posture by transitioning the USTP away from the use of physical server hardware that must be appropriately secured in a data center and, because files for the applications that reside in the cloud environment are encrypted, providing another layer to prevent access by unauthorized users. The ACMS, however, still reflects the security and data limitations of the outdated midrange computing platform technology and must therefore be modernized.

systems to the use of multi-factor authentication capabilities.²⁴ Moreover, the overhaul will also enable the Program to build in extensive requirements on the logging of data related to the access of Federal information systems by users and their behavior while using such systems as mandated by the Administration in August 2021.²⁵

In addition to security improvements, the USTP envisions the overhauled system will reflect user-centered design features related to navigating data, querying, and monitoring analytics as well as best practices on the presentation of the stored data. Further, because of the modernization process, the restructured applications would support the use of modern software delivery methods that would shorten timelines for the development and deployment of updates to applications, including those designed to address emerging security needs.

Initiative #2 – Cybersecurity Software

The USTP requests \$547,000 in recurring funding for the ongoing deployment of upgraded cybersecurity software to ensure constant and enhanced data protection and privacy of systems, logging and monitoring capabilities, and identity management functions to combat cybersecurity attacks and to be able to quickly identify and effectively address any cybersecurity and data privacy breaches that may occur. These efforts would enable the Program to comply with the Administration's mandate to implement a zero-trust architecture which requires continuous authentication and authorization procedures for users at each and every point they can potentially access a network and data, including at device and application levels. The mandate and this request reflect the lessons learned by the Administration and the Department following high-profile security breaches across both the government and private sectors, which highlighted the evolving nature of cybersecurity threats and malicious attempts to access IT systems, and the need for constant vigilance.

²⁴ The Department mandated the transition to the use of multi-factor authentication methods to secure access to component systems through DOJ Order 0904.01, issued in 2016. The order is available at <https://www.justice.gov/jmd/page/file/964941/download>.

²⁵ OMB Memorandum M-21-31, *Improving the Federal Government's Investigative and Remediation Capabilities Related to Cybersecurity Incidents* (Aug. 21, 2021), available at: <https://www.whitehouse.gov/wp-content/uploads/2021/08/M-21-31-Improving-the-Federal-Governments-Investigative-and-Remediation-Capabilities-Related-to-Cybersecurity-Incidents.pdf>. Executive Order No. 14028 on Improving the Nation's Cybersecurity (issued May 12, 2021), imposed a deadline for agencies to comply with the logging as well as the authentication mandate. The order is available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>.

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Initiative #3 – Document Management Solution (DMS)

The USTP is requesting \$1.6 million in FY 2024 and \$892,000 on an annually recurring basis thereafter to implement and maintain a secure, robust, and comprehensive DMS that ensures compliance with record management policies and procedures, and facilitates the sharing of knowledge and information throughout the USTP's widely dispersed workforce (90 field office locations within 21 regions, in addition to a headquarters office). Among the benefits of a DMS is automated information categorization for each document that enhances staff productivity by shortening the amount of time needed by staff to search for interrelated documents or even keywords or phrases within and across work products. It will provide a uniform and efficient solution to preserve and organize institutional knowledge, which is crucial to offset staff attrition and the number of staff approaching retirement age. It also provides a robust and secure means for staff to track and manage document access and editing based on roles and established privacy controls designed to protect sensitive personal and financial information contained in bankruptcy case files and the USTP's administrative files from improper disclosure.

The requested funding reflects estimates based in part on projections provided by the Department's Office of the Chief Information Officer for an off-the-shelf solution utilized by the Executive Office for United States Attorneys. The funding includes the cost of custom configuration and testing of the application; migration of existing data and work products to the system; and secure cloud storage of USTP data in the application.

The request would greatly enhance the efficiency of the Program's staff in headquarters and the field, including those who work on mission-critical cases such as large chapter 11 bankruptcy cases and, importantly, facilitate compliance with records management policies and procedures. Currently, staff rely on file storage and document sharing capabilities in Microsoft File Servers, Microsoft SharePoint, Microsoft OneDrive and Microsoft Teams. These applications, while still critical to their work, lack the efficiency and security of a DMS, which provides standard, best-practice technologies to manage, query, and control access to data.

Initiative #4 – USTP Cross-Functional Team, \$947,000 million for nine positions (two attorneys) and four FTEs

The USTP requires additional staffing resources to manage the implementation and recurring activities associated with the above requested funding. Moreover, the Program is in need of centralized and dedicated resources to oversee existing USTP-wide Data Management, Protection and Privacy activities. Consequently, the Program is requesting funding to add:

- One full-time attorney (GS-15) to focus on the USTP's compliance with data protection and privacy laws, policies, and procedures including oversight of Program records management functions;
- Four IT specialists who will be dedicated to the oversight and execution of recurring security processes and protocols;

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- One part-time attorney (GS-15) and a paralegal (GS-11) to focus on the implementation and recurring activities associated with the DMS and two litigation support specialists or paralegals (GS-11) to support and train USTP attorneys, auditors, and other paralegals on the complex task of cataloging work products. This will ensure consistency in how data is indexed and facilitate retrieval of content from structured data files used by a DMS and the Program’s existing range of litigation support applications, as well as help staff leverage the additional analytic capabilities afforded under a DMS and the Program’s existing litigation support solutions.

Impact on Performance

This request supports the Department’s efforts to promote the integrity and efficiency of the bankruptcy system by ensuring the Program has: (a) secure and robust case and information management systems that meet, and can easily adapt to, ever changing security and data needs, and (b) current security tools capable of addressing and mitigating the risk for potential breaches of Program systems. Modernized systems and processes are fundamental to ensuring successful cybersecurity and data privacy programs that give the public confidence in the Program’s ability to carry out its important mission.

The Program’s existing Cyber crosscut measure will be used to track the impact of this request.

Funding

Base Funding

The amounts reflected in the table that follows include the existing resources devoted by the USTP to addressing cyber activities, including resources related to attorneys in the Program’s Office of the General Counsel who address data privacy and protection issues for the Program and a USTP records manager. The amounts also reflect the cost of resources, specifically IT staff and IT applications, that support Program litigation activities.

<i>FY 2022 Enacted</i>				<i>FY 2023 Enacted</i>				<i>FY 2024 Current Services</i>			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
<u>38</u>	<u>6</u>	<u>8</u>	<u>\$6,122</u>	<u>40</u>	<u>6</u>	<u>8</u>	<u>\$6,464</u>	<u>41</u>	<u>6</u>	<u>8</u>	<u>\$6,379</u>

The amounts exclude costs for which the USTP has never received base budget resources and has or will fund through carryover, including: (a) about \$4.0 million from FY 2022 to FY 2023 for the initial two years of the three-year contract for the ACMS and DXTR modernization; and (b) \$3.6 million annually for legacy bankruptcy system O&M through FY 2024. This enhancement request, as outlined below, includes \$3.0 million in FY 2025 for the maintenance of the modernized ACMS and DXTR (ACMS/DXTR) systems and the remaining 10 legacy applications.

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Personnel Increase Cost Summary

Personnel costs assume a 50 percent FTE lapse.

Type of Position/Series	FY 2024 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				2 nd Year	3 rd Year	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Attorney – Full-Time (0905)	\$140	1	\$263	\$118	\$7	\$118	\$7
Attorney – Part-Time (0905)	\$70	1	\$132	\$59	\$3	\$59	\$3
Paralegals (0950)	\$79	1	\$142	\$56	\$4	\$56	\$4
Senior IT Specialists (2210)	\$508	4	\$238	\$108	\$7	\$430	\$26
Litigation Support Specialists (0301)	\$150	2	\$135	\$52	\$4	\$104	\$8
Total Personnel	\$947	9				\$767	\$48

Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Cybersecurity Software	\$547	\$547	1	\$0	\$0
ACMS/DXTR Modernization IT Contractors	\$2,000	\$2,000	1	\$1,000	\$0
DMS	\$1,622	\$1,622	1	-\$730	\$0
Total Non-Personnel	\$4,169			\$270	\$0

Justification for Non-Personnel Annualizations

- The USTP IT system requires ongoing O&M costs, estimated at \$3.0 million in FY 2025 after completion of the modernized ACMS/DXTR, to cover the modernized system and the Program’s remaining 10 legacy applications. The Program anticipates reductions to this cost following the modernization of all systems.
- The annualization for the DMS reflects the annually recurring cost of each application.

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	41	6	8	\$1,882	\$4,497	\$6,379	\$0	\$0
Increases	9	2	4	\$947	\$4,169	\$5,116	\$1,037	\$48
Grand Total	50	8	12	\$2,830	\$8,666	\$11,495	\$1,037	\$48

Affected Crosscuts

The requested enhancement will impact the Cyber crosscut.

United States Trustee Program

Item Name:	Debtor Audits
Budget Decision Unit(s):	Administration of Cases
Organizational Program:	Debtor Oversight
Program Increase:	Positions <u>0</u> Atty <u>0</u> FTE <u>0</u> Dollars <u>\$2,000,000</u>

Description of Item

The USTP is requesting \$2.0 million to conduct annual audits of chapter 7 and 13 bankruptcy cases as statutorily required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8. Under BAPCPA, the USTP is authorized to contract with independent firms to perform these audits for the purpose of determining the accuracy, veracity, and completeness of petitions, schedules, and other information required to be provided by debtors under sections 521 and 1322 of title 11. If a material misstatement is identified in a Report of Audit, the U.S. Trustee determines what action is appropriate based on the material misstatement(s) and may pursue a variety of actions depending on the circumstances of the case, including seeking denial or revocation of discharge, or reporting the material misstatement to the United States Attorney.

Although statutorily required, debtor audits, have been supported using carryover balances, when available. The USTP carryover has been dwindling and is expected to no longer be available in FY 2024 and future years. Further, since the USTP has utilized carryover and one-time funding to support debtor audits, there is currently, no direct base resources to support this program once carryover funding has been depleted.

Justification

In March 2020, the USTP suspended debtor audits due to public health considerations associated with the COVID-19 pandemic. As the USTP began planning for a return to the workplace in 2022, it also considered plans for the possible reinstatement of debtor audits as public health conditions allowed. As part of that planning, the USTP considered changes to the audit process that would lessen the burden on debtors in complying with audit requirements while still maintaining the integrity of the audits. Included among those changes were a reduction in the volume of documents required to be produced by debtors and technical adjustments to certain thresholds in the material misstatement analysis.

The USTP had anticipated requesting audit firms to resume debtor audits utilizing the updated audit procedures at some point following the return of Federal government staff to the workplace, including the courts' return to in-person appearances. Through the first quarter of FY 2023, however, many courts had continued to limit in-person hearings. Moreover, the uncertainty in Program funding through essentially this period also limited the USTP's ability to resume the audits. Following the enactment of the USTP's FY 2023 appropriation, the Program notified

United States Trustee Program

Congress of the USTP’s intent to resume the audits. As base resources remain limited, however, the Program will be conducting a limited number of audits using carryover from FY 2022 to support them. Absent approval of this enhancement funding request, the Program does not anticipate that sufficient base or carryover resources will be available in FY 2024 to continue the audits.

Impact on Performance

Independently conducted debtor audits fulfill a congressional mandate and are an important element of the Program’s efforts to promote the integrity of the bankruptcy system. They are designed to provide baseline data to gauge the magnitude of fraud, abuse, and error in the bankruptcy system; to assist the USTP in identifying cases of fraud, abuse, and error; and to enhance deterrence. Since, historically, debtor audits have identified an overall material misstatement rate of more than 20 percent, without them, the USTP is hampered in its ability to identify and take action to address, among other things, the understatement or omission of a debtor’s assets, income, or the improper transfer of property prepetition.

BAPCPA requires the USTP to publish an annual public report of audit findings, which will be used to track the impact of this request.²⁶

Funding

Base Funding

There are no current services for this request. The USTP has historically supported the audits through the use of carryover balances, when available. The Program does not anticipate sufficient base or carryover resources in FY 2024 to conduct the audits.

<i>FY 2022 Enacted</i>				<i>FY 2023 Enacted</i>				<i>FY 2024 Current Services</i>			
Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)	Pos	Agt/ Atty	FTE	\$(000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

Personnel Increase Cost Summary

Not Applicable.

²⁶ Annual audit finding reports are available at <https://www.justice.gov/ust/bankruptcy-data-statistics/reports-studies>.

Non-Personnel Increase/Reduction Cost Summary

The requested funding will enable the USTP to conduct two types of audits mandated by BAPCPA: random and exception. Random audits cover cases selected completely at random without regard to the debtor’s income or expenditures. Exception audits cover cases of debtors with income or expenditures above the statistical norms for the judicial districts in which their cases are filed. Based on the requested funding, the USTP will be able to conduct 795 random audits and the same number of exception audits in FY 2024. The unit and overall costs for each type of audit is outlined in the following table.

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Random Audits	\$694	\$0.873	795	\$15	\$15
Exception Audits	\$1,306	\$1.643	795	\$24	\$24
Total Non-Personnel	\$2,000	N/A	N/A	\$39	\$39

Justification for Non-Personnel Annualizations

- Annualizations reflect the estimated unit cost increases for the two types of audits.

Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/ Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	0	0	0	\$0	\$2,000	\$2,000	\$39	\$39
Grand Total	0	0	0	\$0	\$2,000	\$2,000	\$39	\$39

Affected Crosscuts

Not applicable.

VII. Exhibits