

# U.S. Department of Justice

## United States Trustee Program



FY 2022 Performance Budget  
Congressional Submission  
May 2021

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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 public. Initially established as a pilot effort in 1978 encompassing 18 judicial districts,<sup>1</sup> the Program was subsequently expanded in 1987 to cover all federal judicial districts, except those in Alabama and North Carolina.<sup>2</sup> The Program has standing to participate in all bankruptcy cases and annually oversees about 1.3 million ongoing bankruptcy cases. Over the most recent three fiscal years, on average bankruptcy cases represented nearly two-thirds of all cases in the federal judicial system as of the end of the fiscal year.<sup>3</sup>

As the statutory “watchdog” of the bankruptcy system,<sup>4</sup> 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 does not represent the government as a creditor and acts to ensure all bankruptcy participants comply with the Bankruptcy Code (Code) and the Bankruptcy Rules (Rules).<sup>5</sup> Program activities encompass a wide range of administrative, regulatory and enforcement functions including the oversight of 1,200 private trustees who administer cases filed under chapters 7, 12, and 13 and who distribute billions of dollars annually; and the appointment and supervision of trustees in subchapter V cases.<sup>6</sup> In addition, the Program's enforcement activities target a myriad of issues such as professional misconduct in business cases and consumer debtor fraud and abuse.

**The USTP is requesting \$246,593,000 for 1,102 direct positions (428 attorneys) and 1,053 direct full-time equivalent employees (FTEs).** The request includes \$7,915,000 for 75 new positions (33 attorneys) and 38 FTEs to address a potentially significant increase in bankruptcy filings across business and consumer cases due to the COVID-19 pandemic. The request would position the USTP to address anticipated and unforeseeable workload changes as well as provide the necessary resources for the USTP to fulfill its mission.

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<sup>1</sup> The USTP was established through the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598.

<sup>2</sup> The USTP's expansion was enacted through the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554. In the six judicial districts for Alabama and North Carolina, bankruptcy court officials called Bankruptcy Administrators perform a similar function to that of the USTP.

<sup>3</sup> Based on bankruptcy caseload data per the Administrative Office of the U.S. Courts as well as data on cases pending in district courts and number of appeals pending in the courts of appeals per the United States District Courts and the U.S. Court of Appeals respectively.

<sup>4</sup> 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.”

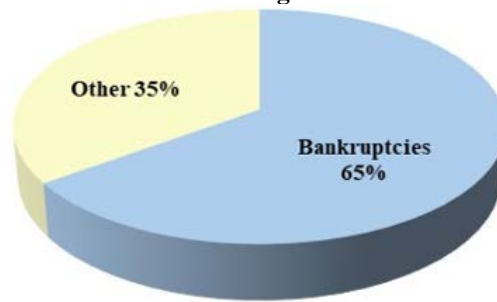
<sup>5</sup> The federal Bankruptcy Code appears in title 11 of the United States Code. The Federal Rules of Bankruptcy Procedure govern procedures for bankruptcy proceedings.

<sup>6</sup> The USTP also oversees private trustees appointed by the Program to cases filed under subchapter V of chapter 11 of the Code. Over the seven months between the subchapter V effective date and the end of FY 2020, the USTP appointed over 200 trustees to serve in approximately 1,100 subchapter V cases.

## United States Trustee Program

The USTP is funded through an appropriation that is offset primarily by bankruptcy fees deposited into the United States Trustee System Fund (U.S. Trustee System Fund). With the January 2021 enactment of the Bankruptcy Administration Improvement Act, Pub. L. No. 116-325 (BAIA), which amended quarterly fees that are based on disbursements made by most chapter 11 debtors, the Program anticipates offsetting appropriations through FY 2025. More information on the Program's fees and the U.S. Trustee System Fund can be found on page 13.

**All Bankruptcies as a Percentage of  
Overall Pending Cases  
FY 2018 through FY 2020**



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*Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet at <https://www.justice.gov/doj/budget-and-performance>*

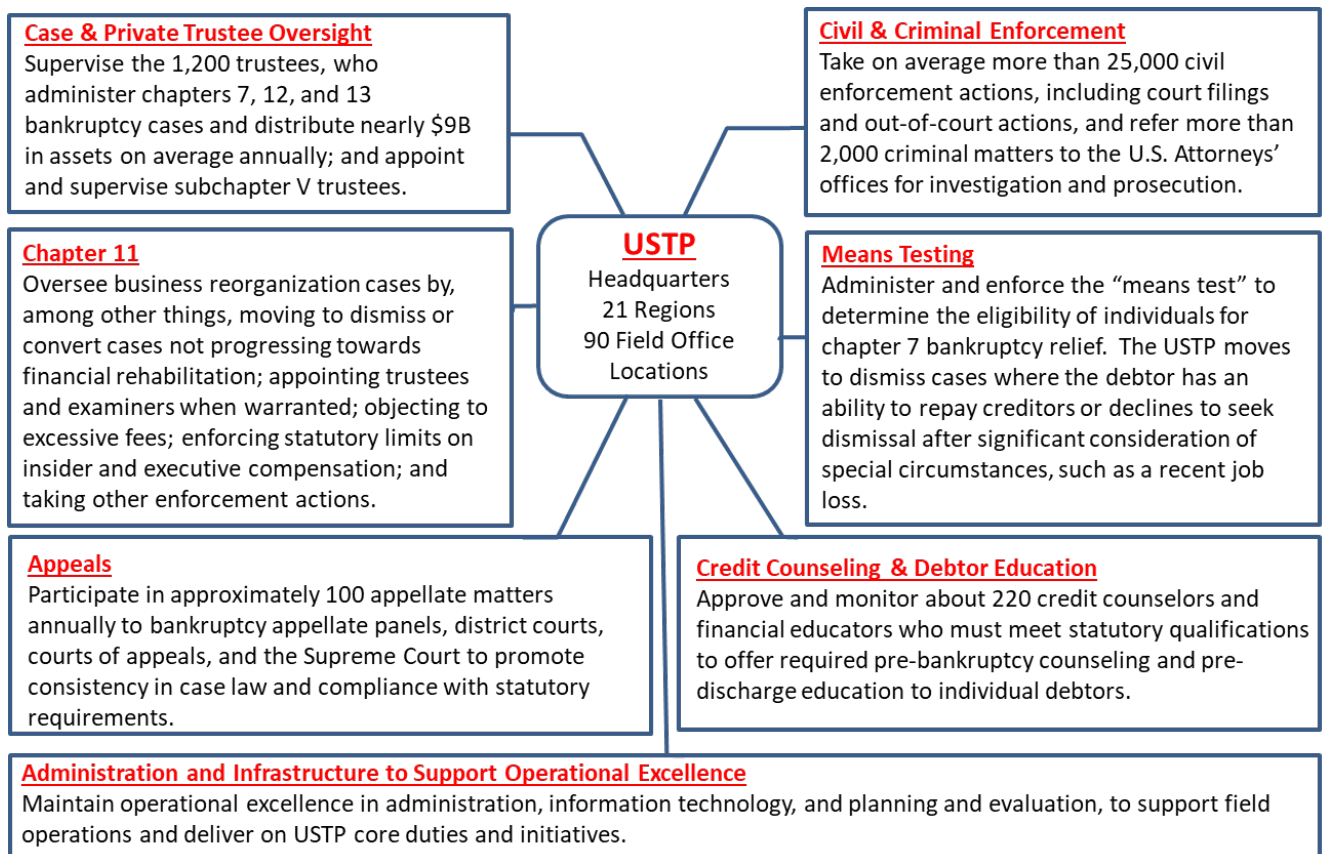
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## B. Core Duties and Recent Activities

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. **COVID-19 Pandemic Response.** The USTP took a number of immediate steps to temporarily reduce the need for in-person interaction during the bankruptcy process yet ensure the bankruptcy system remains functional. These steps included a pivot to an exclusively virtual format for statutory administrative proceedings known as section 341 meetings. They are generally the only formal proceeding most debtors ever participate in during the bankruptcy process and serve a critical role in fact-finding. The transition, which included the re-scheduling of 60,000 in-person meetings, eliminated the need for interaction between large numbers of debtors, creditors, professionals, and other interested parties in a crowded meeting room. USTP staff coordinated extensively with the courts and trustees to notify more than one million impacted parties of the virtual format and procured over a thousand new phone lines and necessary equipment for the remote access.
- b. **COVID-19 Recovery Rebates During Bankruptcy.** Following the March 2020 enactment of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, the USTP helped ensure that debtors going through the bankruptcy process can keep the "recovery rebates" provided for in this act by issuing comprehensive guidance on the law to trustees for chapter 7 and chapter 13 bankruptcy cases. The USTP later issued supplemental guidance following the March 2021 enactment of the American Rescue Plan Act of 2021, Pub. L. No. 117-2.
- c. **Subchapter V of Chapter 11 (SBRA) of Chapter 11 of the Code.** The Small Business Reorganization Act (SBRA), Pub. L. 116-54, ushered in substantial changes to bankruptcy law and practice with its enactment in August 2019 and the creation of a new subchapter V through which small business owners could file. The streamlined processes of the new subchapter provide a more efficient and economical path to reorganization for debtors meeting the statutory limitations, including the debt limit which was temporarily raised by the CARES Act to less than \$7.5 million of debt from the original \$2.7 million threshold.<sup>7</sup> The USTP has devoted considerable initial and recurring base resources to executing the new Program duties imposed by the new law as well as continuing duties now subject to the shortened deadlines of the SBRA. Unlike with most chapter 11 cases, trustees must be appointed by the USTP in every subchapter V case whose primary function is to evaluate the viability of a debtor's business and facilitate the development of a consensual plan of reorganization. In February 2020, following a significant trustee recruitment campaign by the USTP involving over 3,000 applicants for about 250 trustee candidate positions, Program staff began reviewing individual cases as filed to select and appoint the most appropriately skilled trustee from the vetted pool of candidates. Over

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<sup>7</sup> The SBRA is applicable to small business debtors that meet the statutory debt limitations but excludes single-asset real estate debtors. The March 2021 enactment of the COVID-19 Bankruptcy Relief Extension Act of 2021, H.R. 1651, extended the ability to file under the higher debt threshold through March 26, 2022.



the seven months between the February 2020 subchapter V effective date and the end of FY 2020, the USTP appointed over 200 different trustees to serve in approximately 1,100 subchapter V cases. Since that date, overall small business filings have also increased by 35 percent over the previous year with around 75 percent of chapter 11 small business debtors proceeding under the new subchapter. As a result of the workload increase, the Program is allocating more staff not only to trustee appointment and supervision duties, but also to the evaluation and monitoring of each subchapter V filing, which will continue in FY 2022 and beyond. For example, to ensure the statutory objectives of the law are met, Program staff expend considerable resources to ensure that debtors meet the eligibility requirements under the SBRA. This includes making sure debtors do not exceed relevant debt limits, were engaged in business at filing, have primarily business debts, are not single asset real estate debtors, and are not publicly traded entities or affiliates of such entities. In some cases, this has required reviewing documentation from debtors and in others, litigating the issues as well. Additionally, the Program devotes significant resources towards ensuring that cases meet the statutory voting requirements that determine if plans are consensual or non-consensual. By all current measures, it appears that the SBRA is working as Congress intended. Of the cases filed through September 2020, over one-third had obtained confirmation of their reorganization plans as of January 2021, which was nearly double the percentage for small businesses not proceeding under subchapter V.<sup>8</sup> The USTP remains dedicated to supporting the new law, and additional information on the Program's case and trustee oversight responsibilities can be found on pages 27 and 32 respectively.

- d. Conflicts of Interest in Chapter 11 Business Reorganization Cases.** The USTP rigorously reviews applications to retain professionals in chapter 11 cases to ensure the adequate disclosure of connections and the absence of disqualifying conflicts of interest. In the past two years, the USTP achieved two significant settlements to redress failures to disclose possible conflicts of interest by one of the world's largest management consulting firms. In February 2019, the USTP entered into a \$15 million, multi-district settlement agreement with one of the largest global consulting firms. The settlement is one of the highest repayments made by a bankruptcy professional for alleged non-compliance with disclosure rules and resolved disputes over the adequacy of the firm's disclosures of connections in three chapter 11 bankruptcy cases. In December 2020, the USTP reached another settlement with the same firm related to its renewed application to be retained in one of the cases involved in the earlier settlement. The USTP again objected to the adequacy of the firm's disclosures for the new retention application.

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<sup>8</sup> Moreover, a large majority of plans that were confirmed were consensual, suggesting that trustees are successfully resolving confirmation disputes. About eight percent of cases amended out of subchapter V, often following a determination by the USTP that the debtor was ineligible to proceed under chapter V. Excluding these amendments, case conversions or dismissals comprised nearly one-quarter of the subset. Based on anecdotal reports, many such cases nevertheless resulted in successful outcomes due to trustees facilitating consensual resolutions with all parties who decide matters can be resolved outside of the bankruptcy courts.

Under the terms of the settlement,<sup>9</sup> the firm withdrew its employment application and as a result, agreed to forego recovery of any fees in connection with services it had already rendered in the case that would otherwise be subject to review and approval of the court. While the total amount of fees that would have been waived is unknown, the firm rendered services throughout the case and likely would have sought approval for, and reimbursement of, millions of dollars in fees and expenses. Moreover, for the first time, the firm agreed 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.

- e. **Chapter 11 “Strike Teams.”** Overall chapter 11 filings by large public companies, including “mega-cases,” more than doubled during calendar year 2020 and reached their highest level since the 2008 Great Recession (Great Recession) potentially due to the impact of the pandemic.<sup>10</sup> In response, the Program has assembled a formal “strike team” with experienced chapter 11 attorneys from districts throughout the country. The goal of the strike team is to help handle large business reorganization cases and address legal issues consistently wherever the cases are filed. Large chapter 11 business bankruptcies typically require significant USTP resources. The complexity of such cases is driven by the size of a debtor’s assets and liabilities, number of creditors, nature of claims, and legal issues that could have a system-wide impact. Many of the proceedings for these cases continue in court for two to three years, or even longer. The USTP carries out a wide range of statutory responsibilities in both the initial and ongoing stages of such cases, which can involve hundreds of millions to billions in liabilities and require numerous court appearances. The geographic distribution of such cases is also broadening as more mega-cases are being filed in jurisdictions outside the more typical venues of Delaware and New York, further underscoring the need for adequate staffing across the USTP’s field offices. As such, to remain agile and responsive to the continuing impact of the pandemic, this work is incorporated as part of the USTP’s request of \$7.9 million for an additional 75 positions (33 attorneys) and 38 FTEs to address a potentially significant increase in chapter 11 cases as well as in cases filed under chapters 7, 12, 13. The resources would enable the Program to address the significant workload impact from bankruptcy filings rising to levels recorded under the 2008 Great Recession and enable the Program to meet its mission in the years that follow. More information on the Program’s request can be found on page 41.
- f. **Violations by Consumer Debtor Attorneys and Debt Relief Agencies.** Since the USTP’s FY 2016 launch of an initiative to address misconduct by attorneys and debt relief agencies, annually, the Program’s actions in this area have averaged over 15

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<sup>9</sup> While the settlement resolves any actions that could be brought by the USTP for the firm’s inadequate disclosures in the case, it does not impact the rights of other third parties, including any parties or government agencies not participating in the settlement. The settlement, as with the prior settlement, is limited to resolving the firm’s disclosure deficiencies and does not address nor resolve, among other things, claims relating to actual or potential conflicts of interest.

<sup>10</sup> “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.

percent above the pre-initiative total from FY 2015. The Program's efforts build upon traditional enforcement activities. At a local level, the Program takes action against consumer debtor attorneys employing deceptive fee arrangements or who engage in other misconduct that violates bankruptcy law and harms those attorneys' clients. On a national level, building upon traditional enforcement activities, 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. Most recently, the Program entered into a settlement with a national consumer bankruptcy law firm that provides 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, 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. More information on the settlement and the Program's activities in this area can be found on pages 22 to 24.

- g. Debtor Fraud and Abuse.** The USTP combats debtor fraud and abuse primarily by seeking the following relief: dismissal of consumer cases when a debtor has an ability to repay debts under the means test or is found abusive under a bad faith or totality of the circumstances standard; dismissal of business cases when the debtor fails to file reports or show evidence of financial rehabilitation; appointment of an independent trustee to displace inadequate management in business reorganization cases; and denial of discharge for the concealment of assets and other misconduct. In FY 2020, the USTP took more than 10,000 formal and informal actions to address fraud and abuse by consumer debtors seeking chapter 7 relief, with a total financial impact of over \$900 million. Additionally, the Program filed over 1,500 motions to convert or dismiss chapter 11 business cases because they were not progressing toward financial rehabilitation.
- 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 2020, the USTP participated in 100 new appellate matters – an increase of almost 25 percent over the previous year– that included two cases before the Supreme Court, 28 appeals to the United States courts of appeals, 69 appeals before district courts and bankruptcy appellate panels, and one case in which the USTP assisted the U.S. Attorney's office for the Southern District of New York. The USTP's position prevailed in 97 percent of the appeals decided in FY 2020.
- i. Creditor Abuse.** In December 2020, the USTP announced agreements with three mortgage servicers that provide 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, address noncompliance with the Bankruptcy Code and Rules that impacted more than 60,000 accounts of borrowers in bankruptcy dating back to 2011. The servicers' noncompliance resulted in various errors and deficiencies, including payment application errors; inaccurate, missing, and untimely filings in bankruptcy cases; and/or delayed escrow statements. The agreements require the servicers to implement improvements in their bankruptcy operations to ensure that the errors do not recur. This is the latest of 14 USTP national settlements with mortgage servicers, and follows a FY 2019 agreement with Ditech Financial LLC that memorialized approximately \$35 million in remediation to more than 20,000 homeowners for violations of the Bankruptcy Code and Rules.

- j. Criminal Enforcement.** The USTP is required to refer alleged criminal violations, as required by statute, to the United States Attorneys and other law enforcement partners for potential prosecution. In February 2021, a hedge fund founder and co-chair of an unsecured creditors' committee for a large chapter 11 bankruptcy case pled guilty to one count of bankruptcy fraud in connection with his scheme to pressure a rival bidder to abandon its higher bid for assets in connection with the bankruptcy proceedings so that the hedge fund could obtain those assets for a lower price. The hedge fund manager told the rival bidder that the fund would cease doing business with it if it advanced its bid, and he would ensure that the committee did not approve the bid. He then attempted to persuade the rival bidder to cover up the scheme. He faces a maximum sentence of five years in prison. The related criminal complaint filed by the U.S. Attorney for the Southern District of New York was based in part on the USTP's criminal referral, resulting from a civil investigation conducted by staff from multiple offices at the headquarters and field level.

### **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 a local and national or multi-jurisdictional level. The Program's headquarters, the Executive Office for the 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 nearly 1,000 direct and reimbursable FTEs in FY 2020, consists of attorneys, financial analysts, paralegals and professional support staff.

#### **1. Executive Office for United States Trustees (EOUST)**

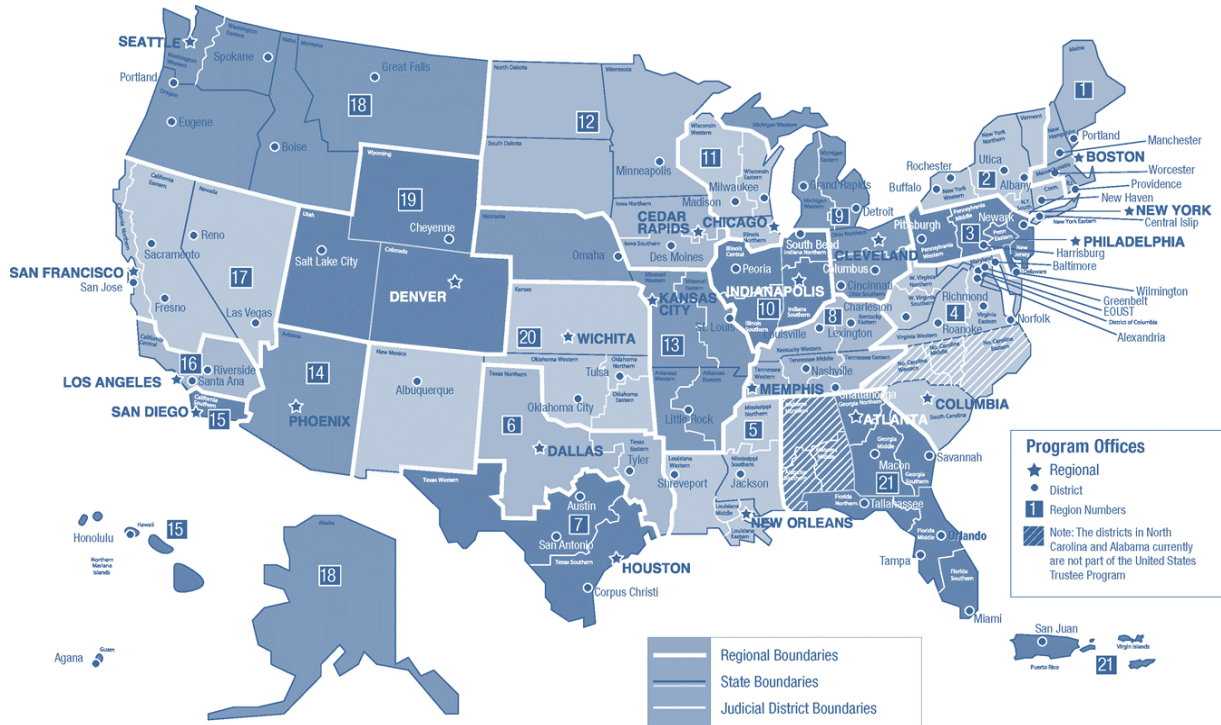
The EOUST oversees the Program's substantive operations, provides general policy and legal guidance, sets management direction on Program initiatives to address systemic fraud and abuse in the bankruptcy system, and handles the Program's administrative functions. Within the EOUST, the Office of the Director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

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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. Six other major units comprise the EOUST: the Office of the General Counsel, which oversees the Program’s litigation activities, coordinates appeals, and provides in-house legal counsel, including ethics advice; the Office of Criminal Enforcement, which oversees the Program’s criminal referral activities; the Office of Oversight, which oversees private trustee supervision and the approval of credit counseling agencies and debtor education providers; the Office of Planning and Evaluation, which conducts internal evaluations, collects and analyzes operational and bankruptcy system data, and develops and delivers training; the Office of Information Technology, which develops and supports the Program’s information technology (IT) systems; and the Office of Administration, which provides human resource, budget, and other administrative support services.

## United States Trustee Program Map of Regions and Offices

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.**

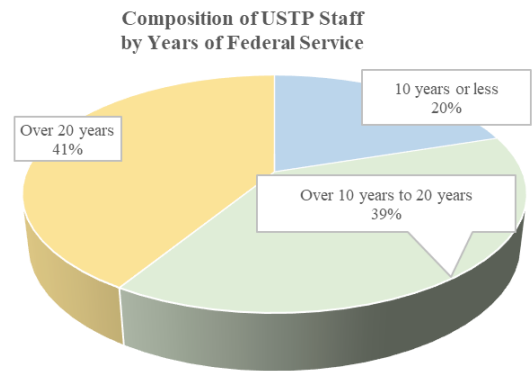


## D. Challenges

The USTP faces several internal and external challenges.

### *Maintaining Staffing to Support Operations*

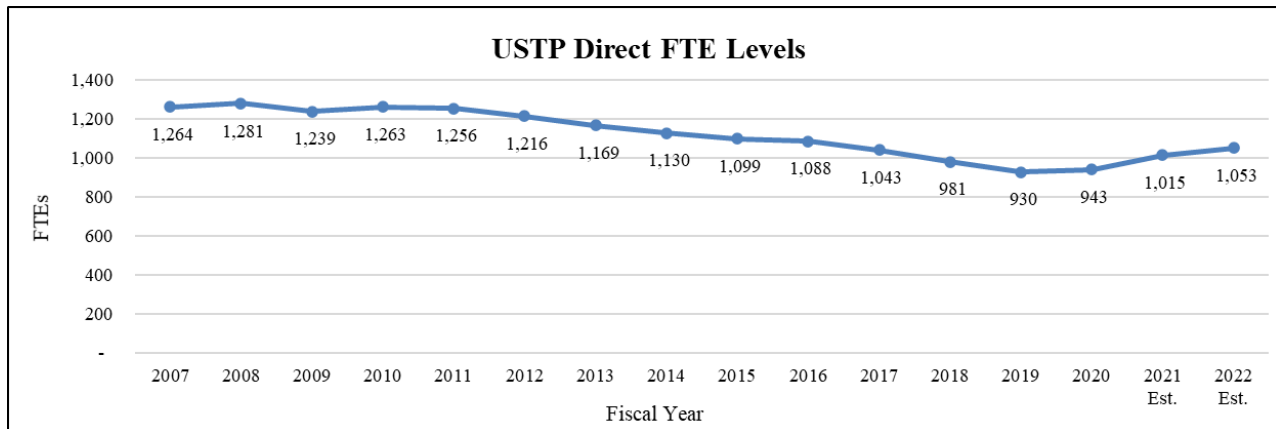
The largest challenge facing the USTP is its ability to maintain the staffing necessary to execute its mission, made further acute by the pending impact of a potential and significant increase in bankruptcy filings prior to and through FY 2022, which would impact Program workload even in the years that follow. Workload levels based on annual case filings per FTE have already increased by one-third between FY 2007 and FY 2019, even though filings in those years were at similar levels, due to more than a quarter decline in staffing. Additionally, over the same period, the USTP took on substantial additional duties conferred by statute and expanded its capacity to combat fraud and abuse committed by debtors, creditors, professionals, and other third parties. This was achieved in spite of the staffing reduction and an essentially flat appropriation between FY 2015 and FY 2020. Over the years, the USTP's adoption of resource-maximizing personnel, financial and workflow strategies has somewhat mitigated staff workload pressures. The Program, however, has limited capacity to address additional workload changes as approximately 40 percent of senior positions have been filled by staff doing double duty. Moreover, staff attrition due to retirements has accelerated in recent years, posing additional risks to the Program if hiring does not sufficiently offset these losses. The problem is expected to worsen as approximately 30 percent of the Program's employees are eligible to retire, based on just the number of staff with 20 or more years of federal government service. In comparison, 15 percent of staff across the federal government are retirement-eligible.<sup>11</sup> In response, the USTP has continued efforts initiated in FY 2020 to fill positions in mission critical as well as administrative areas, including positions that support recruitment and hiring efforts. To preserve and transfer institutional knowledge from departing staff, the Program has instituted mentoring and developmental opportunities for existing staff as well as expanded the use of phased retirement.



<sup>11</sup> See <https://www.fedweek.com/fedweek/retirement-wave-eligibility-numbers-holding-steady/>

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The following chart reflects actual, projected and requested FTE levels for FY 2007 through FY 2022.



Over the past two fiscal years, the USTP achieved its mission, advanced Department priorities, implemented the provisions of the SBRA, and began fulfilling the new Program statutory duties under the new law. Program accomplishments have included two settlements to address failures to disclose possible conflicts of interest by one of the world's largest management consulting firms and significant litigation success in the redress of misconduct by consumer debtor counsel. Moreover, the Program devoted substantial resources to ensuring the continued functioning of the bankruptcy system during the current public health emergency while maximizing the safety of participants in the bankruptcy process. The USTP succeeded due to the deployment of innovative management practices described further on page 16. In FY 2022, the USTP's budget request would support an approximate four percent increase in FTEs from projected FY 2021 levels. With a one-third reduction in the average number of FTE hours devoted to a filing and a strategic allocation of non-FTE resources on mission-essential activities, the increase would enable the Program to address a potentially significant rise in filings, limit the potential growth in filings per FTE to approximately thirty percent above the FY 2019 pre-pandemic level. Moreover, as overall small business chapter 11 filings have increased since the subchapter V February 2020 effective date, the Program would be able to continuing devoting additional existing staff to the review and oversight of subchapter V cases. More information on the Program's request for additional staff to address a potential rise in filings can be found on page 41.

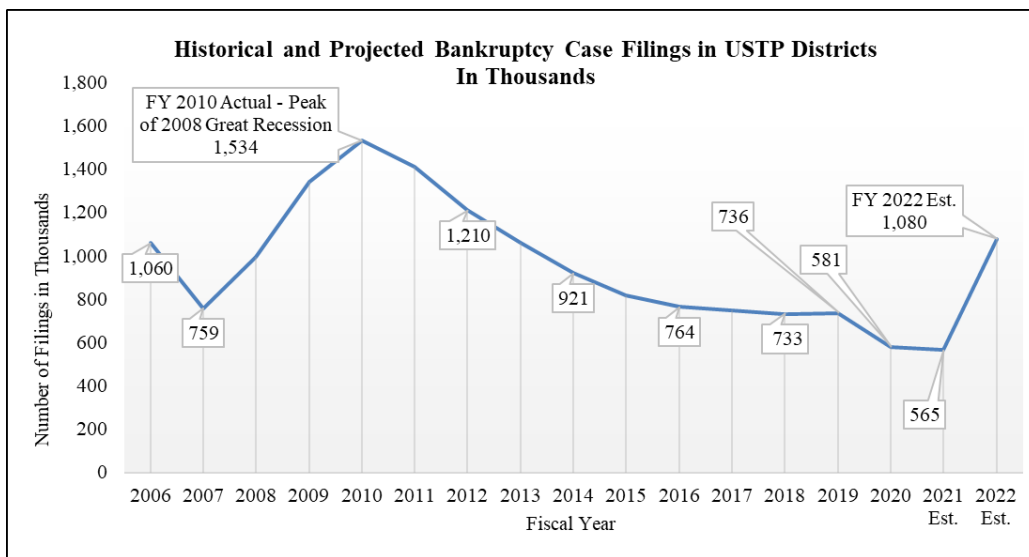
### *Unpredictable Changes in Bankruptcy Filings*

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 2008 Great Recession, filings doubled over FY 2007 through

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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 primarily to consumer filing decreases. Most commentators say the decline was likely due to the impact of government-funded COVID-19 assistance programs and mortgage moratoriums on potential filers which surprised some experts who expected filings to rise significantly as a result of the pandemic. Moreover, many predict the filing increase has been delayed but not eliminated.

Overall chapter 11 filings have also decreased in the first half of FY 2021 but it is worth noting that filings by large public companies, including mega-cases, more than doubled during calendar year 2020, reaching their highest level since the Great Recession potentially due to the impact of the pandemic. Small business filings have increased by over 15 percent in FY 2021, and by 35 percent when measured over the 12-month period following the February 2020 subchapter V effective date. Around 75 percent of chapter 11 small business debtors are proceeding under the new subchapter.



The above chart reflects actual and projected bankruptcy filings for the USTP from FY 2006 through FY 2022. Projected filings are benchmarked to Great Recession levels since the USTP cannot predict the impact to filings from the COVID-19 pandemic, the economic downturn, or the CARES Act and subsequent stimulus laws. The FY 2021 estimate specifically assumes that cases begin rebounding in the fourth quarter, reaching the approximate average of pre-pandemic and FY 2009 filing levels by the end of the year. The FY 2022 projection of 1.1 million filings reflects the assumption that filings will approach FY 2010 levels of 1.5 million filings, the peak for the Great Recession, the following year. As a point of comparison, during the Great Recession, filings across all bankruptcy chapters increased by over 50 percent between FY 2008 and FY 2010, before returning to pre-recession levels eight years later in FY 2016.



### *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 and trustee oversight, as the watchdog of the bankruptcy system 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. More information on the USTP's activities in these areas can be found in section IV which begins on page 19.

### **E. Risks**

#### *Unpredictable Legal Challenges and Changes in Bankruptcy law*

Legal challenges relating to the Bankruptcy Code are unpredictable in scope and number. The USTP enforces the Bankruptcy Code and defends challenges to its provisions, including by litigating issues of first impression. Changes to the Code or its interpretation may not be foreseeable but can significantly impact the Program's responsibilities and increase litigation as well as oversight activities. For example, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, fundamentally changed the Code by adding or amending more than 130 sections, which substantially increased the Program's administrative, regulatory and enforcement duties. More recently, since the enactment of the SBRA in August 2019, the Program has been devoting considerable headquarters and field resources to interpreting, implementing and enforcing the provisions of the law. In addition to developing comprehensive oversight mechanisms and policies, the Program expended significant resources for a trustee recruitment, evaluation and clearing process. The campaign involved over 3,000 applicants for an initial pool of about 250 trustee candidates. The volume of applicants reflected the range of skills sought out by the Program. In addition, the Program's hiring plan targeted a broad range of professional groups including affinity organizations. The resulting pool reflects a diversity of backgrounds, and candidates with business, accounting, mediation and other skills which allow Program staff to match trustee appointments to the specific business and reorganization needs of each case. Because of the new and unique provisions in the SBRA as well as emerging case law on the statute, the Program also devotes additional resources towards extensive public outreach and training of trustees, including an extensive legal and practice manual that will be updated as the law develops. More information on the Program's ongoing duties with regards to trustee appointments and supervision can be found on page 32. For information on the Program's duties regarding the oversight of subchapter V cases, please see page 27.

### **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. A portion of filing fees paid by consumer and business debtors as well as quarterly fees that are based on disbursements made by most chapter 11 debtors comprise the

majority of revenue. The appropriation is initially derived from the general fund of the Department of Treasury (Treasury),<sup>12</sup> and subsequently offset 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,<sup>13</sup> 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. In addition to these, the Program receives a small amount of other statutorily-determined revenue, and it invests and generates interest on deposits to the U.S. Trustee System Fund – all of which are available to offset the Program's annual appropriation.

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.<sup>14</sup> As a result, the Program's appropriations from FY 2018 through FY 2020 were fully offset by fees in those fiscal years.

The 2017 amended quarterly fee structure is the subject of court challenges, including a putative class action, with litigants arguing, among other things, that the 2017 law is unconstitutional because it has a retroactive effect and violated the constitutional uniformity requirements of the tax and bankruptcy clauses in Article I, Section 8, Clauses 1 and 4, because increased fees were collected in North Carolina and Alabama – the districts not in the USTP jurisdiction – only as of October 2018, in cases filed on or after that date, which was nine months after the USTP began collecting the increased fee in all open cases in its districts. The Department and the USTP are defending against these challenges. The USTP, however, has prevailed in most of these cases in which challenges have been brought in court, although most of those are on appeal. To date, the only circuit court of appeals to address this issue has upheld the constitutionality of the 2017 law. *Hobbs v. Buffets, L.L.C. (In re Buffets, L.L.C.)*, 979 F.3d 366 (5th Cir. 2020).

In January 2021, Congress enacted the Bankruptcy Administration Improvement Act of 2020, Pub. L. 116-325. The law further amends the calculation of quarterly fees for calendar quarters

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<sup>12</sup> 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.

<sup>13</sup> The USTP receives a portion of these filing fees as specified by statute.

<sup>14</sup> 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.

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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:

- 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;
- Funds the USTP by offsetting its appropriations, including through FY 2025;
- Uses surplus fees to pay the Administrative Office of the U.S. Courts' (AOUSC) cost to administer payments under section 330(e) of title 11, United States Code, for an increase in private trustee compensation for chapter 7 liquidation cases – the first increase in nearly 30 years;<sup>15</sup>
- Deposits any remaining excess funds into the U.S. Trustee System Fund.

USTP staff are working with the AOUSC, Treasury, the Department and the Office of Management and Budget to analyze the impact of the new law and implement its provisions, which require, among other actions, comprehensive changes to the Program's systems for billing fees and managing revenue.

The following table reflects actual and projected deposits to the U.S. Trustee System Fund for FY 2017 through FY 2022.

<b>USTP Bankruptcy Fees &amp; Other Deposits by Source<sup>1</sup></b> <b>(\$ in Thousands)</b>	<b>FY 2017 Actual</b>	<b>FY 2018 Actual</b>	<b>FY 2019 Actual</b>	<b>FY 2020 Actual</b>	<b>FY 2021 Est.</b>	<b>FY 2022 Est.</b>
Bankruptcy Filing Fees	\$54,675	\$53,613	\$54,016	\$46,278	\$43,434	\$110,150
Chapter 11 Quarterly Fees <sup>2</sup>	\$96,690	\$214,533	\$256,621	\$280,827	\$309,665	\$304,617
Interest	\$210	\$808	\$2,482	\$1,940	\$234	\$1,942
Other	\$163	\$211	\$218	\$195	\$263	\$233
<b>Total Deposits</b>	<b>\$151,738</b>	<b>\$269,165</b>	<b>\$313,336</b>	<b>\$329,238</b>	<b>\$353,597</b>	<b>\$416,942</b>
Transfers <sup>3</sup>	\$0	\$0	\$0	\$0	(\$25,000)	(\$35,000)
<b>Deposits, Net of Transfers</b>	<b>\$151,738</b>	<b>\$269,165</b>	<b>\$313,336</b>	<b>\$329,238</b>	<b>\$328,597</b>	<b>\$381,942</b>

<sup>1</sup> Estimated fees reflect USTP assumptions on bankruptcy filing levels. The FY 2022 estimates reflect an earlier assumption that filings rise to 1.4 million filings in that fiscal year.

<sup>2</sup> FY 2018 and beyond exclude the portion of chapter 11 quarterly fees deposited into the general fund of the Treasury as required by statute to fund additional bankruptcy judgeships. Bankruptcy cases under subchapter V of chapter 11 of the Code are exempt from quarterly fees due to the USTP; this change impacts estimates for FY 2020 and beyond.

<sup>3</sup> Amounts reflect estimates, net of sequestration, by the Administrative Office of the United States Courts (AOUSC) for additional chapter 7 trustee compensation and the costs of administering such payments as enacted under the Bankruptcy Administration Improvement Act of 2020, Pub. L. 116-325. Final amounts are subject to regulations to be promulgated by the AOUSC and dependent on actual filing levels.

<sup>15</sup> The increase in compensation covers cases that include those converting from chapter 11 to chapter 7.

*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>*

### **G. Efforts to Maximize Appropriated Resources**

To meet the Administration's focus on employing effective and efficient business processes that ensure the highest level of stewardship of the federal fisc, the USTP continues to employ innovative personnel, financial and workflow strategies as described further below.

#### *Consolidation of Functions*

The USTP continues to rely on a number of work process changes that consolidate at the regional level functions that were previously conducted in each field office. This enables field staff to pursue other enforcement priorities and provides greater consistency in case administration. This consolidation includes certain administrative areas of trustee oversight, chapter 11 quarterly fee review, and bankruptcy case data extraction and download, where select staff members in each region have been specially trained to handle tasks on a centralized basis. In conjunction with the USTP's IT modernization efforts, the Program is also currently streamlining processes for additional critical functions, including debtor audits and the means test review.

#### *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 the 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

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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 Technology for Streamlining and Cost Savings*

The USTP maximizes its use of technology to reduce costs, and to improve and ensure continuity in operations.

- The USTP is continuing a multi-year modernization project of its system portfolio used to oversee the administration of 1.3 million ongoing bankruptcy cases, enforce civil and criminal matters in such cases, and oversee private trustees who administer cases in chapters 7, 11, 12 and 13. The project, initiated in FY 2019, will retire 12 legacy applications and consolidate them into one integrated system that receives and processes case information from 88 separate court entities. Many of these systems are over a decade old and were developed internally, in response to the USTP's evolving statutory and administrative duties, which have altered work processes over time. The systems rely on outdated and inefficient technology that is costly to operate and too costly to update, thus necessitating the establishment of a new system from the ground-up. The anticipated result is increased functionality, annual cost savings and operational efficiencies, achieved by eliminating obsolete systems, automating functions, and improving user interfaces as well as data analytic capabilities. With a robust foundational system in place, the USTP will be able to ensure the continuity of operations as well as remain agile and responsive to future changes in workload and other unforeseeable risks to Program operations.
- The successful pivot to a sustained maximum telework posture due to the current pandemic highlighted the impact of technology measures implemented by the Program prior to the switch, including a critical laptop refresh completed in FY 2018 and the procurement of additional units in FY 2019, adequately equipping existing and newly hired staff in the transition to working from home full-time. Moreover, the Program's successful transition of IT operations to a sustainable cloud infrastructure, which resulted in cost reductions and avoidance, 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 potential system and infrastructure investments, including in the areas of network security and connectivity, and communication and workplace collaboration, which will ensure the Program's continued agility and responsiveness in the future.

## II. Summary of Program Changes

Item Name	Description	Pos.	FTE	Dollars (\$000)	Page
Bankruptcy Filing Workload – COVID-19	The USTP requests \$7,915,000 to fund the additional staffing necessary for a potentially significant increase in bankruptcy filings due to the COVID-19 pandemic.	[75]	38	\$7,915	41

## III. Appropriations Language and Analysis of Appropriations Language

### United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, \$246,593,000[\$232,361,000] to remain available until expended: Provided, That, notwithstanding any other provision of law, deposits to the United States Trustee System Fund and amounts herein appropriated shall be available in such amounts as may be necessary to pay refunds due depositors: Provided further, That, notwithstanding any other provision of law, fees deposited into the Fund pursuant to section 589a [589a(b)] of title 28, United States Code (*with the exception of those fees to be transferred pursuant to section 589a(f)(1)(B) and (C)*) [as limited by section 1004(b) of the Bankruptcy Judgeship Act of 2017 (division B, Public Law 115–72)], 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 in fiscal year 2022[2021], net of amounts necessary to pay refunds due depositors, exceed \$246,593,000[\$232,361,000], those excess amounts (*with the exception of those fees to be transferred pursuant to section 589a(f)(1)(B) and (C)*) 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 2022[2021], net of amounts necessary to pay refunds due depositors, [(estimated at \$318,000,000)] and (2) to the extent that any remaining general fund appropriations can be derived from amounts deposited in the Fund in previous fiscal years that are not otherwise appropriated, so as to result in a final fiscal year 2022[2021] appropriation from the general fund estimated at \$0.

### Analysis of Appropriation Language

The proposed changes are necessary following the enactment of the Bankruptcy Administration Improvement Act of 2020. These changes will remove old provisions and language that have been superseded by the BAIA, as well as provide language indicating that some of the fees will be transferred to AOUSC and will not be retained in the Fund. Please see section I.F. on page 13 for more information.

#### 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>	<b>Direct Pos.</b>	<b>Direct Estimated FTE</b>	<b>Amount (\$ in thousands)</b>
2020 Enacted	[1,028]	943	\$227,229
2021 Enacted	[1,027]	1,015	\$232,361
Adjustments to Base and Technical Adjustments	[0]	-	\$6,317
2022 Current Services	[1,027]	1,015	\$238,678
2022 Program Increases	[75]	38	\$7,915
2022 Request	[1,102]	1,053	\$246,593
<b>Total Change 2021 - 2022</b>	[75]	38	\$14,232

<i>Administration of Cases</i> <b>Information Technology Breakout</b>	<b>Direct Pos.</b>	<b>Direct Estimated FTE</b>	<b>Amount (\$ in thousands)</b>
2020 Enacted	[29]	27	\$29,244
2021 Enacted	[32]	32	\$29,800
Adjustments to Base and Technical Adjustments	[0]	1	(\$2,884)
2022 Current Services	[32]	33	\$26,916
2022 Program Increases	[0]	-	\$0
2022 Request	[32]	33	\$26,916
<b>Total Change 2021 - 2022</b>	[0]	1	(\$2,884)

## 1. A Balanced Approach to Civil Enforcement

*During FY 2020, the USTP took nearly 25,000 civil enforcement actions against debtors and creditors, including court filings and out of court actions, with a potential monetary impact of nearly \$1 billion in debts not discharged, fees disgorged, and other relief. Since 2003, the USTP has taken more than 832,000 actions with a monetary impact of approximately \$23 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 the BAPCPA, individual debtors with primarily consumer debt and income above their state median are subject to a statutorily prescribed formula to determine disposable income. The formula is based partially on allowable expense standards issued by the Internal Revenue Service for its use in tax collection. The primary purpose of the means test is to help determine eligibility for chapter 7 bankruptcy relief. In FY 2020, a case with disposable income above \$227.50 per month would be 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 responding 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 Seattle Office Complaint Prevents Discharge of \$2.6 Million in Unsecured Debt**

Ruling for the U.S. Trustee after a trial, the Bankruptcy Court for the Western District of Washington denied the debtor's chapter 7 discharge of \$2.6 million in unsecured debt. The U.S. Trustee filed a complaint to deny the debtor's discharge after an investigation revealed that the debtor transferred interests in his residence to his then-spouse while he was being pursued by creditors of his defunct construction businesses. The residence was the only asset of value for both of them, and the transfers served to deplete all of the debtor's equity and encumber the home in favor of his then-spouse. The U.S. Trustee also sought denial of discharge based on the debtor's failure in two bankruptcy cases he filed for his businesses to disclose or explain his pre-petition disposition of vehicles and equipment.

### *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 mortgage servicers, including the FY 2021 settlement discussed on page 7.

### *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, injunctions, and other sanctions. In FY 2020, the Program brought over 700 actions in court and took over 2,000 additional out-of-court actions against debtors' attorneys and non-attorney bankruptcy petition preparers including under the petition preparer provisions of section 110, the disgorgement provisions of section 329 and the debt relief agency provisions of section 526 of the Code.<sup>16</sup>

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

#### **USTP Miami Office Files Objection Resulting in Denial of Post-Petition Fees for Chapter 7 Debtor's Attorney**

After an objection filed by the U.S. Trustee, the Bankruptcy Court for the Southern District of Florida denied the attorney's request to receive post-petition payment of fees for preparing and filing the debtor's bankruptcy petition and schedules and assisting the debtor in complying with other obligations under the Bankruptcy Code. The court held that the local rules require an attorney who files a chapter 7 case to assist the client with completing the chapter 7 petition and related pleadings, appear at the section 341 meeting of creditors, and provide legal advice related to the case, and that such obligations cannot be broken into separate pre and post-petition obligations that can be paid on a post-petition basis. The court also held that, under the Bankruptcy Code, unpaid attorney's fees owed to counsel as of the petition date are dischargeable and that counsel was not permitted to take any action to collect or make a demand for payment of the fees.

<sup>16</sup> 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 in chapter 7 cases. Section 526 limits the conduct of debt relief agencies including attorneys that assist debtors filing for bankruptcy relief. Chapter 7 debtor attorneys' transactions with their clients are also governed, where applicable, by Sections 527 and 528 of the Code.

even minimal professional 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 indicated 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 or will refund 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 will be 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 also takes action against consumer debtor attorneys employing deceptive fee arrangements that violate bankruptcy law and harm those attorney's clients. In most jurisdictions, attorneys in chapter 7 liquidation cases cannot receive payment for pre-petition work after the bankruptcy case is filed because collection is stayed and the fees are subject to discharge. Therefore, most attorneys require the full payment of fees prior to filing a bankruptcy case. But others have sought to “bifurcate” their services by having clients execute contracts for pre and post-petition services, which may raise concerns. For instance, because payments owed for post-petition work are not discharged, bifurcation may result in the attorney

improperly seeking payment for pre-petition services under the color of the post-petition fee agreement. Or, the attorney may not perform critical case analysis before filing, which may cause an ineligible debtor to file bankruptcy, or to file under the wrong chapter.

Bifurcation arrangements may also include the additional feature of “factoring,” where a debtor’s post-petition fee agreement is assigned by the attorney to a third-party finance company in exchange for a lump sum discounted payment. To offset the discount, attorneys may inflate their fees beyond what is permissible under the Code. Factoring presents additional issues, such as those related to inadequate disclosures to the client and to the court. The USTP is currently litigating enforcement actions related to inappropriate bifurcation and factoring in several bankruptcy courts and will continue to investigate and take action as appropriate when debtors’ attorneys engage in this sort of conduct in a way that violates the Code and Rules.

Attorneys who violate the Bankruptcy Code and Rules during their representation of debtors or other parties in many instances also violate the rules of professional conduct governing all lawyers. Where appropriate, the USTP makes referrals of these attorneys to state licensing and disciplinary authorities for investigation and further action, up to and including 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.

The Program’s responsibilities in chapter 11 cases include the following matters.

- 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.
- Appointing trustees and examiners when warranted, such as when there is suspected financial wrongdoing.

### **Bankruptcy Court Upholds Unsecured Creditors’ Committee Appointed by the USTP in Large Chapter 11 Case for a National Advocacy Group**

With support from the debtor, a committee member, who is also a vendor and trade creditor for the advocacy group, challenged the committee composition. The vendor argued that three other committee members had an “axe to grind” with the debtor and that additional trade creditors should be added to the committee. The Bankruptcy Court for the Northern District of Texas agreed with the response from the USTP’s Dallas office that the vendor sought proportional representation when the statute required “adequate representation” and consequently, upheld the committee composition.

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- Reviewing and objecting to excessive insider compensation plans.
- Monitoring proposed reorganization plans and disclosure statements, and taking action, for example, when impacted parties are provided unreasonable timelines or inadequate information to evaluate a proposal.
- Objecting when appropriate to the retention and compensation of professionals, such as when there are suspected conflicts of interest or when compensation requests are unreasonable.
- Moving 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 key activities in chapter 11 cases.

### *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 2020, the USTP filed 55 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 60 percent among objections that were decided during FY 2020. 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.

#### **Actions by USTP Wilmington Office Result in Bankruptcy Court Denial of \$14 million in Bonuses**

Agreeing with the U.S. Trustee, the court stated that it was "offensive" that senior executives of the large chapter 11 debtor, who received \$16 million in pre-petition retention bonuses days before the debtor filed for bankruptcy, now sought an additional \$14 million in incentive payments. In issuing an oral ruling, the judge adopted several positions advocated by the U.S. Trustee. The debtor subsequently filed a revised incentive plan that reduced total possible payouts to \$8 million and made other changes. Although the U.S. Trustee also objected to this revised proposal, the judge approved the revised incentive plan.

### *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 filed over 500 objections and taken nearly 1,700 out of court actions on average annually. 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. The Program's most significant achievement in this area, a FY 2019 settlement agreement with one of the world's largest management consulting firms includes one of the highest repayments made by a bankruptcy professional for alleged non-compliance with disclosure rules.<sup>17</sup> In FY 2020, the USTP reached another significant settlement with the same firm resolving Program objections against the firm's renewed attempt to be retained in one of the cases involved in the earlier settlement. Please see page 5 for more information on the settlement.

Bankruptcy reorganizations and the organizational structure of professional firms seeking to be retained in bankruptcy cases – including law firms and financial advisors – has 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 interpreting the law in a consistent manner. Pursuant to this, the Program publicly-released an internal directive that outlines the general principles that guide

#### **USTP Salt Lake City Objection Results in Denial of \$31,761 in Fees for Law Firm**

The Bankruptcy Court for the District of Utah entered an order sustaining the U.S. Trustee's objection to a fee application by the law firm, counsel to a chapter 11 debtor. The firm sought fees of \$49,891 for successfully defending itself against an objection by a creditor to a prior application for compensation. Among other things, the creditor had argued that the firm should be disqualified from representing the debtor because it was not disinterested. The firm subsequently reduced its fee request to \$31,761, and the U.S. Trustee objected, asserting that they were barred by the Supreme Court's decision in *Baker Botts, LLP v. ASARCO, LLC*, since the firm had been representing its own interests, not the interests of the debtor, when it defended its fee application. The bankruptcy court agreed that *Baker Botts* applied and denied the fees for defending the prior fee application.

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<sup>17</sup> While the agreement resolves disputes with the USTP, it does not impact the rights of any parties or government agencies not participating in the settlement. The cases are captioned Alpha Natural Resources, Case No. 15-33896 (Bankr. E.D. Va.), Westmoreland Coal, Case No. 18-35672 (Bankr. S.D. Tex.), and SunEdison, Case No. 16-10992 (Bankr. S.D.N.Y).

USTP staff in their enforcement of the duty of professionals to disclose connections to a bankruptcy case under the Code and the Rules. The document is publicly available.<sup>18</sup>

### *The Small Business Reorganization Act (SBRA)*

With the overall rise in small business chapter 11 filings since the subchapter V effective date, the USTP must continue devoting additional base budget resources to addressing the new 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, and establishes and participates in the initial debtor interview, and statutorily required section 341 meetings which can involve a wide range of stakeholders. These critical fact-finding activities help staff select and appoint the most appropriately skilled trustee from a pool of available candidates with diverse skillsets. The Program's comprehensive review and ongoing monitoring of each case also enable staff to ensure that debtors meet the eligibility requirements under the law and that cases meet the statutory voting requirements that determine if plans are consensual or non-consensual. 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, continue their diligent oversight of such filings based on the applicable chapter provisions and case facts. 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 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.

### *Streamlining Chapter 11 Debtor Reporting Requirements*

In December 2020, the USTP completed its comprehensive process to develop a rule that streamlines financial reports required of non-small business chapter 11 debtors. The rule, which was published in the Federal Register, simplifies the reporting process while providing transparency and improved uniformity across the reports. Effective in June 2021, debtors and reorganized debtors will each have a standard form to submit, applicable to cases nationwide, instead of about 150 variations of these reports currently required of debtors depending on the location of their filing. The rule does not apply to debtors who are small businesses or who, in accordance with the CARES Act, have elected relief under subchapter V of chapter 11.

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<sup>18</sup> 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.

### 3. Combatting Abuse in Post-Bankruptcy Asbestos Trusts

In recent years, there has been increasing public concern, including from the courts and researchers, that asbestos trusts may be paying fraudulent claims and mismanaging funds, which may deplete funds available for legitimate claimants.

*Asbestos trusts operate and pay claims for years or even decades after an asbestos company emerges from bankruptcy. Since 1994, more than 60 such trusts have been established. According to the Government Accountability Office, asbestos bankruptcy trusts paid \$17.5 billion from 1988 through 2011, and more recent studies estimate higher amounts.*

Asbestos trusts pay the personal injury claims of former employees and customers of debtor companies that were involved in the production of asbestos or products containing the mineral. These trusts are established under a debtor company's confirmed plan of reorganization and are governed under section 524(g) of chapter 11 of the Code, a provision added in 1994 that established a mechanism to address the unique issues associated with asbestos liabilities. The trusts allow debtor companies to set aside money for claims while continuing to operate. Prior to the provision's enactment, the magnitude of litigation brought on by victims exposed to asbestos prompted a number of asbestos companies to file for bankruptcy relief. The symptoms of asbestos-related diseases, however, can take decades to manifest. Once created, following confirmation, the trusts assume responsibility for both the defense and payment of existing and future claims, but operate under limited oversight by the bankruptcy courts and the USTP. Consequently, the standards and mechanisms of accountability and transparency applicable in chapter 11 cases do not apply to asbestos trusts. Although the USTP and courts have limited authority to oversee asbestos trusts created through chapter 11 plans of reorganization, the USTP recently has made major strides in obtaining rulings prior to court approval of such plans that: (1) change the standard and process for appointing a Future Claimants Representative (FCR) such that the court no longer automatically defers to the tort lawyers' selection; and (2) impose new anti-fraud and auditing requirements. On appeal, a district court affirmed the bankruptcy court's selection of an FCR, nominated by the debtor, but agreed with the USTP that the court should not apply a deferential standard to the debtor's candidate.

### 4. 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 nearly 60 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. Attorney, over 20 attorneys assist U.S. Attorneys' offices in the prosecution of bankruptcy and bankruptcy-related crimes.

**Former Payday Loan Servicer Pleads Guilty to Bankruptcy Fraud, Tax Evasion, and Interstate Transportation of Stolen Money – Case Referred by USTP Houston Office and Investigative Assistance Provided by USTP Houston and Kansas City Offices**

The defendant pled guilty in the Western District of Missouri to one count each of bankruptcy fraud, tax evasion, and interstate transportation of stolen money after the U.S. Trustee referred the defendant's bankruptcy-related scheme. The perpetrator obtained personal information on individuals seeking payday loans through his businesses. He used this information to create falsified payday loan debt portfolios that he marketed as legitimate and sold to third-party debt buyers, who then attempted to collect the fake debt from individuals including filing claims in the cases of those who had filed for bankruptcy. He received as much as \$7.3 million from the sale of the false debt portfolios. The bankruptcy claims were the subject of a miscellaneous proceeding before the Bankruptcy Court for the Southern District of Texas. During the proceeding, the defendant provided false testimony that resulted in the filing of false documents with the court.

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 United States Attorneys' Offices, Federal Bureau of Investigation (FBI), Internal Revenue Service Criminal Investigation Division, U.S. Postal Inspection Service, Department of Housing and Urban Development Office of the Inspector General, and Secret Service.

### **Debtor Sentenced for Wire Fraud and Securities Fraud in Case Prosecuted with USTP Atlanta Office Assistance**

The District Court for the Middle District of Tennessee sentenced a former stockbroker and bankruptcy debtor to 29 months of imprisonment and ordered 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.

Combating elder abuse and financial fraud targeted at seniors is a key priority of the Department. In this area, the USTP continues to evaluate cases for and takes action on signs of potential criminal violations. The Program also works in concert with private trustees to identify instances of bankruptcy 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 family member. This can include cases filed for an elderly debtor without their informed consent or cases that involve funds obtained from an elderly person through fraudulent means. The Program also remains vigilant in detecting signs of more sophisticated fraudulent financial schemes, such as those that target groups that may include elderly persons. Beyond financial crimes, the bankruptcy process, which requires transparency and disclosures, also enables the Program to monitor cases for signs of neglect and physical abuse of elderly individuals through bankruptcy filings.

In accordance with the direction from the Attorney General to promptly refer instances of wrongdoing related to the pandemic, the USTP has advised the United States Trustees of existing and emerging fraudulent and abusive schemes that may impact bankruptcy cases. In FY 2020, the USTP's referrals included a number of cases related to wrongdoing under the CARES Act, with the vast majority involving loans under the Paycheck Protection Program.

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*More information on the USTP's annual criminal referrals can be found at [http://www.justice.gov/ust/eo/public\\_affairs/reports\\_studies/index.htm](http://www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm)*

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### 5. 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.

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*In FY 2020, the Program participated in 100 new appellate matters beyond the bankruptcy court, including 28 matters at the United States court of appeals level and two before the Supreme Court.*

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

- Addressing the finality of bankruptcy court orders, the Supreme Court unanimously agreed with the position of the United States, participating as *amicus*, that an order denying a motion to modify the automatic stay is a final, appealable order “when the bankruptcy court unreservedly grants or denies relief.” Guided by its opinion in *Bullard v. Blue Hills Bank*, 575 U.S. 496 (2015), the Court reasoned that adjudication of a stay-relief motion “forms a discrete procedural unit” within the bankruptcy case that “yields a final, appealable order when the bankruptcy court unreservedly grants or denies relief.” The decision is important for two reasons. First, it underscores that a bankruptcy case may yield more than one final order that is immediately appealable by right. Second, it confirms that orders that merely deny relief—here a refusal to lift the automatic stay—may be final, so final orders are not restricted to ones that grant affirmative relief. The clarity provided in *Ritzen* will greatly assist the Program in appealing adverse rulings involving significant and novel issues that might not have been subject to review previously. As in *Bullard*, the Program helped the Solicitor General’s office in the briefing and arguing of this case by sharing its substantive expertise and participating in meetings with the parties and at the moot courts the Solicitor General’s office conducted in preparing for oral argument.

*Ritzen Group, Inc. v. Jackson Masonry, LLC*, 589 U.S. \_\_\_, 140 S. Ct. 582 (2020)

- The United States Circuit Court for the Eleventh Circuit agreed with the position of the USTP and affirmed the bankruptcy court’s decision revoking the discharge of a debtors’ debt under 11 U.S.C. § 727(d)(2) in light of the debtors’ fraudulent activity. Addressing a statutory interpretation issue of first impression, the court held that although section 727(d)(1) required a party seeking to revoke a discharge to prove lack of knowledge of the fraud until after the discharge was granted, this lack-of-knowledge element was not required under section 727(d)(2), which authorizes the revocation of a discharge when the debtor

fraudulently failed to report the acquisition of estate property or to surrender such property to the trustee.

*Thompson v. Gargula*, 939 F.3d 1279 (11th Cir. 2019)

- The United States District Court for the Northern District of Illinois agreed with the position of the USTP and affirmed the bankruptcy court’s order appointing a chapter 11 trustee. The district court agreed with the USTP on the applicable standard of proof and held that a movant under 11 U.S.C. § 1104 must show the need for a trustee by a preponderance of the evidence—and not by clear and convincing evidence as the debtor contended. The court held that, in any event, both burdens of proof had been met, and that the bankruptcy court did not abuse its discretion when it determined that cause existed to appoint a trustee and that appointment of a trustee was in the interests of creditors, where the debtor had engaged in gross mismanagement by: diverting payroll taxes into its operating account; paying a board member \$35,000 in violation of a cash collateral order; failing to collect rent from a property management company owned by the debtor’s former CEO; and failing to pay insurance premiums.

*In re Woodlawn Cmty. Dev. Corp.*, 613 B.R. 671 (N.D. Ill. 2020)

### 6. Private Trustee Oversight

The USTP 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 handle approximately 1.3 million ongoing cases and distribute nearly \$9 billion in assets on average annually. The Program also 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 laws. 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 plan of 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 the SBRA, this activity can require more resources in the implementation stage of the new provisions, though updates to guidance and ongoing training by Program staff, for trustees as well as employees, is necessary as experience is gained under the new laws. The USTP must also evaluate the performance and effectiveness of trustees according to the Code. In the case of the SBRA, the

Program continues to expend base budget resources towards the enhancement of oversight policies and mechanisms. These activities include ongoing 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. For trustees in chapters 7, 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, ensuring payments, including those based on reasonable and necessary expenditures in trustee budgets or as approved by the bankruptcy court, so they conform to the Code. To accomplish these duties as well as other responsibilities, the Program's oversight activities include reviewing over 60,000 reports on chapter 7 cases on average annually as well as 200 operating budgets of chapter 12 and 13 trustees; and annually conducting around 450 audits and other reviews of trustee operations.

Beyond the USTP's successful recruitment campaign in FY 2020 for new subchapter V trustees, the USTP anticipates continuing to expend base budget resources to advertise, select and clear new trustees due to expected turnover in the initial pool of candidates. In addition, to ensure the ongoing success of the SBRA, the Program is continuing its related outreach efforts to bankruptcy stakeholders, including members of the bench, bar, and other professionals, to share lessons learned and gather relevant feedback.

### **7. 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, on-site 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 approved entities must re-apply annually to maintain their standing. Currently, approximately 80 credit counseling agencies and 140 debtor education providers are approved to offer these services. Around 10 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**

RESOURCES		Target		Actual		Projected		Changes		Requested (Total)	
		FY 2020		FY 2020		FY 2021		Current Services Adjustments & Program Changes		FY 2022 Request	
Total Costs and Direct FTEs		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
<b>Program Total</b>		976	227,229 [255]	944	227,229 [205]	1,016	232,361 [251]	38	14,232 [6]	1,054	246,593 [257]
Program Activity	<b>1. Civil and Criminal Enforcement and Appellate Matters</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		503	117,023 [225]	486	117,023 [193]	523	119,666 [221]	19	7,328 [6]	543	126,994 [227]
Efficiency Measure	No. of 707(b) inquiries per successful outcome	7.0		5.7		7.0		0.0		7.0	
	Percent of Trustee Final Reports reviewed within 60 days	95%		100%		95%		0%		95%	
Program Activity	<b>2. Case and Trustee Administration</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		473	110,206 [30]	458	110,206 [12]	493	112,695 [30]	19	6,904 [0]	511	119,599 [30]
Outputs	Number of successful actions related to consumer protection <sup>1/</sup>	N/A		2,047		N/A		N/A		N/A	
	Number of successful discharge actions	N/A		317		N/A		N/A		N/A	
	Potential additional returns to creditors through civil enforcement and related efforts <sup>1/</sup>	N/A		\$997.9M		N/A		N/A		N/A	
	Litigation success rate	95%		96%		95%		0%		95%	

1/ Beginning in FY 2018, the USTP excluded targets for numerical performance measures due to the uncertain effects of anticipated staffing reductions.

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

*Number of successful actions related to consumer protection:* This measure consists of formal motions and complaints granted in a bankruptcy court and successful inquiries made by the 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 Reaffirmation Procedures, Improper Solicitation, Objection to Relief from Stay Motions, and Other Actions for Attorney Misconduct.

*Number of successful discharge complaints (discontinued in FY 2018):* This measure consists of successful formal discharge complaints filed by the USTP in a bankruptcy court to prevent fraud and abuse by individual debtors. These complaints result in waiver, denial, or revocation of a discharge of debt. It is one of the most serious civil remedies against fraud and abuse by individual debtors in the bankruptcy system and is taken to resolve issues such as hidden assets and unreported income. (This measure does not include successful discharge complaints against debtors who are ineligible due to a prior discharge or who failed to complete a debtor education course.)

*Number of successful discharge actions (new measure in FY 2018):* 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

## United States Trustee Program

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 disgorged, and sanctions and fines against professionals.

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

PERFORMANCE MEASURE TABLE										
Appropriation:		United States Trustee Program								
Decision Unit:		Administration of Cases								
Performance Report and Performance Plan Targets		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2020	FY 2021	FY 2022	FY 2023
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target	Target
Efficiency Measure	No. of 707(b) inquiries per successful outcome	5.2	5.1	5.4	5.3	7.0	5.7	7.0	7.0	7.0
	Percent of Trustee Final Reports reviewed within 60 days	New Measure FY 2017	100%	100%	98%	95%	100%	95%	95%	95%
Outputs	Number of successful actions related to consumer protection <sup>1</sup>	2,503	2,483	2,723	1,605	N/A	2,047	N/A	N/A	N/A
	Number of successful discharge complaints	462	424	424	Discontinued FY18	Discontinued FY18	Discontinued FY18	Discontinued FY18	Discontinued FY18	Discontinued FY18
	Number of successful discharge actions <sup>1</sup>	New Measure FY 2018	New Measure FY 2018	472	345	N/A	317	N/A	N/A	N/A
	Potential additional returns to creditors through civil enforcement and related efforts <sup>1/2</sup>	\$965M	\$884M	\$2,839M	\$757M	N/A	\$997.9M	N/A	N/A	N/A
	Litigation success rate	New Measure FY 2017	98%	97%	97%	95%	96%	95%	95%	95%

1/ Beginning in FY 2018, the USTP excluded targets for numerical performance measures due to the uncertain effects of anticipated staffing reductions.

2/ The FY 2018 actual figure for potential additional returns to creditors through civil enforcement and related efforts is due to a case with \$2.2 billion in debts not discharged.



### 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 2020, this included making nearly 2,500 criminal referrals to United States Attorneys and law enforcement; participating in 100 appellate matters beyond the bankruptcy court, including 28 matters at the United States court of appeals level and two before the Supreme Court; reviewing over 60,000 trustee reports; conducting around 450 on-site audits and field reviews for chapter 7, 12 and 13 trustee operations; and filing 55 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 60 percent among objections that were decided during FY 2020. Overall, the USTP took nearly 25,000 formal and informal civil enforcement actions.

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*A copy of the USTP's FY 2020 Annual Report can be viewed or downloaded from the Internet at <https://www.justice.gov/ust/page/file/1384576/download>*

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#### 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.

##### **a. Enforce 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 a settlement 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.

**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. Integral to protecting the system is the USTP's statutory responsibility to refer suspected criminal activity to the United States Attorneys and to provide assistance to law enforcement when appropriate, including serving as Special Assistant United States Attorneys. Program staff 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.

**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 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 financial 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:

*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. In FY 2019, the USTP entered into a \$15 million multi-district settlement agreement with one of the world's largest management consulting firms resolving disputes over the adequacy of disclosures made by the firm in chapter 11 bankruptcy cases. The settlement is one of the highest repayments made by a bankruptcy professional for alleged non-compliance with disclosure rules. In FY 2021, the USTP reached another settlement with the same firm on its renewed application to be retained in one of the cases involved in the earlier settlement. While the total amount of fees to be waived is unknown, the firm rendered services throughout the case and likely would have sought approval for, and reimbursement of, millions of dollars in fees and expenses. Moreover, for the first time, the firm has agreed it will disclose all affiliate connections and all confidential client connections in any bankruptcy case in which it seeks to be retained in the future.

*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. In FY 2020, the USTP filed 55 formal objections to executive bonuses and severance payments in chapter 11 cases with a success rate of 60 percent among objections that were decided during FY 2020. 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.

**e. Achieve management excellence by promoting ethical conduct across Program staff, fostering workforce performance, and pursuing cost savings in technology.**

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

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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. 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. Ongoing activities in this area include outreach to both professional and academic affinity organizations to encourage interest in the Program's mission and its hiring efforts for both mission critical and operational support functions. In addition, the USTP is undertaking a similar recruitment outreach process for prospective trustees, partnering with the National Conference of Bankruptcy Judges on ways to identify potential talent as well as encourage early interest in a bankruptcy profession.

In the area of technology, the USTP continuously reviews its operations for cost-saving opportunities. In addition to continuing the use of shared services for its Help Desk and litigation support, the Program is continuing a critical, multi-year modernization project of its system portfolio used to oversee the administration of 1.3 million ongoing bankruptcy cases annually, enforce civil and criminal matters in such cases, and oversee private trustees who administer cases in chapters 7, 11, 12 and 13. The modernization effort is anticipated to result in increased functionality and annual cost savings by eliminating obsolete systems, automating functions, and improving user interfaces as well as data analytic capabilities.

## V. Program Increases by Item

**Item Name:** Bankruptcy Filing Workload – COVID-19

**Budget Decision Unit(s):** Administration of Cases

**Program Increase for FY 2021:** Positions 75 Atty 33 FTE 38 Dollars \$7,915,000

### Description of Item

The USTP is requesting \$7.9 million for an additional 75 positions (33 attorneys) and 38 FTEs to address a potentially significant increase in bankruptcy filings due to the COVID-19 pandemic. During the Great Recession, filings rose sharply over a two-year period to peak at 1.5 million filings in FY 2010. The requested resources assume filings begin to rebound in the fourth quarter of FY 2021, reaching 1.1 million filings in FY 2022, reflecting a more than 45 percent increase over the pre-pandemic filing level of FY 2019.

The USTP lacks the resources to support the potential rise in bankruptcy filings. Despite similar case levels in FY 2007 and FY 2019, which were about half of the level for FY 2010, caseload per employee in FY 2019 was about 800 filings per FTE, one-third greater than the FY 2007 level. Moreover, there is limited capacity to relieve workload pressures as approximately 20 percent of senior positions have been filled by staff doing double duty and existing staff have been devoted to ongoing trustee and case oversight duties associated with the SBRA and overall small business chapter 11 cases. Without the requested positions, filings per FTE could increase by 34 percent above the pre-pandemic FY 2019 level to 1,064 filings per FTE. Even with the requested positions, however, the Program plans to reduce the allocation of staff time per filing by about one-third below the current average in order to maximize the impact of the USTP's enforcement efforts and limit the workload increase to 30 percent above the FY 2019 average employee caseload.

Caseload levels are only one measure of the workload burden on USTP staff. Large chapter 11 business bankruptcies, including those referred to as "mega-cases," typically require significant USTP resources. The complexity of such cases is driven by the size of a debtor's assets and liabilities, number of creditors, nature of claims, and legal issues that could have a system-wide impact. Many of the proceedings for these cases continue in court for two to three years, or even longer. The USTP carries out a wide range of statutory responsibilities in both the initial and ongoing stages of such cases, which can involve hundreds of millions to billions in liabilities and

require numerous court appearances.<sup>19</sup> In the very early stages of a case, for example, the Program appoints official committees of creditors after conducting a comprehensive analysis of the types of debt held by unsecured creditors (such as vendor or bond financing), their financial exposure (which changes if the debt was hedged or actively traded), and other factors that determine whether such entities adequately represent the creditor body as a whole, as required under the Code. Further, while the Program does not substitute its business judgment for that of management, it seeks to protect the interests of all stakeholders by, for example, reviewing and objecting to excessive management bonuses and attorneys' fees, and the inappropriate retention of bankruptcy professionals. Overall chapter 11 filings by large public companies, including mega-cases, more than doubled during calendar year 2020 and reached their highest level since the Great Recession. The geographic distribution of such cases is also broadening as more mega-cases are being filed in jurisdictions outside the more typical venues of Delaware and New York. Both trends underscore the need for the Program to have an appropriately sized, skilled, and geographically distributed workforce base. This would enable the Program to effectively continue its nationwide service model that has been in place for over three decades, allowing staff to participate in more than 250 bankruptcy courts and before approximately 300 bankruptcy judges.

The request aligns with Department priorities to remain agile and responsive to future threats to the bankruptcy system. A functioning system, of which the Program is a critical part, ensures a stable national economy, which also impacts the Department's other priority areas for FY 2022. Adequate Program staffing heading into the Great Recession enabled the USTP to launch critical national initiatives against systemic fraud and abuse of the system, including in the area of mortgage fraud. This request would enable the Program to address not only an increase in workload due to filing projections for FY 2022, but also the cumulative impact of a potentially significant rise in filings beginning in FY 2021.

As outlined in the table that follows, the USTP's request is sub-divided into bankruptcy-chapter specific initiatives, which will enable the Program to pivot, as necessary, when specific fraudulent and abusive schemes emerge from the current upheaval caused by COVID-19. The first initiative is for large chapter 11 filings. The second initiative is for non-chapter 11 filings, including cases in chapters 7 and 13, which will enable the Program to address the workload related to bankruptcy relief provided primarily to consumers, although businesses may also liquidate under chapter 7.

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<sup>19</sup> The USTP does not currently track the specific staff resources devoted to chapter 11 cases by case size. "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. A 2009 Government Accountability Office study on case-related workload for bankruptcy judges evaluated the approach by judicial districts in accounting for the resource-intensive nature of such cases. Specifically, the aggregate estimated number of judgeship hours required for all filings that comprise a mega case are increased by a ratio based on docketed events per hour for mega versus non-mega cases. The average of the resulting indicator based on several years of data forms one part of the basis for determining the need for additional judges for a bankruptcy court. See <https://www.gao.gov/assets/130/122743.pdf>

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Positions, FTE and Cost Summary	Personnel			Amount Requested (\$000)		
	Pos	Atty	FTE	Personnel	Non-Personnel	Total
<b>Bankruptcy Filing Workload -- COVID-19</b>	<b>75</b>	<b>33</b>	<b>38</b>	<b>\$7,915</b>	<b>\$0</b>	<b>\$7,915</b>
Initiative #1 - Increase in Filings for Large Chapter 11 Cases	38	17	19	\$4,038	\$0	\$4,038
Initiative #2 - Increase in Filings for Non-Chapter 11 Cases	37	16	19	\$3,877	\$0	\$3,877

## Justification

The USTP's request is based on the following assumptions outlined in the table and described further below.

Assumptions	
FY 2022 Total Annual Filings	1,080,230
Less Pre-COVID-19 Filings based on FY 2021 President's Budget Request	-771,000
Increase due to COVID-19	309,230
Less Small Business Chapter 11 Filings Including Subchapter V	-4,000
Increase in Large Chapter 11 and Non-Chapter 11 Filings	305,230
<b>Initiative #1: New Large Chapter 11 Filings due to COVID-19</b>	
Estimated Filings	6,000
Increase in FTE Hours per Filing	13
Required FTE Increase	38
FTE Lapse	50%
Requested FTEs	19
<b>Initiative #2: New Non-Chapter 11 Filings due to COVID-19</b>	
Estimated Filings	299,230
Increase in FTE Hours per Filing	0.26
FTE Enhancement Request	37
FTE Lapse	50%
Requested FTEs	19
<b>FTE Workload</b>	
Estimated Large Chapter 11 and Non-Chapter 11 Filings	1,076,230
FTEs in FY 2022 Current Services	1,015
With Requested FTEs	1,053
Estimated Filings per FTE	1,022
FY 2010 Filings per FTE	1,215
Projected Variance in Filings per FTE	-16%

- FY 2022 filings reach approximately 1.1 million in total.
- Filings per FTE is limited to about a 30 percent increase over the FY 2019 level.

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- Workload assumptions incorporate the impact of an increase in the current number of bankruptcy judges, if they match FY 2010 levels.
- FTE hours per filing are consistent with current USTP records on the amount of time devoted by staff to underlying activities and tasks but reduced by one-third.

### Impact on Performance

This request was identified as part of the USTP's response to the Department's FY 2020 Strategic Objective Review and Enterprise Risk Management evaluation. The Program's existing performance measures will be used to track the impact of this request. Adjustments to reflect the impact of this request may be made after FY 2021, after data for a full fiscal year reflecting a potential increase in filings can be recorded.

## Funding

### Base Funding

There are no current services for this request.

<i>FY 2020 Enacted</i>				<i>FY 2021 President's Budget</i>				<i>FY 2022 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

Type of Position/Series	Positions Requested	Annual Costs per Position (\$000)			FY 2022 Request (\$000)	Annualizations (\$000)	
		1st Year Adjusted Cost	2nd Year Adjusted Cost	3rd Year Full Cost (Modular)		FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Accounting and Budget (0500-0599)	21	\$110	\$92	\$208	\$2,312	\$1,937	\$120
Attorneys (0905)	33	\$124	\$105	\$235	\$4,082	\$3,481	\$191
Paralegals / Other Law (0900-0999)	21	\$72	\$51	\$127	\$1,521	\$1,076	\$70
<b>Total Personnel</b>	<b>75</b>	<b>\$106</b>	<b>\$87</b>	<b>\$198</b>	<b>\$7,915</b>	<b>\$6,494</b>	<b>\$382</b>

### Non-Personnel Increase/Reduction Cost Summary

This request does not include any other increases or reductions related to non-personnel costs.



**Justification for Non-Personnel Annualizations**

This request does not include any other increases or reductions related to non-personnel costs.

**Total Request for this Item**

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	75	33	38	\$7,915	\$0	\$7,915	\$6,494	\$382
<b>Grand Total</b>	<b>75</b>	<b>33</b>	<b>38</b>	<b>\$7,915</b>	<b>\$0</b>	<b>\$7,915</b>	<b>\$6,494</b>	<b>\$382</b>

**Affected Crosscuts**

The requested enhancement does not impact the USTP’s crosscut measure.

## **VII. Exhibits**