

# U.S. Department of Justice

## United States Trustee Program



FY 2018 Performance Budget  
Congressional Submission

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## I. Overview for the United States Trustee Program

### A. Introduction

The United States Trustee Program (USTP or Program) is a litigating component of the Department of Justice (DOJ) whose mission is to promote the integrity and efficiency of the nation's bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public.

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

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To meet its mission, the USTP requests \$225,479,000, which supports 1,028 positions (360 attorneys) and 1,028 full time equivalent employees (FTEs) for FY 2018. This request funds only the most mission critical personnel and operational needs, statutory case administration and oversight, and investigation into cases of fraud and abuse committed by debtors, creditors and other parties in the bankruptcy system – areas that continue to grow in terms of case complexity and associated litigation and enforcement activities.

In FY 2018, the USTP proposes to adjust quarterly fees for the largest chapter 11 debtors. With the enactment of the proposal, the USTP's FY 2018 budget request is anticipated to be fully offset by bankruptcy fees collected and on deposit in the United States Trustee System Fund.<sup>1</sup>

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

### B. Responsibilities and Priorities

The Program continues to steadfastly carry out core statutory responsibilities of policing fraud and abuse and ensuring that private trustees effectively administer estate assets. As the watchdog of the bankruptcy system, the USTP employs a broad range of enforcement and oversight activities to ensure the system functions fairly and efficiently for all stakeholders. Notably, the USTP has demonstrated great agility and responsiveness in taking action against debtor abuse; protecting consumer debtors from fraud and abuse; ensuring bankruptcy law is

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<sup>1</sup> The Program's FY 2018 revenue estimate with a fee increase assumes that the proposed fee adjustment is effective October 1, 2017.

uniform in all judicial districts; and maintaining a bankruptcy system that functions fairly and efficiently.

## **1. Civil Enforcement Activities**

The Program takes civil actions to enforce the Bankruptcy Code and to combat bankruptcy fraud and abuse. Although most actions are taken to address debtor violations, the USTP takes a balanced approach to remedy wrongdoing by creditors and other parties who exploit debtors. During FY 2016, USTP offices reported taking more than 31,000 formal and informal civil enforcement actions, including those not requiring formal resolution by a court, with a potential monetary impact of nearly \$1 billion. Since the Program began tracking its civil enforcement and related actions in 2003, it has taken more than 717,000 actions with a monetary impact in excess of \$17.3 billion.

### *Debtor Abuse*

The Program administers the statutory “means test” of consumer debtors. The USTP determines if a debtor is “presumed abusive” under the statutory formula and files either a motion to dismiss the case or a statement explaining why a motion to dismiss is not appropriate. The USTP also moves to dismiss cases for other improper debtor actions, such as extravagant purchases on the eve of bankruptcy, and files complaints to deny discharge for more serious offenses, such as concealment of assets.

### *Creditor Abuse*

Since FY 2007, as part of its consumer protection duties, the Program has undertaken a coordinated and sustained national effort to address abusive creditor activity against individual debtors, who often are least able to defend themselves from unscrupulous, improper, or fraudulent conduct committed against them by creditors and other third parties.

Increasingly, the USTP has leveraged its resources to protect consumers through targeted litigation or informal enforcement actions resulting in national and multi-jurisdictional settlements. Some are bankruptcy-specific settlements solely between the USTP and the creditor, while others address both bankruptcy and non-bankruptcy conduct and involve multiple federal and state entities such as the Department of Housing and Urban Development, the Consumer Financial Protection Bureau, and state attorney generals.

For example, in February 2016, the Program’s coordinated approach helped bring about the settlement that the Department of Justice and its federal and state partners reached with HSBC Bank.<sup>2</sup> The USTP is a signatory to the \$470 million agreement, which resolved a panoply of mortgage loan origination and servicing claims, including violations of bankruptcy law that deprived distressed homeowners of rights as they sought to save their homes in chapter 13.

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<sup>2</sup> The USTP’s press release is available at <https://www.justice.gov/opa/pr/justice-department-reaches-470-million-joint-state-federal-settlement-hsbc-address-mortgage>.

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In 2015, the USTP obtained monetary relief of more than \$130 million for non-compliance by mortgage servicers Wells Fargo Bank N.A. (Wells Fargo) and JPMorgan Chase Bank, N.A. (Chase). Wells Fargo acknowledged its failure to provide more than 100,000 legally required notices to homeowners who are or were in bankruptcy, thereby denying their opportunity to challenge the accuracy of mortgage payment increases. The settlement with Chase addressed issues uncovered by the USTP involving the robo-signing of payment change notices filed in bankruptcy court, as well as Chase's failure to timely and accurately provide payment change notices and escrow statements to more than 25,000 customers in bankruptcy. In both settlements, the banks agreed to also change internal operations and submit to oversight by an independent compliance reviewer.

Since 2008, the USTP has entered into 12 national settlements, nine of which involved abusive conduct by creditors. The USTP generally obtains three key results in its consumer protection settlements:

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

Even as the USTP continues to investigate violations within the mortgage arena, it also has launched investigations into the conduct of creditors who engage in the buying and selling of unsecured consumer claims. Systemic violations ranging from the robo-signing of court documents, the collection of discharged debt, and abuse of process through filing high volumes of stale debt claims are among the matters being reviewed, and some of these matters are in the latter stages of investigation.

### *Debtor Attorney Enforcement*

The Program also has focused its national and local enforcement objectives to address a growing concern regarding unscrupulous or underperforming consumer practitioners, including national and Internet-based law firms that violate bankruptcy practice requirements. Debtors, creditors, and the court systems are all victims of improper, fraudulent, or abusive practices by those who represent debtors in bankruptcy courts. Historically, the Program has taken more than 15,000 formal actions and made more than 30,000 inquiries relating to debtors' attorneys and non-attorney petition preparers. It also has made more than 300 referrals to state bars, and over 300 disciplinary actions have been issued. The net result of these actions has been approximately \$24 million in fines imposed, \$52 million in fees disgorged or recovered, and \$3.5 million in sanctions imposed. The Program has recently seen a surge of misconduct by unscrupulous or underperforming consumer practitioners that often results in attorney misconduct actions by the USTP. Past enforcement activities suggest that increased efforts in combating these issues will likely deter similar conduct and require fewer actions in subsequent years.

### 2. Oversight and Criminal Enforcement Activities

By statute, the Program has standing to participate in each of the 700,000 to more than 1.5 million bankruptcy cases filed annually within its jurisdiction. These activities include:

- Supervising private trustees who administer chapters 7, 12, and 13 bankruptcy cases and who distribute about \$10 billion in assets each year. This duty involves reviewing around 100,000 case reports annually for accuracy and compliance with law, reviewing hundreds of trustee operations, and performing other trustee oversight and auditing functions.
- Providing oversight of chapter 11 cases by taking actions that range from objecting to excessive and unreasonable professional fees and improper management bonuses, to reviewing debtors' disclosure statements and proposed plans of reorganization, to seeking dismissal of cases where there is little likelihood of reorganization or the debtor fails to exercise its fiduciary obligations.
- Identifying and referring cases of potential criminal wrongdoing to law enforcement, training law enforcement who investigate bankruptcy crimes, and assisting the U.S. Attorneys in the prosecution of cases through Program attorneys who are cross-designated as Special Assistant U.S. Attorneys. During FY 2016, the USTP presented more than 100 bankruptcy and bankruptcy-related fraud training programs that reached approximately 3,900 federal, state, and local law enforcement personnel, Program employees, private bankruptcy trustees, and members of the bar and other professional associations throughout the country.
- Approving and monitoring approximately 120 credit counseling agencies and 200 debtor education providers that offer statutorily required services to individual debtors.

### 3. Shaping Bankruptcy Law

One of the most important roles the Program plays in the bankruptcy system is to identify and raise issues for review on appeal, thereby ensuring that the law is shaped, interpreted, and applied evenly in all judicial districts. The USTP identifies important emerging issues, develops uniform legal positions, and advocates them as a party and as *amicus curiae*.<sup>3</sup> The USTP has handled a significant number of appellate matters in recent years, many of which may have a profound and long-standing effect on the bankruptcy system. In FY 2016, the Program participated in 99 appellate matters beyond the bankruptcy court, including two dozen matters at the United States court of appeals level.

The USTP also works to shape the bankruptcy law by engaging in outreach and training to address significant priorities that range from local to international. The USTP's field offices are actively involved in their local bankruptcy communities and regularly engage with bankruptcy

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<sup>3</sup> When the USTP acts as *amicus curiae*, it is not a party to the case, but is permitted by the court to provide information, such as a legal opinion, testimony or a brief, that directly affects the case.



judges, private trustees appointed by the U.S. Trustees, and bankruptcy practitioners, as well as national groups that represent these stakeholders, to address issues of mutual concern. Further, the Program participates as a liaison on the Judicial Conference of the United States' Advisory Committee on Rules of Bankruptcy Procedure. The USTP also serves as the United States' representative with the International Association of Insolvency Regulators (IAIR), an organization that brings together the collective experiences and expertise of government insolvency regulators from jurisdictions around the world. A senior representative from the USTP participates at IAIR's annual meeting and, last year, spoke on a panel addressing on the issue of achieving the right balance between debtor and creditor protection.

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

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*For more information on Program activities, see the Annual Report of Significant Accomplishments at [http://www.justice.gov/ust/ea/public\\_affairs/annualreport/index.htm](http://www.justice.gov/ust/ea/public_affairs/annualreport/index.htm).*

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### **C. Program History and Structure**

The USTP is a national program with broad administrative, regulatory, and litigation responsibilities under the Bankruptcy Code (title 11) and title 28 of the United States Code. The Program was established by the Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, *et seq.*) as a pilot effort encompassing 18 judicial districts. Through the enactment of the Bankruptcy Judges, U.S. Trustees, and Family Farmer Bankruptcy Act of 1986, the Program expanded to 21 regions nationwide, covering all Federal judicial districts except those in Alabama and North Carolina. The Program has a headquarters office in Washington, D.C., led by a Director; 21 regions managed by U.S. Trustees; and 92 field office locations in 46 states supervised by Assistant U.S. Trustees.<sup>4</sup> In FY 2016, the Program had 1,088 FTEs, consisting of attorneys, financial analysts, paralegals, and support staff. More than 90 percent of the Program's employees are located in its field offices.

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<sup>4</sup> Over FY 2014 to FY 2016, the Program completed three consolidations of offices (Brooklyn with Manhattan, Woodland Hills with Los Angeles, and Oakland with San Francisco).

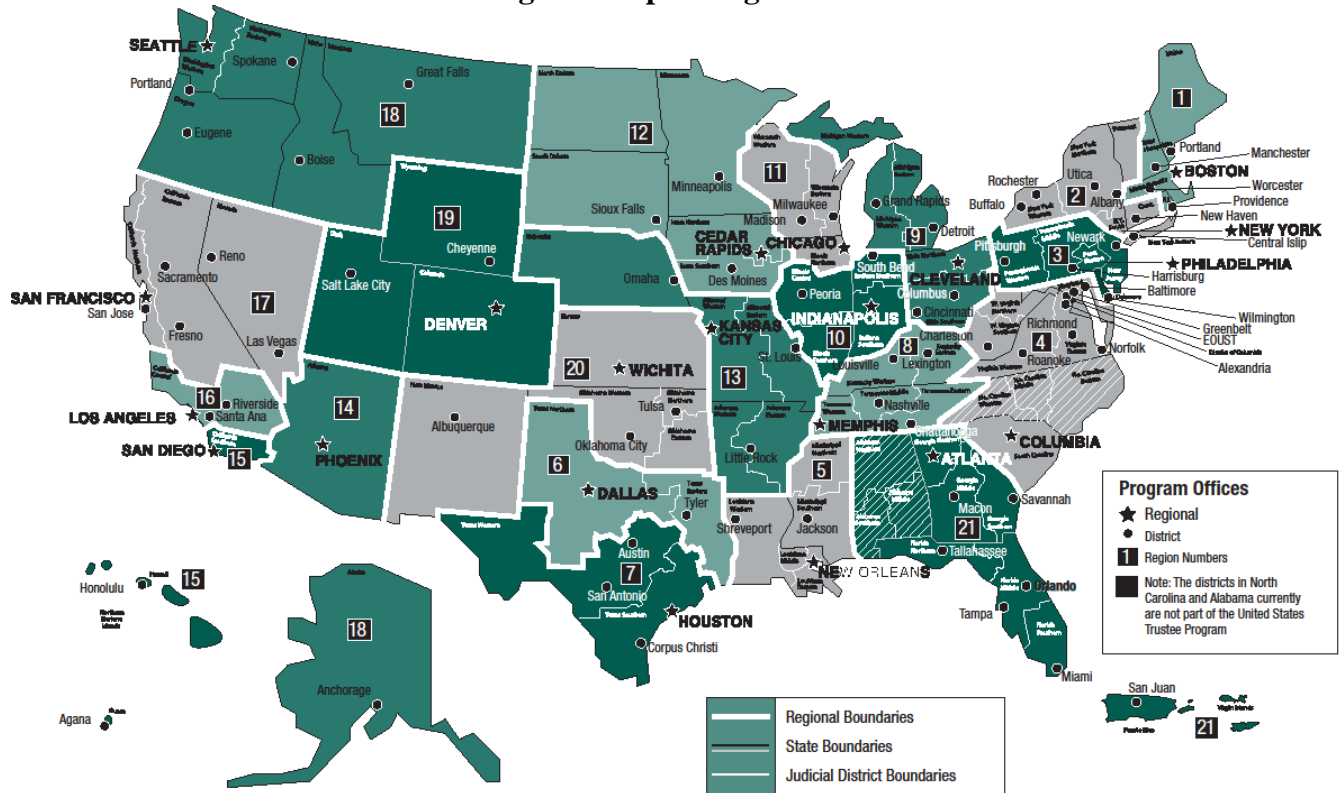
## 1. Executive Office for United States Trustees

The Executive Office for U.S. Trustees (EOUST) oversees the Program by providing leadership, central policy and management direction, and administrative and information technology support to its field offices. The Office of the Director directly supervises the U.S. Trustees and the operations of the EOUST and has primary responsibility for liaison with the Department, Congress, the judiciary, private trustee organizations, and other stakeholders in the bankruptcy system (e.g., professional associations). The EOUST includes the Office of the General Counsel, the Office of Oversight, the Office of Criminal Enforcement, the Office of Planning and Evaluation, the Office of Administration, and the Office of Information Technology.

## 2. USTP Field Offices

USTP field offices oversee bankruptcy case administration by supervising the private trustees who administer consumer bankruptcy estates under chapters 7, 12, and 13 of the Bankruptcy Code; litigating civil enforcement actions; ensuring that chapter 11 cases proceed toward rehabilitation, conversion, or dismissal; and carrying out other core responsibilities (e.g., administering the statutory means test).

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



### D. Challenges

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

#### 1. Maintaining Funding and Staffing to Support Operations

The largest immediate challenge facing the USTP is its ability to maintain the high level of enforcement activities, oversight and bankruptcy services for all stakeholders in a challenging budget environment. Over the last 12 years, the Program has successfully carried out substantial new duties it assumed under the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), greatly expanded its national consumer protection initiatives (including investigating mortgage servicer misconduct), and undertaken more complex litigation that has yielded billions of dollars in settlements. Despite this workload expansion, full funding for adjustments-to-base (ATBs) has not been consistently appropriated. More recently, the Program's funding essentially has been flat-lined since FY 2015.

The USTP's funding history and various hiring challenges have impacted the Program's ability to maintain staffing levels. From FY 2010 through FY 2016, the workforce declined by 175 FTEs, which is a 14 percent decrease. Current staffing has fallen below pre-BAPCPA levels, even though a 2005 Congressional Budget Office Cost Estimate Report indicated that at least 220 additional staff positions were needed for BAPCPA implementation.<sup>5</sup> To minimize the impact of lower staffing levels, the Program has adopted innovative work flows and methodologies to leverage resources regionally and nationally; the use of personnel detail assignments; and other efficiency measures.

Over FY 2017 and FY 2018, as a result of not receiving full inflationary ATB increases, the USTP will need to further reduce staffing by an additional 60 FTEs. To focus on mission priorities, the Program will strategically backfill only a limited number of critical positions.

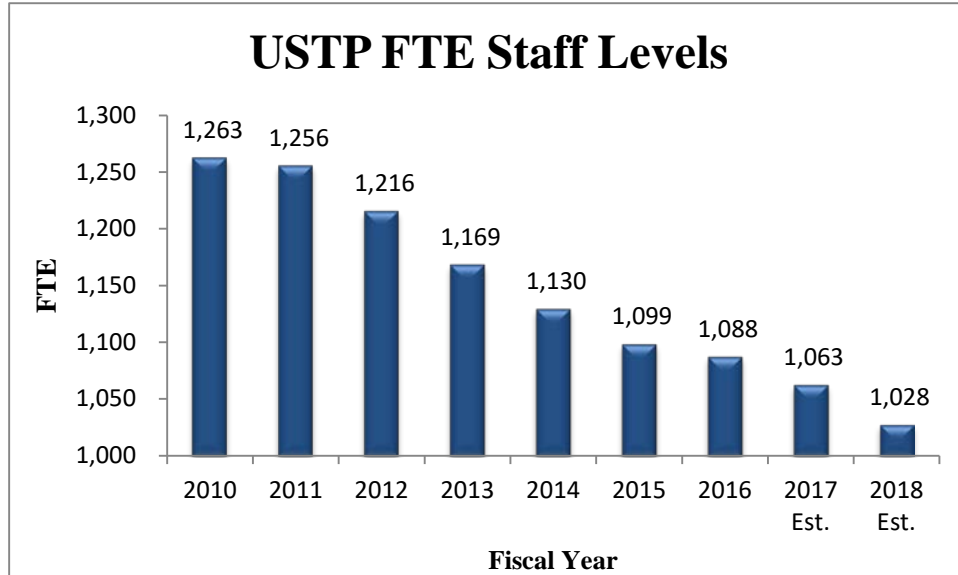
The Program is authorized by law to contract with independent firms to conduct debtor audits, which assist the USTP in determining the accuracy, veracity, and completeness of petitions, schedules, and other information required to be provided by debtors under sections 521 and 1322 of title 11. The USTP intends to use available carryover to fund debtor audits at a reduced rate for a portion of FY 2017 and in FY 2018.

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<sup>5</sup> The Congressional Budget Office Cost Estimate Report is available at <https://www.cbo.gov/publication/16466>.

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The following chart reflects actual and projected operational USTP staffing levels in FTEs for FY 2010 through FY 2018.<sup>6</sup>



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

From 1989 through FY 2016, the Program's appropriation was fully offset by bankruptcy fees paid primarily by those who use the bankruptcy system. Two categories of fees generate nearly all of the revenue for the Fund. The first category is the filing fee paid at the commencement of each case in chapters 7, 11, 12, and 13,<sup>7</sup> and the second category is the quarterly fee paid by chapter 11 debtors. All fees are deposited into the Fund and offset the USTP's annual appropriation. 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. The Program's current fee rates have been in effect since 2005 for filing fees and 2008 for quarterly fees.

In FY 2016, a change in appropriation language was made such that the USTP's full appropriation is initially derived from the General Fund of the Treasury and subsequently offset by net fees received during the fiscal year and the balance in the Fund.

With a decline in bankruptcy filings over the past six years, the balance in the Fund was reduced to \$10.3 million at the end of FY 2016. Based upon recent filing trends, the USTP does not

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<sup>6</sup> The official FTE estimate for FY 2017 is 1,184 FTEs, however, based on new administration priorities the USTP projects a revised operational estimate of 1,063 FTEs. The Program manages 92 field office locations nationwide, the Executive Office, and more than 400 sites where Section 341 meetings are held. In addition, staff appears in court in more than 300 locations nationwide.

<sup>7</sup> The USTP receives a portion of these filing fees as specified by statute.

## United States Trustee Program

project a significant rebound in bankruptcy filings in FY 2018.<sup>8</sup> In FY 2016, offsetting collections covered approximately 66 percent of the Program's appropriation, with the remainder being drawn from the Fund. In FY 2017, the Program is predicted to exhaust the balance of the Fund and fall \$92 million short of offsetting the FY 2017 funding level.

To address this issue in FY 2018 and beyond, the USTP proposes to adjust the quarterly fees for the largest chapter 11 debtors. With the enactment of the proposal, the FY 2018 budget request is anticipated to be fully offset by bankruptcy fees collected and on deposit in the Fund.<sup>9</sup>

The following table reflects actual and projected revenue collected by source, for the period FY 2012 – FY 2018.

Bankruptcy Fees by Source (\$ in thousands)	FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Actual	FY 2017 Est.	FY 2018 Est. without Fee Increase <sup>1</sup>	FY 2018 Est. with Fee Increase <sup>2</sup>
Bankruptcy Filing Fees	\$ 94,073	\$ 81,374	\$ 69,518	\$ 60,515	\$ 56,380	\$ 49,200	\$ 53,600	\$ 53,600
Chapter 11 Quarterly Fees	\$ 139,289	\$ 126,948	\$ 110,623	\$ 92,688	\$ 91,125	\$ 73,000	\$ 85,000	\$ 235,000
Interest on Earnings on Investments	\$ 652	\$ 902	\$ 744	\$ 650	\$ 523	\$ 857	\$ 257	\$ 257
Other	\$ 123	\$ 142	\$ 178	\$ 76	\$ 301	\$ 143	\$ 143	\$ 143
<b>Total Deposits</b>	<b>\$ 234,137</b>	<b>\$ 209,366</b>	<b>\$ 181,063</b>	<b>\$ 153,929</b>	<b>\$ 148,329</b>	<b>\$ 123,200</b>	<b>\$ 139,000</b>	<b>\$ 289,000</b>

1/ The USTP's current estimate for FY 2018 is \$139 million without the proposed chapter 11 fee increase.

2/ The FY 2018 with fee increase revenue estimate assumes that the proposed fee adjustment is effective October 1, 2017. The proposed fee structure and FY 2018 revenue estimates were calculated using the bankruptcy filing projections provided in section I.D.4. Any change in bankruptcy filings or fee adjustment effective date would impact actual revenue collections.

### 3. Fee Proposal

The USTP proposes to adjust the quarterly fees for the largest chapter 11 debtors. The proposed fee structure would allow the USTP Director to adjust the quarterly fee, within specified limits, imposed in cases with quarterly disbursements of at least \$1 million. Initially, the fee would be set at the lesser of 1 percent of disbursements or \$250,000. Beginning in FY 2021, the USTP Director may adjust the fee no more than once a fiscal year, not to exceed the lesser of 1 percent of disbursements or \$250,000.

<sup>8</sup> USTP estimates are based on recent filing trends and do not consider other economic factors, draw dates for high yield bonds, or other considerations frequently cited by commentators who make filing predictions.

<sup>9</sup> The Program's FY 2018 revenue estimate with a fee increase assumes that the proposed fee adjustment is effective October 1, 2017.

Importantly, to ensure that small businesses and other debtors with lower disbursements do not pay additional fees, cases with quarterly disbursements under \$1 million are excluded from the proposed adjustment in chapter 11 quarterly fees. About 98 percent of debtors who voluntarily identify themselves in the bankruptcy system as meeting the Bankruptcy Code's definition of a small business have quarterly disbursements under \$1 million.<sup>10</sup>

#### 4. Programmatic Issues

*Unpredictable Legal Challenges.* 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.

*Evolving and Complex Caseload.* The USTP's sustained heavy workload in civil enforcement, along with the sheer sophistication of fraud schemes and abusive activities, place an incredible burden on USTP staff to move cases through the system efficiently. In addition to carrying out statutory duties, including means testing and trustee oversight, the Program remains very much involved in new and complex issues associated with national mortgage servicers, other consumer protection issues, and complex chapter 11 bankruptcy filings.

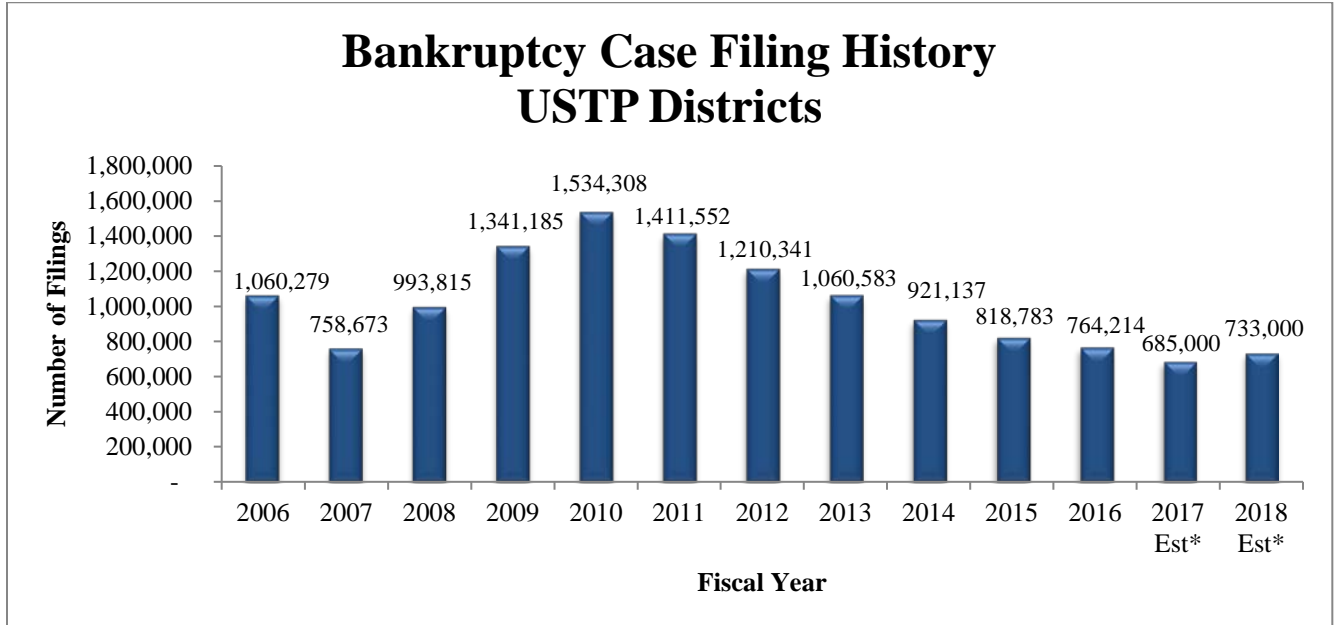
*Volatility in Bankruptcy Filings.* The volatility in the number and location of bankruptcy filings creates challenges in case management. For the past century, filings have generally increased about two-thirds of the time and decreased the other one-third. However, in recent years, bankruptcy filing rates have been extraordinarily unpredictable, with unprecedented volatility that some experts attribute to changes in the law, low interest rates, declining consumer credit, and the availability of distressed debt funding in the capital markets. Many of these factors are subject to sudden change, as shown by the explosion in the number of bankruptcy filings from FY 2008 to FY 2010. Filings from FY 2014 to 2018 are estimated to be fewer than one million per year for the first time since FY 2008. During FY 2016, the rate of the filing decline lessened, with chapter 11 filings substantially increasing and chapter 13 filings nearly stable while chapter 7 filings continued to decrease. While some commentators suggest that overall filings will rise, based upon trend analysis and without regard to changes in external economic conditions, the USTP does not project a significant rebound in bankruptcy filings by FY 2018.

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<sup>10</sup> Generally, 11 U.S.C. § 101(51D) defines a small business debtor as an individual, partnership, or corporation engaged in commercial or business activities that has aggregate non-contingent liquidated debts of not more than \$2,566,050, subject to adjustment every three years.



The following chart reflects actual and projected filings for fiscal years 2006 through 2018.<sup>11</sup>



\* Note: FY 2017 – FY 2018 bankruptcy filings are based on current estimates.

*Compatibility of USTP and Court Data Systems.* The Program depends on the exchange of electronic data with the U.S. Bankruptcy Courts to ensure the timely administration of bankruptcy cases. As data systems are updated, the Program must work cooperatively with the Administrative Office of the U.S. Courts to ensure compatibility to support an effective and efficient bankruptcy process.

*Security at Section 341 Public Meetings.* The USTP, in response to growing concerns by judges, trustees, and practitioners, initiated a pilot program at the end of FY 2015 under which armed guards provided by the Federal Protective Service are present at section 341 meetings in approximately 16 locations that the Program deemed most in need of additional security.

Section 341 of the Bankruptcy Code requires the U.S. Trustee to convene a meeting of creditors in every bankruptcy case. At the section 341 meeting, the debtor must appear and answer questions under oath from the U.S. Trustee, any trustee appointed in the case, creditors, and other parties in interest regarding the administration of the bankruptcy estate and the debtor’s liabilities and financial condition. In addition, these meetings are open to the general public. The USTP acquires space for section 341 meeting rooms in secured locations when feasible and justifiable. This is not always possible, however, due to a lack of available space, as well as the infrequency of meetings that take place at remote locations. As a result, over 100 of the 400-plus meeting rooms are currently situated in non-federal space with less than optimal security, including

<sup>11</sup> The chart reflects bankruptcy filings under all chapters of the Bankruptcy Code, as reported by the Administrative Office of the U.S. Courts (AOUSC). Fiscal years 2017–2018 are current estimated filings.

commercial space and low or no cost space in hotel conference rooms and local government facilities like public libraries. Because of their nature, section 341 meetings can be quite combustible because tensions between the debtor and creditors, estranged family members, former employees, and other parties sometimes run high, resulting in increased safety and security risks.

Between FY 2015 and FY 2016, the USTP committed \$1.4 million of carryover funding to cover the pilot, and will target to continue the initiative through FY 2018 with the use of available carryover funding.

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

In recent years, in the USTP has developed innovative strategies to find cost-effective operational solutions. The following are examples of the Program's efforts to date. In FY 2018, the Program will continue to explore efficiencies within its work processes, technology systems, and operating structure.

#### *Consolidation of Functions*

The Program piloted and implemented nationwide a number of work process changes by consolidating at the regional level functions previously conducted in each field office, freeing valuable time for field office personnel to pursue other enforcement priorities and providing greater consistency in case administration. This consolidation includes certain administrative areas of trustee oversight, chapter 11 quarterly fee review, and bankruptcy case data extraction and download. For example, the USTP approves and files Trustee Final Reports (TFRs) that provide for the distribution of chapter 7 estate funds to creditors in accordance with statutorily prescribed priorities. TFRs must be reviewed and approved by the USTP, and filed with the Bankruptcy Court, within 60 days of receipt. Consolidation has resulted in more efficient and consistent review of TFRs, now conducted by only a few specially trained staff members.

#### *Co-Location of Work Space*

The USTP has achieved considerable savings by returning underutilized space and reducing space allocations as leases expire. In total, since FY 2012, the Program estimates it has returned more than 49,000 square feet of space. This includes between FY 2014 and FY 2016 co-locating several Program field offices (Brooklyn with Manhattan; Woodland Hills with Los Angeles; and Oakland with San Francisco), providing the dual benefit of reducing office space costs while increasing operational efficiencies.

#### *Use of Technology for Streamlining and Cost Savings*

The Program is always examining ways to maximize its use of technology to improve operations while reducing costs.



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- Since 2014, the USTP has reduced its annual cost of accessing bankruptcy court documents needed for appropriate case oversight by approximately \$750,000 annually by utilizing an internally developed case viewer that provides docket-like views of case filings received via daily downloads from the court and by transitioning from the federal court's Public Access to Court Records (PACER) system to a third party vendor that allows access to bankruptcy court records nationwide.
- In FY 2016, the Program completed a transition away from desktop computers to mobile laptop devices, thereby eliminating the need for multiple devices for employees. This technology refresh reduced the Program's total inventory of devices by 500, resulting in an estimated cost avoidance of more than \$500,000 per life-cycle.
- The Program is in the process of enhancing its underlying network operational performance by tripling its internal bandwidth capacity in all of its offices at no net cost increase.
- The USTP is reducing its Help Desk support costs through a shared contract with the Bureau of Alcohol, Tobacco, Firearm and Explosives.
- The USTP maximizes its use of video teleconferencing equipment in its field offices nationwide to reduce travel costs to attend court hearings and for meetings and training programs.

### **F. Program Efforts Toward Integrating Environmental Accountability**

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

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

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

## II. Summary of Program Changes

The USTP is not proposing formal program changes in FY 2018.

## III. Appropriations Language and Analysis of Appropriations Language

The FY 2018 budget request includes proposed changes in the appropriations language set forth and explained below. New language is *italicized and underlined*, and language proposed for deletion is bracketed.

### United States Trustee System Fund

For necessary expenses of the United States Trustee Program, as authorized, [~~\$225,908,000~~]*\$225,479,000*, to remain available until expended: *Provided*, That, notwithstanding any other provision of law, deposits to the United States Trustee System Fund and amounts herein appropriated shall be available in such amounts as may be necessary to pay refunds due depositors: *Provided further*, That, notwithstanding any other provision of law, fees collected pursuant to section 589a(b) of title 28, United States Code, shall be retained and used for necessary expenses in this appropriation and shall remain available until expended: *Provided further*, That to the extent that fees collected in fiscal year [2016]*2018*, net of amounts necessary to pay refunds due depositors, exceed [~~\$225,908,000~~]*\$225,479,000*, those excess amounts shall be available in future fiscal years only to the extent provided in advance in appropriations Acts: *Provided further*, That the sum herein appropriated from the general fund shall be reduced (1) as such fees are received during fiscal year [2016]*2018*, net of amounts necessary to pay refunds due depositors, (estimated at [~~\$162,400,000~~]*\$289,000,000*) and (2) to the extent that any remaining general fund appropriations can be derived from amounts deposited in the Fund in previous fiscal years that are not otherwise appropriated, so as to result in a final fiscal year [2016]*2018* appropriation from the general fund estimated at \$0.

### Analysis of Appropriation Language

No substantive changes proposed.

## IV. General Provision Language and Analysis of General Provision Language

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

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

- (A) “1 percent of disbursements, or \$250,000, whichever is less, for each quarter in which disbursements total \$1,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.”; and
- (B) “Beginning in fiscal year 2021, the Director of the Executive Office for United States Trustees may adjust (no more frequently than once per fiscal year) the fee for each quarter in which disbursements total \$1,000,000 or more, not to exceed 1 percent of disbursements, or \$250,000, whichever is less.”
- (2) This section and the amendment made by subsection (a) shall take effect October 1, 2017, or on the first day of the calendar quarter following the enactment of this Act, whichever is later, and shall apply to all cases pending or filed under title 11 of the United States Code on or after the effective date of the amendment.

### **Analysis of General Provision Language**

The proposed language amends 28 U.S.C. § 1930(a)(6) to allow the Director of the Executive Office for United States Trustees (Director) to adjust the quarterly fee, within specified limits, imposed in larger cases filed pursuant to chapter 11 of title 11, United States Code, with quarterly disbursements of at least \$1 million. Initially, the fee would be set at the lesser of 1 percent of disbursements or \$250,000. Beginning in fiscal year 2021, the Director may adjust the fee no more than once a fiscal year, provided that the amount does not exceed the lesser of 1 percent of disbursements or \$250,000. The proposed fee would take effect the first calendar quarter after the date of enactment. There is no effect on outlays.

**V. Program Activity Justification**

**A. Administration of Cases**

The USTP budget is contained in one decision unit, the Administration of Cases, which encompasses all operational activities and includes the direct cost of all outputs, indirect costs, and common administrative systems. There are two main Program activities: (1) enforcement; and (2) case and trustee administration. The FTEs and associated funding are allocated to these Program activities based upon the direct, productive 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 Program activities.

<i>Administration of Cases</i>	<b>Direct Pos.</b>	<b>Estimated FTE</b>	<b>Amount (\$ in thousands)</b>
2016 Enacted	1,314	1,088	\$225,908
2017 Continuing Resolution	1,314	1,184	\$225,479
Adjustments to Base and Technical Adjustments	(286)	(156)	\$0
2018 Current Services	1,028	1,028	\$225,479
2018 Request	1,028	1,028	\$225,479
<b>Total Change 2017 - 2018</b>	<b>(286)</b>	<b>(156)</b>	<b>\$0</b>

<i>Administration of Cases</i> <b>Information Technology Breakout</b>	<b>Direct Pos.</b>	<b>Estimated FTE <sup>/1</sup></b>	<b>Amount (\$ in thousands)</b>
2016 Enacted	39	32	\$22,245
2017 Continuing Resolution	39	32	\$25,882
Adjustments to Base and Technical Adjustments	-	1	-\$3,032
2018 Current Services	33	33	\$22,850
2018 Request	33	33	\$22,850
<b>Total Change 2017 - 2018</b>	<b>(6)</b>	<b>1</b>	<b>-\$3,032</b>

<sup>/1</sup> FY16 FTE is actual.

**1. Civil Enforcement**

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

During FY 2016, USTP offices reported taking more than 31,000 formal and informal civil enforcement actions, with a potential monetary impact in excess of \$965 million in debts not discharged, fines, and other remedies. The USTP prevailed in 98.5 percent of the actions resolved by judicial decision or consent in the fundamental areas of dismissal for abuse (11 U.S.C. § 707(b)), denial of discharge (11 U.S.C. § 727), fines and injunctions against

bankruptcy petition preparers (11 U.S.C. § 110), and disgorgements of attorneys' fees (11 U.S.C. § 329). For example, in a recent case in the Western District of Virginia, the USTP investigated and took action against a multi-state consumer law firm. The USTP successfully obtained significant sanctions against the law firm and its lawyers for, among other things, failure to disclose its fees, improper fee sharing, providing substandard legal services to its clients, and the unauthorized practice of law. The USTP understands that the law firm ceased operations after the court's ruling.

### *Means Testing*

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

In FY 2016, approximately 10 percent of chapter 7 debtors had income above their state median. Of those cases filed by above median income debtors, about 6 percent were "presumed abusive" under the means test. Of those presumed abusive cases that did not voluntarily convert or dismiss, the Program exercised its statutory discretion to decline to file a motion to dismiss in about 63 percent of the cases after consideration of the debtor's special circumstances, such as recent job loss, that justified an adjustment to the current monthly income calculation.

### *Consumer Protection*

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

The USTP's approach of addressing multi-jurisdictional violations through a coordinated enforcement effort that holds creditors accountable and protects consumers has proven effective. The Program has participated in or played a substantial role in 12 nationwide settlements, including nine settlements to protect consumer debtors against national creditors to address a range of violations, including the collection of discharged debt, improper disclosure of privacy protected information, the filing of inaccurate and inflated claims, and failure to provide court-

required notices. These national settlements provide relief for victimized debtors, require systemic corrective actions so such violations do not recur, and uphold the integrity of the bankruptcy system.

Most recently, in February 2016, the Program's coordinated approach helped bring about the settlement that the Department of Justice and its federal and state partners reached with HSBC Bank. The USTP is a signatory to the \$470 million agreement, which resolved a panoply of mortgage loan origination and servicing claims, including violations of bankruptcy law that deprived distressed homeowners of rights as they sought to save their homes in chapter 13.

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

Eight months earlier, in March 2015 the Program announced a settlement with Chase obligating the bank to pay more than \$50 million, including cash payments, mortgage loan credits and loan forgiveness to over 25,000 homeowners who are or were in bankruptcy. Chase acknowledged that it filed in bankruptcy courts around the country more than 50,000 payment change notices that were improperly signed, under penalty of perjury, by persons who had not reviewed the accuracy of the notices. Chase also acknowledged that it failed to file timely, accurate notices of mortgage payment changes and failed to provide timely, accurate escrow statements. In addition to the monetary payments, Chase agreed to make necessary changes to its technology, policies, procedures, internal controls, and other oversight systems to ensure that the problems identified do not recur, and to be subject to an independent compliance review by a monitor who would file public reports with the bankruptcy court.

## **2. Criminal Enforcement**

The Program has a statutory duty to refer matters to the U.S. Attorney's offices for investigation and prosecution that "relate to the occurrence of any action which may constitute a crime." 28 U.S.C. § 586(a)(3)(F). The statute also requires that each U.S. Trustee shall assist the U.S. Attorney in carrying out prosecutions. The Program submits an annual report to Congress that details the number and types of criminal referrals made by the Program, the outcomes of those referrals, an explanation in any decrease in referrals, and the Program's efforts to prevent bankruptcy fraud and abuse. In FY 2016, the USTP made 2,158 criminal referrals involving a broad range of allegations.



*For more information on criminal referrals, see the annual reports to Congress:*

[http://www.justice.gov/ust/eo/public\\_affairs/reports\\_studies/index.htm](http://www.justice.gov/ust/eo/public_affairs/reports_studies/index.htm)

Among its considerable efforts in the area of criminal enforcement, the USTP field offices participate in more than 70 local bankruptcy fraud working groups, mortgage fraud working groups, and other specialized task forces throughout the country; conduct extensive training for federal, state, and local law enforcement personnel, USTP staff, and private bankruptcy trustees (training approximately 3,900 people in FY 2016); and publish internal resource documents. In addition, Program staff – including attorneys, bankruptcy analysts, and paralegals – frequently assist law enforcement partners with investigations and provide expert or fact testimony at criminal trials.

One example of a successful USTP criminal referral involves a defendant who pleaded guilty to wire fraud and conspiracy to commit bankruptcy fraud and was sentenced in the District of Arizona to 10 years in prison and three years of probation. The defendant raised more than \$20 million from 500 investors for nonexistent land development projects and improperly used some of the money for unrelated business and personal expenses. He also failed to disclose significant assets in his bankruptcy, including jewelry, luxury items, interests in real estate, and businesses. His wife and co-debtor was also sentenced to one year of home confinement and five years of probation after pleading guilty to conspiracy to commit bankruptcy fraud based on her failure to disclose assets in the bankruptcy. The U.S. Trustee referred the criminal matter and assisted with the investigation, and a trial attorney from the office served as a Special Assistant U.S. Attorney in the case.

### **3. Chapter 11 Oversight**

The Program carries out significant responsibilities in business reorganization cases. These responsibilities include such matters as appointing official committees of creditors and equity security holders, objecting when appropriate to the retention and compensation of professionals, reviewing and objecting to disclosure statements to ensure adequate information is provided to stakeholders, appointing trustees and examiners when warranted, enforcing the statutory limitations on insider and executive compensation, and moving to dismiss or convert about one-third of chapter 11 cases each year because they are not progressing towards financial rehabilitation.

As the USTP has stepped up its enforcement in the chapter 11 arena, it is increasingly clear that the Program's role as the "watchdog" of the system is essential to vindicate congressional mandates in the Bankruptcy Code. For example, even when debtor companies and some of their major creditors agree on a course of action, the interests of other stakeholders often are implicated. The USTP's role allows it to present issues for judicial decision even where parties either will not, or lack the financial wherewithal to, litigate. Although the USTP should never

substitute its business judgment for that of economic stakeholders, it is the Program's job to ensure that the Code and Rules are followed by all participants in the bankruptcy system. This has led us to oppose both debtors and creditors on issues such as payment of attorneys' fees, executive bonuses, and matters of corporate governance.

In addition, the USTP has responsibility for ensuring accountability by company management and professionals employed in chapter 11 cases in such areas as:

*Attorney's Fees.* The USTP polices compliance with statutory and rule-based standards for awarding attorney and other professional fees in chapter 11 cases. In particular, the USTP has advanced major reforms in large chapter 11 case attorney billing practices by issuing guidelines that require greater transparency and market-driven rates. The guidelines, which became effective November 1, 2013, have been effective. Among other things, they have highlighted instances of disclosures that do not comply with statutory standards. For example, applications showed instances where firms that provided pre-petition fee discounts to their client did not extend those same discounts after the client filed for chapter 11 relief. Issues such as these have been resolved largely through modification of the retention or fee application once the concern was raised by the United States Trustee.

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

In many cases, the U.S. Trustee's formal or informal objections have resulted in substantial voluntary changes to the debtor's proposed executive compensation programs. Other cases required formal court action. Some examples include:

- In the case of *Molycorp Inc.*, the U.S. Trustee objection resulted in the denial of a chapter 11 debtor's plan to pay bonuses totaling as much as \$2.9 million to seven management-level employees. The U.S. Trustee successfully argued in the Bankruptcy Court for the District of Delaware that the bonuses were impermissibly designed to compensate management merely for staying with the debtor during the bankruptcy case, not to provide incentives for management to accomplish difficult objectives in the case. As a result, the debtor revised the plan to reduce the proposed bonus amounts by almost two-thirds and to impose more stringent standards for earning them. Ultimately, because the more stringent standards were not met, the executives did not receive the bonuses.
- In the case of *GT Advanced Technologies*, the Bankruptcy Court for the District of New Hampshire sustained the U.S. Trustee's objection and denied the purported "incentive" bonuses for the debtor's management totaling \$2.1 million. The court agreed that these bonuses were disguised retention bonuses prohibited by the Code and further denied



another bonus plan of \$1.5 million because it was not justified by the facts and circumstances of the case.

- In the chapter 11 case of *The Sports Authority, Inc.*, the Bankruptcy Court for the District of Delaware sustained the U.S. Trustee's objection to the debtor's request for payment of \$2.85 million in management bonuses, holding that the proposed compensation was inappropriate where high-level management executives were merely staying in their jobs after the business had been liquidated and rank-and-file employees were losing their jobs.

*Independent Trustees and Examiners:* The Program's responsibilities in business reorganization cases also include the appointment of trustees when there are grounds to suspect that current management has participated in gross mismanagement, fraud, dishonesty, or other improper activity. The USTP also seeks the appointment of examiners when independent investigations are needed. By way of example, the U.S. Trustee appointed chapter 11 trustees in cases such as *TelexFree LLC* (the debtor purported to provide inexpensive Internet phone service worldwide but actually operated a massive cross-border pyramid scheme), *ISoltech, Inc.* (the debtor allegedly installed uncertified solar panels in U.S. military bases and commercial facilities), and *Soundview Elite, Ltd.* (involving self-dealing by the managers of Cayman Islands mutual funds). In addition, the United States Trustee appointed an examiner in the *Caesars' Entertainment* case in the Northern District of Illinois whose investigation was widely praised for providing a roadmap for a more efficient resolution of the case, including the potential recovery of \$3.5 billion for the estate.

*Financial Reporting:* The USTP is currently engaged in a formal rulemaking to standardize uniform mandatory monthly operating reports for non-small business cases. Chapter 11 monthly operating reports are essential reports that enable courts, creditors, and the USTP to assess debtors' progress toward financial rehabilitation and their compliance with bankruptcy requirements. These reports often are the impetus for USTP motions to convert or dismiss cases or to seek other relief.

#### **4. Appellate Practice and Challenges to the Bankruptcy Code**

One of the Program's most important roles has been to develop consistent case law. The USTP is the only participant in the bankruptcy system with a national perspective and a responsibility to develop coherent case law across the nation. The USTP has been handling a large number of appeals, many of which may have a profound and long-standing effect on the bankruptcy system. In FY 2016, the Program participated in 99 appellate matters beyond the bankruptcy court, including two dozen matters at the United States court of appeals level. In addition, the Program has been involved in a number of significant cases before the Supreme Court.

Most recently, the USTP assisted the Office of the Solicitor General in participating as *amicus* in *Czyzewski v. Jevic Holding Corporation*, No. 15-649 (U.S.). In March 2017, the Supreme Court ruled in the government's favor, finding that a settlement and structured dismissal may not be used to distribute bankruptcy estate funds without following the Bankruptcy Code's priority

## United States Trustee Program

scheme. \_\_\_ U.S. \_\_\_, 137 S. Ct. 937 (2017). The U.S. Trustee sided with the truck drivers whose employer fired them, filed bankruptcy the next day, and then denied them their right to priority payment under bankruptcy law.

In 2016, the USTP also assisted the Solicitor General in successfully arguing that debtors should be liable for debts obtained through intentional fraudulent schemes even if they do not involve a false statement or false representation, *Husky Int'l Electronics v. Ritz*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1581 (2016). And in FY 2015, the United States participated as *amicus* in three bankruptcy cases before the United States Supreme Court. The USTP was listed among the government's counsel in two of the briefs. In *Baker Botts LLP v. ASARCO LLC*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2158 (2015), the Court affirmed the Court of Appeals for the Fifth Circuit's prohibition against the right of attorneys to obtain additional fees for defending objections to their fee applications. In *Bullard v. Blue Hills Bank, fka Hyde Park Sav. Bank*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 1686 (2015), the Court addressed the standards for determining the finality of bankruptcy court orders, which affected not only the denials of proposed consumer debt repayment plans at issue in the case, but also many other matters (e.g., USTP motions to disqualify counsel and objections to their fees).

The USTP's appellate efforts also seek to further the Program's work in other key areas. For instance, the Program has defended on appeal judgments holding bankruptcy professionals who violate their obligations to their clients, the court, and the bankruptcy estate accountable for their misdeeds. In one recent case, a chapter 7 trustee was removed from all of his cases after it was uncovered that he had tried to overcharge the bankruptcy estate by surreptitiously billing for personal expenses not necessary to the administration of the estate. On appeal, the USTP successfully defended his removal. *Smith v. Robbins (In re IFS Fin. Corp.)*, 803 F.3d 195 (5th Cir. 2015). When an attorney not only failed to provide a benefit to his client (the debtor), but also took actions that were detrimental to the debtor and caused the debtor to incur unnecessary fees, the Program successfully defended an order denying compensation to the attorney, disgorging his attorney's fees, and suspending him from practicing in that court. *Needler v. Casamatta (In re Miller Auto. Grp. Inc.)*, 536 B.R. 828 (B.A.P. 8th Cir. 2015). The Program also successfully defended sanctions against a debtor's attorney who told his client to lie about her assets and her financial transactions in violation of the Bankruptcy Code. *Bisges v. Gargula (In re Clink)*, 770 F.3d 719 (8th Cir. 2014). Further, the Program successfully defended sanctions imposed upon an attorney who made misleading and inaccurate arguments in documents filed with the bankruptcy court. *Baker v. Harrington (In re Hoover)*, 827 F.3d 191 (1st Cir. 2016). Finally, the Program successfully defended an order significantly reducing a bankruptcy attorney's fees because no attorney-client relationship existed during the periods when the disputed services were provided and, even if such a relationship had existed, the attorney failed to adequately record his time, had a conflict of interest, and violated the court's rules governing compensation requests which justified the reduction of fees. *Gold v. Harrington (In re Gold)*, 654 F. App'x 14 (2d Cir. 2016).

### **5. Trustee Administration**

The Program appoints and supervises private trustees, who are not government employees, to administer bankruptcy estates and distribute payments to creditors in cases filed under chapters 7, 12, and 13. Chapter 7 trustees collect the debtor's assets that are not exempt from creditors, liquidate the assets, and distribute the proceeds to creditors. Chapter 12 and chapter 13 trustees evaluate the financial affairs of the debtor, make recommendations to the court regarding confirmation of the debtor's repayment plan, and administer the court-approved plan by collecting payments from the debtor and disbursing the funds to creditors in accordance with the priorities of the Bankruptcy Code.

The Program instructs trustees concerning their duties to debtors, creditors, other parties in interest, and the U.S. Trustee; trains trustees and evaluates their performance; reviews their financial operations; ensures the effective administration of estate assets; and intervenes to investigate and recover the loss of estate assets when embezzlement, mismanagement, or other improper activity is suspected or alleged.

At the end of FY 2016, the Program supervised the activities of 960 chapter 7 trustees, 36 chapter 12 trustees, and 177 chapter 13 trustees. In FY 2016, chapter 7 trustees administered approximately 45,000 asset cases that generated nearly \$3.2 billion in funds, while chapter 12 and chapter 13 trustees administered approximately 1.1 million cases and disbursed nearly \$6.2 billion.

# United States Trustee Program

## B. Performance Tables

1. PERFORMANCE AND RESOURCES TABLE <sup>1/</sup>											
Appropriation: United States Trustee Program											
Decision Unit: Administration of Cases											
		Target		Actual		Projected		Changes		Requested (Total)	
WORKLOAD/ RESOURCES		FY 2016		FY 2016		FY 2017		Current Services Adjustments & FY 2018 Program Changes		FY 2018 Request	
Total Costs and FTE		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
TYPE / Strategic Objective	Performance /Resources	1,184	\$225,908	1,088	\$225,908	1,184	\$225,479	-156	\$0	1,028	\$225,479
Program Activity	1. Civil and Criminal Enforcement and Appellate Matters	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		453	\$86,500	561	\$116,500	611	\$116,339	-80	\$0	531	\$116,339
Efficiency Measure	No. of 707(b) inquiries per successful outcome	7.0		5.2		7.0		0.0		7.0	
	Percent of Trustee Final Reports reviewed within 60 days <sup>2</sup>	New Measure FY 2017		New Measure FY 2017		95%		0%		95%	
Program Activity	2. Case and Trustee Administration	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		731	\$139,408	527	\$109,348	573	\$109,140	-76	\$0	497	\$109,140
Outputs	Number of successful actions related to consumer protection	2,400		2,503		2,200		0		N/A	
	Number of successful discharge complaints	475 <sup>3</sup>		462		475		0		Discontinued FY18 <sup>2</sup>	
	Number of successful discharge actions <sup>2</sup>	New Measure FY 2018		New Measure FY 2018		New Measure FY 2018		New Measure FY 2018		N/A	
	Potential Additional Returns to Creditors through Civil Enforcement and Related Efforts	\$950,000,000		\$965,464,640		\$950,000,000		\$0		N/A	
	Litigation success rate <sup>2</sup>	New Measure FY 2017		New Measure FY 2017		95%		0%		95%	

1/ The Program has discontinued reporting the number of bankruptcy case filings on the performance and resource table. The decision to discontinue reporting this measure was made in collaboration with JMD as the measure was established as a workload measure and is not a performance measure. For FY 2018, the USTP is not including targets for numerical performance measures due to the uncertain effects of anticipated staffing reductions.

2/ The Program added two new measures in FY 2017, the percent of Trustee Final Reports reviewed within 60 days and the Program's overall litigation success rate. The Program added one new measure in FY 2018, the number of successful discharge actions, to replace the number of successful discharge complaints, which will be discontinued in FY 2018.

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

### **Data Definitions:**

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

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

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

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

*Number of Section 707(b) inquiries per successful outcome:* Inquiries made under 11 U.S.C. § 707(b)(2) and (b)(3) help the Program assess an individual debtor's eligibility for chapter 7 relief. If the debtor'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 U.S. 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 remedy available to the Program against debtors in its effort to prevent fraud and abuse 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, which will be discontinued in FY 2018. This measure consists of successful formal and informal discharge actions that result in waiver, denial, or revocation of discharge of debt. These actions are taken to resolve issues such as hidden assets and unreported income and represent one of the most serious civil remedy available to the Program 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:* Program actions have a significant financial impact, and this measure tracks the amounts involved as the result of the Program's formal and informal actions. The majority of this 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.



# United States Trustee Program

Decision Unit: Administration of Cases									
Performance Report and Performance Plan Targets		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016		FY 2017	FY 2018
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target <sup>3</sup>
Efficiency Measure	No. of 707(b) inquiries per successful outcome	4.4	4.7	4.8	5.2	7.0	5.2	7.0	7.0
	Percent of Trustee Final Reports reviewed within 60 days <sup>1</sup>	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	95%	95%
Outputs	Number of successful actions related to consumer protection	3,259	4,018	2,829	2,545	2,400	2,503	2,200	N/A
	Number of successful discharge complaints <sup>2</sup>	557	551	410	395	475 <sup>2</sup>	462	475	Discontinued FY18 <sup>2</sup>
	Number of successful discharge actions <sup>1</sup>	New Measure FY 2018	New Measure FY 2018	New Measure FY 2018	New Measure FY 2018	New Measure FY 2018	New Measure FY 2018	New Measure FY 2018	N/A
	Potential additional returns to creditors through civil enforcement and related efforts	\$1,982 M	\$1,659 M	\$1,071 M	\$1,168 M	\$950 M	\$965 M	\$950 M	N/A
	Litigation success rate <sup>1</sup>	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	New Measure FY 2017	95%	95%

1/ The Program added two new measures in FY 2017: the percent of Trustee Final Reports reviewed within 60 days and the Program's overall litigation success rate; and one new measure in FY 2018: the number of successful discharge actions.

2/ The FY 2016 target for the number of successful discharge complaints differs from the FY 2016 President's Budget. This measure will be discontinued in FY 2018, and replaced by the number of successful discharge actions.

3/ For FY 2018, the USTP is not including targets for numerical performance measures due to the uncertain effects of anticipated staffing reductions.

## C. Performance and Strategies

### 1. Performance Plan and Report for Outcomes

The USTP's cadre of dedicated professionals has continued to fulfill mission priorities despite a 14 percent decrease in staffing since FY 2010. In FY 2016, this has included making more than 2,100 criminal referrals to U.S. Attorneys and law enforcement; participating in 99 appellate matters beyond the bankruptcy court, including two dozen matters at the United States court of appeals level; reviewing approximately 90,000 trustees' final reports; conducting more than 500 on-site audits and field reviews for chapter 7, 12 and 13 trustee operations; and filing nearly 2,500 motions to convert or dismiss chapter 11 cases. In addition, the USTP took more than

31,000 formal and informal civil enforcement actions which, while significant, represented a decline of less than 1,000 actions from FY 2015.

In FY 2016, the Program met three of its four performance goals. The Program fell 13 cases short of its target of 475 successful discharge complaints, but posted an increase of 17% compared to FY 2015. These complaints are filed to resolve issues such as hidden assets and unreported income, and they constitute one of the most serious civil remedies available to the Program in combatting debtor fraud and abuse in the bankruptcy system. When successful, these complaints result in denial or revocation of a discharge of debt. The Program attributes not meeting this goal to several factors, most notably fewer staff on-board, the loss of experienced staff trained to discover and investigate these type of actions, and to a lesser degree reduced bankruptcy filings. The Program, however, remains committed to this core enforcement area.

For FY 2018, the Program will replace the successful discharge complaints measure with a successful discharge actions measure. This adjustment will involve adding successful informal inquiries under § 727 that result in a discharge waiver. These outcomes are the same as those in the original measure but are just attained through a different means, without the need to file a formal action with the court. Also beginning in FY 2018, the Program will report totals for numerical measures (including the new successful discharge actions measure) without including targets. Targets for the existing percentage and ratio-based measures will remain unchanged.

## **2. Strategies to Accomplish Outcomes**

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

The USTP's anti-fraud and abuse efforts focus on wrongdoing both by debtors and by those who exploit debtors.

*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 Bankruptcy 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.

*Creditor Abuse.* Addressing violations of the Bankruptcy Code by creditors remains a key Program priority. Even as the USTP continues to investigate violations within the mortgage arena, it also has launched investigations into the conduct of creditors who engage in the buying and selling of unsecured consumer claims. Systemic violations ranging from the robo-signing of court documents, the collection of discharged debt, and abuse of process through filing high volumes of stale debt claims are among the matters being reviewed, and some of these matters are in the latter stages of investigation.



*Professional Misconduct.* The USTP has a long history of rigorous enforcement of the Bankruptcy Code and Rules against attorneys and others who fail to perform their duties to their consumer clients. For example, in FY 2016, the Program filed more than 900 court actions against professionals and non-attorney bankruptcy petition preparers who failed to provide the services required by law.

*Underperforming Attorney Enforcement.* In FY 2018, the Program anticipates continuing to prioritize its national enforcement efforts to address a growing concern regarding unscrupulous or underperforming consumer practitioners. Debtors, creditors, and the court systems are all victims of improper, fraudulent, or abusive practices by those who represent debtors in bankruptcy courts.

***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 U.S. Attorney and to provide assistance to law enforcement when appropriate, including serving as Special Assistant U.S. 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, mortgage rescue fraud, money laundering, investor fraud, identity theft, bank fraud, mail fraud, and wire fraud.

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

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

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

The USTP monitors and takes enforcement actions in reorganization cases within its jurisdiction, ranging from small, single proprietorships to multi-billion dollar international conglomerates. Without substituting its judgment for that of parties with a monetary stake, the USTP focuses its

attention on areas such as the following: filing motions and appointing trustees to replace management that engaged in egregious or improper activity; filing motions and appointing independent examiners to investigate the financial affairs of a debtor company; prescribing and monitoring financial reports to ensure that the debtor is not dissipating assets; filing enforcement motions to dismiss or convert to chapter 7 liquidation when cases are failing; reviewing applications to employ attorneys and other professionals to identify disqualifying conflicts of interest and objecting to employment if appropriate; appointing official committees of creditors to serve as fiduciaries acting on behalf of other creditors to negotiate a plan of reorganization; and reviewing and objecting to professional applications to ensure that fees do not exceed market rates and comply with other statutory requirements.

### **VI. Program Increases by Item**

The FY 2018 requested budget does not reflect program increases.

### **VII. Program Offsets by Item**

The FY 2018 requested budget does not reflect program offsets.

# Exhibits